SB 52 Reporting Disclosure That Follows the Money

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 – 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 cutoff dates.

Bills like SB 27 (Correa) and AB 45 (Dickinson) would help "pierce through the veil" of organizations like 501c4s that are often used to hide big contributors. But under current law it will still be hard to "peel the onion" to find the actual original contributors, because in the ordinary course of business, committees often give to each other in a spaghetti-like fashion that makes it nearly impossible to find the original sources.

In our view, there are seven key things that full disclosure needs to do to give voters the information they need on political ads while being constitutional:

1) Require 501c4s and other organizations to reveal major donors that pay for their political expenditures.
2) Protect donors from being disclosed if their money isn't being used for political purposes.
3) Reveal the original contributors for political expenditures, i.e. the large original individual, corporate, or union donors, no matter how many layers of organizations their funds were transferred through. Original contributors can also include non-profits and committees, to the extent their original contributions are made up of small donations.
4) Require organizations that transfer or expend politically-available funds of $2,000 or more from anybody to account for and report the original contributions and how they were used.
5) Not allow contributors to avoid disclosure by making their contribution before an arbitrary time limit.
6) Allow the FPPC to audit organizations' politically-available funds to ensure they are abiding by the rules.
7) Be minimally burdensome by not requiring tracking of contributions under $2,000 for on-ad disclosures and by treating contributions from affiliates to a parent organization as contributions by the parent.

SB 27 and AB 45 address goal 1 and partially goal 2. But we also need to address the other disclosure issues.

SB 52 addresses all seven goals by taking concepts from the Colorado disclosure law (Title 1, Article 45, 7) and the national DISCLOSE Act (HR 4010 of 2012) and extending them to handle multiple layers of transferring organizations to "follow the money", while still protecting donors from disclosure who don't want their funds to be used for political purposes.

The key is that we need disclosure that follows the money – no matter how many organizations an original contribution is transferred through, and when they are transferred, they all need to identify, keep track of, and report the significant original contributors of the politically-available funds they expend or transfer.

SB 52's Proposed "Follow-the-Money Disclosure" language would require:

(1) Donors of $2,000 or more in a year must be given the opportunity to either opt out of or opt in to having their funds be available for political advertisements and therefore being publicly disclosed when spent on political ads. Donations and payments of dues from persons giving less than $2,000 in a year are automatically available for political purposes and disclosed under the name of their original recipient.

These "politically-available funds" are meant to be distinct from "contributions" as defined in California's Political Reform Act because receiving them should not automatically require formation of a committee or

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public reporting, because they might not actually ever be used for political purposes in California.

E.g. A nonprofit or federal out of state committee that receives funds that may be used for political advertisements in California may end up using them for something other than California contributions.
-- This is related to Colorado's disclosure law (Title 1, Article 45, 7) that requires organizations to make all independent expenditures from a separate bank account, because any donor that gives to that account knows they will be disclosed. (http://www.sos.state.co.us/pubs/info_center/laws/Title1Article45.html)

Donors to non-profits will be protected because they will never be publicly disclosed if they said they don't want their donation to be used for political advertisements or their funds are used for non-political purposes.

(2) Covered organizations must keep a detailed accounting of the original contributors that gave at least $2,000 in politically-available funds. The accounting must include whether original contributions were directed to be used for specific campaigns and when funds from original contributions were expended or transferred. They may only use funds transferred from other covered organizations when that organization has provided them a transfer report showing the original contributions that make up the transferred funds.
-- If an organization uses contributions from persons giving less than $2,000 in a calendar year and/or business or investment income, then the organization itself is reported as the original contributor. If it only uses such donations, then it doesn't need to keep a detailed accounting of original contributors at all.

(3) Whenever a covered organization makes a transfer of politically-available funds to another organization, it must report the original contributors that made up those funds to the organization it transfers them to. When selecting which original contributors to report as making up the funds it transfers, the organization must first report any funds that were explicitly directed for the specific campaign involved. If there are none, or if more funds are needed to account for the entire transfer, then it must report enough original contributions to account for the transfer using an accounting procedure that the FPPC shall adopt.
-- Organizations only need to do this if they use politically-available funds given from any person who gave $2,000 or more in a calendar year. Otherwise the organization itself is considered the original contributor.

(4) Whenever an organization makes expenditures for a campaign, it has to report and record which original contributions paid for the expenditures it has made.

(5) Gives the FPPC ability to audit the sources and uses of politically-available funds of any organization, though funds that aren't politically-available won't be publically disclosed.

Example:

If Bob gives $1 million to non-profit A and they are politically available (i.e. the non-profit's policy is that all donations are politically-available and he didn't opt out, or he explicitly opted in), they will be ultimately disclosed when they are spent on political advertisements. No matter how many layers of organizations those politically-available funds are transferred through, each will know that Bob was the original contributor and be required to report him as its original contributor to the organization they transfer it to. No organization may use politically-available funds whose original contributors are not known and identified.

Note this is true whether or not there is an actual campaign that would trigger conventional "contribution" reports when the donation is made. As long as Bob's original contribution is considered politically-available, he will be tracked as an original contributor in the transfer reports and hence reported when it is eventually spent on a political ad, whether that be three months or three years after his original contribution.