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Information presented to
the Commission at the

4-16-14 LAFCO hearing.

Memorandum

To: PUBLIC AGENCY CLIENTS
ELECTED OFFICIALS AND FILING OFFICERS
From: BEST BEST KRIEGER LLP
Date: APRIL 9, 2014

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APR 14 2014

LAFCO
San Bernardino County

ASSEMBLY BILL 800: ENHANCED AUTHORITY OF STATE TO ENFORCE
CAMPAIGN CONTRIBUTION AND EXPENDITURE LAWS

On April 3, 2014, Governor Brown signed Assembly Bill 800 (AB 800). AB 800 makes several changes to the Political Reform Act ("PRA"), including granting the Fair Political Practices Commission ("FPPC") the authority to conduct discretionary audits of any campaign during elections. Prior to AB 800's passage, the FPPC was unable to commence audits of committees until after the conclusion of the election. It also gives the FPPC the power to seek a court order to compel disclosure from committees, and gives such civil actions preference in court to be heard faster to ensure disclosures happen before Election Day. AB 800 will become operative on July 1, 2014.

By way of background, the PRA sets limits on the amount and type of contributions that may be received by an elected official, a candidate for elective office or a campaign for or against a measure. It also limits the amount and type of expenditures that may be made from campaign funds by an elected official, candidate, campaign committee and other intermediaries acting on their behalf. State law also requires that certain contributions and expenditures be disclosed through public filings with the Secretary of State and the FPPC. State law also authorizes the State to audit and investigate candidates and committees for compliance with the PRA. A more detailed analysis of these laws go beyond the scope of this memo, but our office can provide this information upon request.

Summary of Major Changes:

- The PRA authorizes the Franchise Tax Board ("FTB") and FPPC to conduct audits and field investigations of financial statements required to be submitted by lobbying firms, lobbyist employees, candidates and specified committees. However, it previously prohibited the commencement of the audit or investigation until after the election. It also prescribed the scope of statements and reports that could be audited or investigated.

AB 800 removes these limitations. It allows an audit or investigation at any time and allows a review of any reports or statements required under the PRA. This now includes reports and statements that are held by the candidate, committee, etc. but have not yet been filed with the FTB or FPPC. This is partially in response to an \$11 million campaign contribution made to the Small Business Action Committee PAC three weeks prior the November 2012 Statewide General Election. Prior law prevented State authorities from



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auditing or investigating this contribution until after the election. AB 800 removes this loophole.

- AB 800 authorizes the FPPC to seek injunctive relief from a court to compel disclosure of any PRA-required report or statement to ensure compliance with the PRA. The court is required to grant expedited review so that such documents can be obtained and lawful disclosures made by the FPPC prior to Election Day. Previously, the lack of authority to seek a quick court order prevented the FPPC from obtaining and disclosing documents until after Election Day, when the disclosure would be virtually worthless.

There are other technical changes made to the law by AB 800:

- The PRA requires the FTB to complete its audit report and send it to the FPPC, the Secretary of State, the Attorney General and, in some cases, the local filing officer and District Attorney. Under prior law, the FTB had to complete the report within one year after the audit is selected.

AB 800 extends the time to two years.

- The PRA prohibits FTB members, employees and agents from divulging information received as part of an audit or investigation, except in furtherance of the audit or investigation or in connection with a court proceeding.

AB 800 expressly includes FPPC members, employees and agents as well.

- The PRA prohibits an agent or independent contractor from spending \$500 or more, other than overhead or normal operating expenses, on behalf of or for the benefit of any candidate or committee unless the candidate or committee reports the expenditure as if they had made it directly.

AB 800 additionally requires subagents and subcontractors who provide goods and services to or for the benefit of a candidate or committee to disclose this information to the agent or independent contractor, who then must disclose the information to the candidate or committee within 3 working days prior to the campaign expenditure statement filing deadline. For certain late filings, the deadline is only 24 hours.

- The PRA requires disclosure of all “surplus campaign funds” under the control of a former candidate or elected officer and regulates the purposes for which they may be spent. Previously, campaign funds became “surplus” immediately after the officer left office or at the end of the post-election reporting period following the candidate’s defeat, whichever occurred last.



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AB 800 increases the time before these funds are declared “surplus” – it is now 90 days after the officer leaves office or at the end of the post-election reporting period following the candidate’s defeat, whichever occurs last.

CONCLUSION

Please let our office know if you have any questions about the recent rule changes or reporting questions related to last year.

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