

New Bills in CA Legislature on Crowdfunding, Other Hot Issues

03.20.19 | Linda J. Rosenthal, JD



In order to meet a deadline in the California legislature for introducing new bills to be considered in the current session, lawmakers hurried to file three items in late February 2019 of significant interest to nonprofit organizations.

They cover three of the hottest topics in the philanthropy sector: crowdfunding, donor-advised funds, and community foundations. The bills on donor-advised funds ([AB 1712](#)) and community foundations ([AB 1338](#)) are “spot bills,” placeholder filings that will be replaced by substantive bills in the coming weeks. The crowdfunding bill ([AB 1539](#)), though, is the actual proposed legislation; of course, in order to take effect, it must still work its way through the Assembly and then the Senate, where it will likely be amended several times.

All of these topics are ones that we have covered at length in recent posts, the developments of which we have been following closely. It’s no surprise, then, that each of these three is going to be debated in the current legislative session in California. They will also likely be taken up in other state legislatures, along with being considered at the federal level in one way or another.

Spot Bills

Donor-advised funds

The donor-advised fund (DAF) legislation, [AB 1712](#), “Donor advised funds” was introduced by Assembly Member [Buffy Wicks](#), (D; Assembly Dist. 15 including Berkeley and Richmond) on February 22, 2019. The status notes indicate it may be heard “in committee” on March 25, 2019.

As a spot bill, it is necessarily limited to general parameters and intent, but what has been included so far is certainly enough for any interested parties to take note and gear up to comment.

The preamble states: “This bill would express the intent of the Legislature to enact legislation that would relate to donor-advised funds for the purpose of improving transparency and accountability through annual reporting requirements, promoting best practices, and requiring minimum annual distributions.”

Section 1, expressing findings and declarations, make certain important points which mirror concerns already raised by observers. These points (paraphrased) are: (a) California taxpayers are claiming millions each year in deductions for contributions to DAFs; (b) Organizations sponsoring DAFs account for a “rapidly growing share of charitable giving”, citing statistics; (c) DAFs have been around for decades, but this growth “and the rapid expansion of DAFs affiliated with for-profit investment manage businesses” is raising concerns; (d) Reports suggest problems including: “less transparency, oversight, and accountability”; failure to produce enough public benefits; and investments in industries and economic sectors that “may be at odds with the DAF’s charitable purpose.”

Reportedly, the California Association of Nonprofits is largely responsible for this bill, based on a recent survey about the proposed regulation of DAFs. We’ve covered these developments in a number of prior posts including, most recently, here and here.

Community Foundations

The community foundations legislation, AB 1338. Community foundations, was introduced by Assembly Member Jacqui Irwin (D; Assembly Dist. 44 including Oxnard and Thousand Oaks) on February 22, 2019. The status notes indicate it may be heard “in committee” on March 25, 2019.

It is, like the DAF measure, a spot bill. Both the Preamble and Section 1 are short and to the point: “This bill would state the intent of the Legislature to enact legislation that would require the board members and officers of a community foundation to obtain financial fiduciary training.”

We’ve posted many times in the past year about the troubles surrounding the huge Silicon Valley Community Foundation; see, for example, here, here, and here.

Crowdfunding

The third of the newly introduced bills is a substantive bill, AB 1539, Charitable organizations, that was also introduced by Assembly Member Jacqui Irwin on February 22, 2019, and may be “heard in committee” on March 25, 2019.

It is “an act to amend Section 12599.6 of, and to add Section 12599.9 to, the Government Code, relating to charitable organizations,” the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

We’ll cover this bill in depth in a separate post; for now, we’ll use parts of the Legislative Counsel’s Digest to summarize the key points.

The referenced statute gives the state and, in particular, the Attorney General, oversight and enforcement powers over charitable organizations as well as “commercial fundraisers, fundraising counsel, commercial coventurers,” and others engaged in charitable solicitation activities.

Existing law, which includes the power to impose specified civil penalties, “prohibits certain acts and practices in the planning, conduct, or execution of any solicitation or charitable sales promotion.” These proscribed acts and practices include “misrepresenting or misleading anyone in any manner” about who is sponsoring, endorsing, or approving a charitable solicitation or sales promotion, or about who will be getting the money collected.

Existing law also requires charitable organizations and trustees to file periodic reports about “the nature of assets held for charitable purposes, among other information.”

In short, AB 1539 attempts to regulate crowdfunding and, in particular, “how one charity may raise funds for other charities.” Charities would have to get the written consent of another charity “before using its name in an internet solicitation unless certain requirements are met.” It would also require the charity soliciting the funds to file an annual report with the AG’s Registry of Charitable Trusts.

We’ll delay any further, “deep-in-the-weed” analysis of the actual proposed language until our later post. It’s likely that the proposed language will be amended in any event.

There was an unsuccessful attempt at a crowdfunding bill in last year’s session; there was fairly widespread agreement that it was insufficient and badly constructed. The interested parties pledged to work together in the off-season to come up with a better bill for the current session.

We’ve written about these efforts; see, for instance, [here](#), [here](#), and [here](#).

Conclusion

We’ll follow up as soon as there are new developments in the donor-advised funds and community foundations bills. We’ll also write about any reaction to the substantive crowdfunding measure and amendments and action on that legislation.

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