

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1692 (Garcia) – As Introduced: February 13, 2014

SUBJECT: Political Reform Act of 1974.

SUMMARY: Limits the use of campaign funds and legal defense funds to pay fines and penalties that are imposed for an improper personal use of campaign funds. Specifically, this bill:

- 1) Prohibits an expenditure of campaign funds of more than \$200 to pay a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that was found to be improper because the expenditure resulted in either of the following:
 - a) A personal benefit to the candidate or officer, and the expenditure was not reasonably related to a political, legislative, or governmental purpose; or,
 - b) A substantial personal benefit to the candidate or officer, and the expenditure was not directly related to a political, legislative, or governmental purpose.
- 2) Codifies a regulatory definition of the term "attorney's fees and other related legal costs" for the purposes of provisions of existing law that specify the permissible uses of funds raised into a legal defense fund, and makes that definition applicable to provisions of state law that restrict the use of surplus campaign funds and that limit the circumstances under which campaign funds may be used to pay fines, penalties, judgments, or settlements.
 - a) Defines the terms "attorney's fees and other related legal costs" and "attorney's fees and other costs," for the purposes of various provisions of the Political Reform Act (PRA), to include only the following:
 - i) Attorney's fees and other legal costs related to the defense of a candidate or officer; and,
 - ii) Administrative costs directly related to compliance with the requirements of the PRA.
 - b) Provides that the terms "attorney's fees and other related legal costs" and "attorney's fees and other costs," for the purposes of various provisions of the PRA, do not include expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or except as expressly authorized, a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by a candidate or officer.
- 3) Makes corresponding changes.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Prohibits campaign funds from being used to pay or reimburse fines, penalties, judgments, or settlements, except those resulting from either of the following:
 - a) Parking citations issued in the performance of an activity that was directly related to a political, legislative, or governmental purpose; or,
 - b) Any other action for which payment of attorney's fees from contributions is permitted pursuant to the PRA.
- 3) Requires campaign expenditures to be reasonably related to a political, legislative, or governmental purpose. Requires campaign expenditures that confer a substantial personal benefit on an individual with the authority to approve the expenditure of campaign funds to be directly related to a political, legislative, or governmental purpose. Provides that the term "substantial personal benefit" for these purposes means an expenditure that results in a direct personal benefit of more than \$200.
- 4) Permits candidates and elected officials to establish a legal defense fund to defray attorney's fees and other related legal costs incurred in the defense of the candidate or elective officer who is subject to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. Provides that funds deposited into a legal defense fund may be used only to defray those attorney's fees and other related legal costs.
- 5) Provides that campaign funds that are raised on or after January 1, 1989 by a candidate and that remain in the campaign account at the time the candidate leaves elective office, or at the end of the postelection reporting period following the defeat of the candidate, are considered surplus campaign funds. Restricts the purposes for which surplus campaign funds can be used, but permits such funds to be used for payment of attorney's fees for litigation which arises directly out of a candidate's or elected official's activities, duties, or status as a candidate or elected officer.
- 6) Provides that expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee's activities or out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) Purpose of the Bill: According to the author, "To prevent campaign funds from being used to pay for fines that result from the violation of campaign fund laws (i.e. making expenditures intended for private purposes), AB 1692 prohibits the use of campaign funds to pay for the associated fines, penalties, judgments and settlements."
- 2) Personal Use of Campaign Funds: Existing law generally prohibits campaign funds from being used for personal expenses, and instead requires campaign expenditures to be reasonably related to a political, legislative, or governmental purpose. When a campaign expenditure results in a personal benefit of more than \$200 to an individual who had the authority to approve the expenditure, the expenditure must be *directly* related to a political, legislative, or governmental purpose. These provisions are intended to ensure that campaign funds are not used as a method of personally enriching candidates and officers of political committees.
- 3) Use of Campaign Funds to Pay Fines & Penalties and Possible Amendment: As noted above, the PRA generally allows campaign funds to be used to pay or reimburse fines and penalties only if the action is one for which the use of campaign funds to pay attorney's fees would be permissible. The use of campaign funds to pay attorney's fees is permissible only when those attorney's fees arise directly out of an election campaign, the electoral process, or the performance of an official's governmental activities. These provisions are a natural extension of the "personal use" provisions of the PRA—if litigation against a candidate or elected official is unrelated to that person's duties or activities as a candidate or official, then the expenditure of campaign funds for attorney's fees (or to pay any fines or penalties that result from the litigation) would not be reasonably or directly related to a political, governmental, or legislative purpose, but instead would serve to defray the personal legal expenses of the candidate or official.

Arguably, the concept behind this bill is similar. When a determination is made in an enforcement action that a candidate or other person has received an impermissible personal benefit from a campaign expenditure, a necessary part of that determination is an assessment that the expenditure in question was not related to a political, legislative, or governmental purpose as required by law. To permit campaign funds to be used to pay a fine or penalty in such a situation would seem to be inconsistent with the policy that campaign expenditures must be related to a political, legislative, or governmental purpose, since the underlying expenditure that led to the fine or penalty being imposed was deemed not to be related to a political, legislative, or governmental purpose.

However, this bill does allow up to \$200 of a fine that is levied as a result of the improper personal use of campaign funds to be paid for with campaign funds. If there is a concern that individuals receive an improper personal benefit when they use campaign funds to pay fines that are imposed for the personal use of campaign funds, it is unclear why individuals should be allowed to pay the first \$200 of such a fine with campaign funds. The author and the committee may wish to consider an amendment that prohibits the use of campaign funds of any amount to pay a fine that is levied due to the improper personal use of campaign funds.

- 4) Regulatory Definition of "Attorney's Fees": As noted above, existing law permits candidates and elected officials to establish a legal defense fund to defray attorney's fees and other related legal costs under certain situations. The FPPC has adopted a regulation to define the term "attorney's fees and other related legal costs" for the purpose of expenditures from legal defense funds. This bill codifies the definition in the FPPC regulation.

Additionally, this bill adopts the FPPC's regulatory definition of "attorney's fees" for the purposes of other provisions of the PRA that allow surplus campaign funds and non-legal defense campaign funds to be used for attorney's fees.

- 5) Related Legislation: AB 2692 (Fong), which is pending in this committee, requires a person who is found in an administrative proceeding to have improperly used campaign funds for personal purposes, to pay the value of the personal benefit received to the general fund, in addition to any other fine or penalty imposed as a result of the proceeding.

AB 1666 (Garcia), which is also being heard in this committee today, prohibits the use of campaign funds to pay restitution fines that are imposed when a public official is convicted of bribery, as specified.

- 6) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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