

Date of Hearing: June 15, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

SB 1107 (Allen) – As Amended March 28, 2016

SENATE VOTE: 26-12

SUBJECT: Political Reform Act of 1974: public moneys: definition.

SUMMARY: Allows state and local governments to offer public campaign financing programs. Prohibits, under state law, foreign governments and foreign principals from making contributions and expenditures in connection with candidate elections. Increases the maximum monetary penalties for unlawful foreign contributions and expenditures. Limits the uses of campaign funds that are held by public officials who have been convicted of various public trust crimes. Specifically, **this bill**:

- 1) Permits state and local governmental entities to establish programs that provide for public campaign financing for candidates for elective office, if all of the following criteria have been met:
 - a) The state or local governmental entity has established a dedicated fund for the purpose of providing public campaign financing for candidates for elective office;
 - b) Public moneys held in the fund are available to all qualified, voluntarily participating candidates of the same office without regard to incumbency or political party preference; and,
 - c) The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter.
- 2) Prohibits a foreign government or foreign principal, as defined, from making, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with a state or local candidate.
- 3) Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal, as defined, in connection with a state or local candidate.
- 4) Increases the potential monetary penalties available for a violation of state law restricting contributions and expenditures by foreign governments and foreign principals as follows:
 - a) Increases the maximum fine available in a criminal enforcement proceeding from an amount equal to the amount contributed or expended to an amount that is the greater of the following:
 - i) \$10,000; or,
 - ii) An amount equal to the amount contributed or expended.

- b) Increases the maximum fine available in a civil enforcement proceeding from an amount up to \$5,000 per violation to an amount that is the greater of the following:
 - i) \$10,000; or,
 - ii) An amount equal to the amount contributed or expended.
- 5) Provides that an officeholder who is convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes, and whose conviction has become final, may use funds held by the officeholder's candidate controlled committee only for the payment of outstanding campaign debts or expenses and the repayment of contributions. Requires the officeholder, six months after conviction for one of the aforementioned felonies becomes final, to forfeit any remaining funds and requires the funds to be deposited in the general fund. Provides that these provisions do not apply to funds held by a ballot measure committee or in a legal defense fund.
- 6) Requires the Secretary of State (SOS) to submit the provisions of this bill to the voters for approval at a statewide election, as specified.
- 7) Contains a severability clause.
- 8) Makes corresponding and technical changes.

EXISTING STATE LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Prohibits public officers from expending, and candidates from accepting, public moneys for the purpose of seeking elective office.
- 3) Prohibits a foreign government or foreign principal from making, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, a state or local ballot measure. Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure.
 - a) Defines "foreign principal," for the purposes of these restrictions, to include the following:
 - i) A foreign political party;
 - ii) A person outside the United States (US), unless either of the following is established:
 - (1) The person is an individual and a citizen of the US; or,

- (2) The person is not an individual, and is organized under or created by the laws of the US or of any state or other place subject to the jurisdiction of the US and has its principal place of business within the US;
 - iii) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or,
 - iv) A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the US nor a lawfully admitted permanent resident of the US.
- b) Provides that these restrictions do not prohibit a contribution, expenditure, or independent expenditure made by a lawfully admitted permanent resident.
 - c) Provides that a person who violates these provisions is guilty of a misdemeanor and shall be fined an amount equal to the amount contributed or expended.
- 4) Provides that contributions deposited into a candidate's campaign account are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. Provides that an expenditure of campaign funds is within the lawful execution of this trust if the expenditure is reasonably related to a political, legislative or governmental purpose, as specified. Requires an expenditure that confers a substantial personal benefit on anyone with authority to approve the expenditure to be directly related to a political, legislative, or governmental purpose.
 - 5) Prohibits a person from being a candidate for, or being elected to, an elective office if the person has been convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes.
 - 6) Provides that a person who violates any provision of the PRA, except as specified, for which no specific civil penalty is provided, shall be liable in a civil action for an amount of up to \$5,000 per violation.
 - 7) Permits the FPPC to impose administrative penalties of up to \$5,000 per violation of the PRA.
 - 8) Requires every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature.

EXISTING FEDERAL LAW:

- 1) Prohibits a foreign national, directly or indirectly, from doing either of the following in connection with a federal, state, or local election:

- a) Making a contribution or donation of money or other thing of value, or an express or implied promise to make a contribution or donation; or,
 - b) Making an expenditure, independent expenditure, or disbursement for an electioneering communication.
- 2) Prohibits a person from soliciting, accepting, or receiving a contribution or donation made by a foreign national in connection with a federal, state, or local election.
- 3) Defines “foreign national,” for the purposes of the prohibitions described above, as either of the following:
- a) A government of a foreign country; a foreign political party; or a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or,
 - b) An individual who is not a citizen or a national of the US and who is not lawfully admitted for permanent residence in the US.
- 4) Establishes the Federal Election Commission (FEC), and makes it responsible for the administration and enforcement of the Federal Election Campaign Act (FECA), including the restrictions on contributions and expenditures by foreign nationals described above.

FISCAL EFFECT: According to the Senate Appropriations Committee analysis:

- 1) The FPPC indicates that it would incur first-year costs of \$167,000 and ongoing annual costs of \$160,000 to implement the provisions of the bill (General Fund).
- 2) One-time costs in the range of \$414,000 to \$552,000 to the SOS for printing and mailing costs to place the measure on the ballot in the next statewide election (General Fund).

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

In the wake of the U.S. Supreme Court’s Citizens United decision, local governments are increasingly reviewing their campaign finance ordinances in order to ensure the accountability of their elections. However, most California local governments do not have the option to offer any public funding to electoral campaigns, under an existing statewide ban.

Currently, six charter cities provide limited public funding to match small campaign contributions. These programs provide candidates with an alternative to relying on large campaign contributions and amplify the voices of everyday Californians who make small donations.

Unfortunately, other local governments are prohibited from offering public

campaign funding, due to a provision adopted nearly 30 years ago as part of Proposition 73 in 1988. While charter cities such as [Los Angeles] are exempt under the state Constitution, general law cities, counties, districts, and the state government are covered by the current state ban. In fact, after voters in Sacramento County enacted public financing, the courts struck it down under Proposition 73.

SB 1107 would remove the ban on voluntary public campaign financing programs, subject to voter approval. Programs would have to meet basic criteria for fairness and accountability. SB 1107 does not create, or require any government to create, any public campaign financing program – it simply restores the option for local governments and the state.

Additionally, SB 1107 includes two other commonsense provisions to increase election accountability. The bill would require elected officials, who under current law are banned from running for office due to conviction of a specified felony such as bribery, to forfeit their campaign funds within six months, after paying debts or returning contributions, other than legal defense funds.

SB 1107 also would extend the current prohibition against foreign corporations or governments contributing to ballot measure campaigns to also include candidate campaigns, and would increase the maximum fine for violating that prohibition.

- 2) **Public Financing and Proposition 73:** In 1988, voters approved two separate campaign finance reform initiatives, Proposition 68 and Proposition 73. Proposition 68 proposed a system of public funding and expenditure limits for state legislative races, and passed with 53% of the vote. Proposition 73 prohibited public funding of campaigns and set contribution limits for state and local elections, and passed with 58% of the vote. The California State Supreme Court subsequently ruled in *Taxpayers to Limit Campaign Spending v. FPPC* (1990) 51 Cal. 3d 744, that because the two measures contained conflicting comprehensive regulatory schemes they could not be merged and only one could be implemented. As such, since Proposition 73 received more affirmative votes than Proposition 68, the Court ordered the implementation of Proposition 73 and proclaimed all provisions of Proposition 68 invalid.

In 1990, all state and local elections were conducted under the provisions of Proposition 73. Many of the provisions of Proposition 73 were ultimately ruled unconstitutional by the federal courts. The only provisions of Proposition 73 to survive legal challenge were contribution limits for special elections, restrictions on certain mass mailings by officeholders, and the prohibition on the use of public money for campaign purposes. The contribution limits for special elections that were included in Proposition 73 subsequently were repealed and replaced in another ballot measure.

Because of the public funding ban contained in Proposition 73, the state and most local governments in California do not have the option to offer public financing programs for electoral campaigns. While the California Supreme Court ruled that the public financing ban does not apply to charter cities (*Johnson v. Bradley* (1992) 4 Cal. 4th 389), a state appellate

court has held that the public financing ban *does* apply to charter counties (*County of Sacramento v. Fair Political Practices Commission* (1990) 222 Cal. App. 3d 687). The California Constitution generally grants charter cities a greater degree of autonomy over local affairs than charter counties have, particularly with respect to local elections.

As a result, while charter cities in California can enact public campaign financing programs, general law cities, all counties, all districts, and the state government are covered by the current ban. According to information provided by the author's office, six charter cities currently provide limited public funding to match small campaign contributions (Los Angeles, Long Beach, Oakland, Richmond, Sacramento, and San Francisco).

- 3) **Previous Measures to Permit Public Financing:** On three previous occasions, California voters have rejected ballot measures that would have repealed the prohibition against public funding of campaigns that was included in Proposition 73. In all three cases, however, the ballot measures also proposed to enact specific public financing programs for state elections—something that this bill does not propose.

Proposition 25—an initiative measure that appeared on the March 2000 statewide primary election ballot—would have provided for public financing of campaign media advertisements and voter information packets for qualifying candidates and ballot measure committees that agreed to abide by spending limits and would have repealed the PRA's prohibition against public financing systems, among other provisions. Proposition 25 failed passage, receiving 34.7% of the vote statewide.

Proposition 89—an initiative measure that appeared on the November 2006 statewide general election ballot—would have created a public financing system for candidates for elective state office, and would have repealed the PRA's prohibition against public financing systems. Proposition 89 was defeated by the voters, receiving 25.7% of the vote statewide.

Proposition 15—a measure that was placed on the June 2010 statewide primary election ballot by the Legislature—would have created a public financing pilot project for candidates for SOS, and would have repealed the PRA's prohibition against public financing systems. Proposition 15 was defeated by the voters, receiving 42.7% of the vote statewide.

- 4) **Foreign Campaign Spending, Federal Law, and Previous Legislation:** As detailed above, federal law prohibits foreign nationals from making contributions in connection with federal, state, and local elections. According to information from the FEC, “[t]he ban on political contributions and expenditures by foreign nationals was first enacted in 1966 as part of the amendments to the Foreign Agents Registration Act (FARA), an ‘internal security’ statute. The goal of the FARA was to minimize foreign intervention in US elections by establishing a series of limitations on foreign nationals. These included registration requirements for the agents of foreign principals and a general prohibition on political contributions by foreign nationals. In 1974, the prohibition was incorporated into [FECA], giving the [FEC] jurisdiction over its enforcement and interpretation.”

Until 2002, the restriction on contributions by foreign nationals specifically applied to contributions made “in connection with an election to any political office.” Because that

language was limited to elections for *office*, it was the position of the FEC that contributions from foreign nationals relating exclusively to ballot measures were not restricted by federal law. (In 2002, the restriction on foreign contributions was amended to make it applicable to any contribution made “in connection with a Federal, State, or local election,” though it is unclear whether that change was intended to cover ballot measure elections.)

In 1997, the Legislature approved and Governor Wilson signed SB 109 (Kopp), Chapter 67, Statutes of 1997, to prohibit foreign governments or foreign principals from making contributions, expenditures, or independent expenditures in connection with state or local ballot measures. The legislative history suggests that SB 109 did not seek to regulate foreign contributions made in connection with elections for *office* because such contributions were already restricted by federal law. Instead, SB 109 was limited to foreign spending in connection with ballot measure elections, thereby restricting foreign spending that was not covered by federal law.

Aside from the fact that state law is limited to foreign spending made in connection with ballot measures, state and federal law differ in one other important respect. While federal law restricts contributions and expenditures by foreign nationals, state law does not restrict contributions or expenditures by a foreign national who is an individual and who is legally present in the US. The initial version of SB 109 (and an unsuccessful bill from the prior legislative session) would have restricted contributions by foreign nationals who were legally present in the US, but that restriction was amended out of the bill to address opposition arguments that the restriction could be unconstitutional.

- 5) **Recent Enforcement Action Related to Foreign Contributions:** The FPPC recently brought an enforcement action for the first time in a case involving foreign contributions made in connection with a ballot measure. That enforcement action was initiated after the FEC considered an enforcement action of its own, and declined to take action in that case.

Measure B was a Los Angeles County initiative dealing with adult film production that appeared on the ballot at the November 2012 statewide general election. In October 2012, one of the proponents of Measure B filed a complaint with the FEC alleging that the committee opposing Measure B had received contributions made by a foreign national, and further alleging that those contributions violated FECA. In August 2014, the Associate General Counsel of the FEC recommended dismissing the complaint due in part to a “lack of clear legal guidance” on whether federal law restricts contributions made by foreign nationals in connection with ballot measures. The FEC was equally divided on whether to dismiss the complaint, and in March 2015, it ultimately closed the file on the complaint without taking further action.

In July 2015, after the FEC’s action to close its file, the FPPC received a sworn complaint in connection with the same matter. Last December, the FPPC reached a stipulated settlement in that case. As detailed in that settlement, Manwin USA, a Delaware-based subsidiary of Manwin International, a Luxembourg-based corporation, made contributions totaling more than \$268,000 to the committee opposing Measure B. In addition, Froytal, a Cyprus-based subsidiary of Manwin International, made a contribution of \$75,000 to the committee opposing Measure B, although that contribution subsequently was returned by the committee.

Even though Manwin USA was incorporated under Delaware-law, its contributions violated California law because it was a subsidiary of a foreign corporation and the decision to contribute funds was made by an officer of the foreign corporation who was neither a US citizen nor a lawfully admitted permanent resident of the US.

The FPPC fined Manwin USA a total of \$20,000 for the unlawful contributions that it made, fined Froytal \$5,000 for the unlawful contribution that it made, and fined the committee opposing Measure B and its treasurer a total of \$20,000 for accepting unlawful contributions made by foreign principals. The FPPC also imposed an additional \$16,500 in fines for violations of reporting and disclosure laws that occurred in connection with the unlawful foreign contributions.

- 6) **Suggested Amendments:** As detailed above, this bill requires the SOS to submit its provisions to the voters for approval at a statewide election. According to the author's office, it is the author's desire for this bill to appear on the ballot at the November 2018 statewide general election.

Existing law, however, requires measures submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature. Legislative measures that are chaptered on or before June 30, 2016, will appear on the ballot at the November 8, 2016, statewide election. Any legislative measure that is chaptered during the current legislative session, but after June 30, likely will appear on the ballot at the 2018 statewide *primary* election, unless the measure provides otherwise. (If the Governor called a statewide special election to be held prior to the June 2018 primary election, legislative measures could also appear on the ballot at that election.)

In order to ensure that this measure appears on the ballot at the November 2018 statewide general election, in accordance with the author's intent, committee staff recommends that this bill be amended to require the SOS to submit it to the voters at that election.

Furthermore, in order to clarify the method by which a dedicated fund may be established for the purposes of creating a public financing program, committee staff recommends the following technical amendment:

On page 3, line 8, after "purpose" insert:

by statute, ordinance, resolution, or charter,

- 7) **Related Legislation:** AB 2250 (Ridley-Thomas), which is pending reconsideration on the Assembly Floor, is similar to the section of this bill that prohibits, under state law, foreign governments and foreign principals from making contributions or expenditures in connection with candidate elections. AB 2250 was approved by this committee on a 5-1 vote, but failed passage on the Assembly Floor on a 51-0 vote (54 votes were required for passage).
- 8) **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 by the Legislature must further the purposes of the proposition and require a two-thirds vote of each house of the Legislature, or the Legislature may propose amendments to the proposition that do not further the purposes of the act by a majority vote, but such amendments must be approved by the voters to take effect. This bill would only take effect if approved by the voters.

REGISTERED SUPPORT / OPPOSITION:

Support

California Clean Money Campaign (co-sponsor)
California Common Cause (co-sponsor)
AARP
Alliance of Californians for Community Empowerment Action
American Civil Liberties Union of California
American Sustainable Business Council
Asian Americans Advancing Justice—California
Brennan Center for Justice at New York University School of Law
California Alliance for Retired Americans
California Church IMPACT
California Forward Action Fund
California League of Conservation Voters
California OneCare
California School Employees Association, AFL-CIO
CALPIRG
Campaign Legal Center
City and County of San Francisco
Courage Campaign
Franciscan Action Network
League of Women Voters of California
Los Angeles County Federation of Labor
Lutheran Office of Public Policy—California
MapLight
MOVI, Money Out Voters In
National Council of Jewish Women—California
Represent California
Represent.Us
San Francisco Bay Area Rapid Transit District
Sierra Club California
Southwest Voter Registration Education Project
UFCW Western States Council
Voices for Progress

Opposition

None on file.

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