

Date of Hearing: January 10, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 664 (Steinorth) – As Amended January 3, 2018

**SUBJECT:** Political Reform Act of 1974: campaign fund expenditures.

**SUMMARY:** Prohibits a candidate controlled committee from paying an amount greater than fair market value for goods, services, facilities, or anything else of value if the payment is made to specified family members of the candidate or elected officer who controls the committee.

Specifically, **this bill:**

- 1) Prohibits a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate for elective office from receiving compensation in exchange for goods, services, facilities, or anything else of value other than money rendered, from campaign funds held by a controlled committee of the elected officer or candidate, if that compensation exceeds the fair market value of the exchanged item.
- 2) Prohibits financial or material compensation from being paid beyond fair market value from campaign funds held by a controlled committee of an elected officer or a candidate for elective office, in exchange for services rendered, to a vendor that is majority-owned or controlled by a spouse, domestic partner, parent, grandparent, sibling, child, or grandchild of the elected officer or candidate.

**EXISTING 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) Provides that all contributions deposited into the campaign account of a candidate for elective state office are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.
- 3) Prohibits a campaign committee from making an expenditure unless it is reasonably related to a political, legislative, or governmental purpose, except as specified.
  - a) Prohibits the use of campaign funds for an expenditure that confers a substantial personal benefit on any individual or individuals with authority to approve the expenditure unless the expenditure is directly related to a political, legislative, or governmental purpose.
  - b) Prohibits the use of campaign funds to pay for or reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose.
- 4) Prohibits a spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation in exchange for services rendered from campaign funds held by

a controlled committee of the elected officer or candidate.

- 5) Prohibits the use of campaign funds to compensate a candidate or elected officer for the performance of political, legislative, or governmental activities, except for reimbursement of out-of-pocket expenses incurred for political, legislative, or governmental purposes.
- 6) Defines "fair market value," for the purposes of the PRA, as the estimated fair market value of goods, services, facilities or anything of value other than money. Provides that whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under the PRA, the amount reported shall be the fair market value, and a description of the goods, services, facilities, or other thing of value shall be appended to the report or statement.
- 7) Provides that any person who knowingly or willfully violates the PRA is guilty of a misdemeanor.

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

**COMMENTS:**

- 1) **Prior Committee Consideration:** In April of last year, the committee considered a prior version of this bill that would have prohibited specified family members of an elected officer or a candidate from receiving compensation in exchange for services rendered from campaign funds held by a controlled committee of the elected officer or candidate. This prohibition would have applied even in situations where the compensation paid was at or below the fair market value for the services rendered. That version of the bill was rejected by the committee by a vote of 3-4, and reconsideration was granted. Since that time, the bill has been amended to delete the prior provisions of the bill, and instead to prohibit a candidate controlled committee from paying specified family members of the candidate or elected officer more than fair market value for goods, services, facilities, or anything else of value.
- 2) **Purpose of the Bill:** According to the author:

AB 664 seeks to hold legislative candidates to a higher standard, while clarifying California Fair Political Practices Commission investigations. This bill would amend current Government Code 84307.5 to prevent immediate family members of candidates for public office, as well as vendors owned by immediate family members, from receiving compensation, beyond fair market value, from campaign contributions.

The Political Reform Act of 1974 (PRA) currently prevents a spouse or domestic partner of a candidate for elective office from receiving compensation from campaign funds in return for services rendered. The PRA also indicates that payments for services rendered "shall be the fair market value" of the service provided. However, the PRA does not prevent candidates from employing other family members, nor does it set guidelines to prevent excessive compensation to these family members. This deficiency in the law has led to conflicts of a similar

nature to be mediated by the California Fair Political Practices Commission so that payment “is reasonable compensation for the services rendered.” There has been a lack of clarity in FPPC investigations because this interpretation is not explicitly stated in the PRA. This loophole leaves room for unethical gifts of financial benefit to family members or organizations controlled by family members. AB 664 would strengthen the Political Reform Act by closing this loophole.

- 3) **Campaign Services and Fair Market Value:** As detailed above, existing state law generally requires that funds held by campaign committees be used only for political, legislative, and governmental purposes. In interpreting these laws, the FPPC has advised that payments for services provided to a campaign committee generally must reflect the fair market value of the services provided (*Harden* Advice Letter, No. A-90-498). This requirement ensures that campaign funds—regardless of the recipient of those funds—are used for expenses associated with the candidate seeking or holding office. In applying that advice, the FPPC further advised that nothing in the PRA prohibits a candidate's controlled committee from contracting with or hiring a non-dependent child of the candidate, as long as the non-dependent child was paid fair market value for the services provided to the committee (*Tierney* Advice Letter, No. A-04-094). In light of the FPPC's advice, if a person was paid by a campaign committee for work that was not actually performed, or was paid an amount that exceeded the fair market value of the work performed, such a payment is prohibited under existing law.

This bill effectively codifies the FPPC's advice that a candidate controlled committee is prohibited from paying an amount greater than fair market value for goods, services, facilities, or anything else of value if the payment is made to specified family members of the candidate or elected officer who controls the committee.

- 4) **Background & Previous Legislation:** California law recognizes that ethical concerns may arise when a candidate receives a personal financial benefit from contributions received by his or her campaign, and accordingly limits a candidate's use of campaign funds on expenditures that provide a personal financial benefit to the candidate. In general, the PRA requires most campaign expenditures to be *reasonably* related to a political, legislative, or governmental purpose. Expenditures of a candidate's or officer's campaign funds that confer a substantial personal benefit on that candidate or officer, however, must meet a higher standard, and be *directly* related to a political, legislative, or governmental purpose.

In certain situations, the PRA further restricts the expenditure of campaign funds even when those expenditures are directly related to a political, legislative, or governmental purpose. For example, the PRA prohibits campaign funds from being used to compensate a candidate or elected officer for the performance of political, legislative, or governmental activities, except for reimbursement of out-of-pocket expenses incurred for political, legislative, or governmental purposes. Furthermore, the PRA limits the amount of money that a candidate may loan to his or her own campaign. Those limits were put into place due to concerns that money raised by a candidate subsequent to an election to repay that candidate's personal loan to his or her campaign committee would go into the candidate's own pocket, indirectly resulting in campaign contributions becoming a candidate's personal funds.

Similar concerns led to the recent enactment of laws that prohibit a candidate from paying his or her spouse or domestic partner for professional services rendered to the candidate's campaign committee. Under California's community property laws, any income earned by a married person while living with his or her spouse generally is considered to be community property, which is jointly held by both spouses. As a result, when a candidate pays his or her spouse from the candidate's campaign committee, the campaign committee's payment indirectly becomes the candidate's personal property. To address those concerns, SB 739 (Strickland), Chapter 360, Statutes of 2009, prohibited a spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation from campaign funds held by a controlled committee of the elected officer or candidate for services rendered in connection with fundraising for the benefit of the officeholder or candidate. Five years later, that law was expanded through the passage of AB 2320 (Fong), Chapter 902, Statutes of 2014, which prohibits an official's or candidate's spouse or domestic partner from being paid by the candidate's or official's campaign for *any* services rendered to the campaign, instead of prohibiting such payments only when the services provided to the campaign were for fundraising purposes.

- 5) **Payments Above Fair Market Value to Non-Family Members and Suggested Amendment:** As detailed above, the FPPC has advised that *any* payments made by a campaign committee for services provided to the committee must reflect the fair market value of the services provided. This bill, however, deals only with payments made by candidate controlled committees to specified family members of the controlling candidate.

The fact that the provisions of this bill are limited to payments made by candidate controlled committees to specified family members of the controlling candidate could create an implication that payments for services in excess of fair market value are permitted when the recipient is *not* a family member of the candidate. This does not appear to be consistent with the author's intent. To clarify this point, the author and the committee may wish to consider an amendment to add language specifying that this bill is not intended to be construed to authorize campaign committees to make payments in excess of fair market value to entities not expressly covered by the bill.

- 6) **Technical Amendment:** To clarify ambiguous language in this bill, committee staff recommends the following technical amendment:

On page 2, line 11, strike out "other than money rendered".

- 7) **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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