

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1678 (Berman) – As Amended April 17, 2017

SUBJECT: School districts and community college districts: political activities: dedicated fund.

SUMMARY: Clarifies that local agencies, school districts, and community college districts may establish public campaign financing programs in accordance with existing law. Specifically, **this bill:**

- 1) Provides that an existing prohibition against the use of school or community college district funds for the purpose of urging the support or defeat of any ballot measure or candidate shall not prohibit a school or community college district from establishing and implementing a dedicated fund for a public campaign financing program in accordance with existing law.
- 2) Provides that an existing prohibition against the use of local agency funds to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters, shall not prohibit a local agency from establishing and implementing a dedicated fund for a public campaign financing program in accordance with existing law.

EXISTING LAW:

- 1) Prohibits any elected state or local officer from using or permitting others to use public resources for a campaign activity, or personal or other purposes not authorized by law, as specified.
- 2) Prohibits school district or community college district funds, services, supplies, or equipment from being used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.
- 3) Prohibits an officer, employee, or consultant of a local agency from expending or authorizing the expenditure of local agency funds to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters, as specified.
- 4) Prohibits a public officer from expending, and a candidate from accepting, any public moneys for the purpose of seeking elective office, except in a situation where a state or local governmental entity establishes a dedicated fund for that purpose by statute, ordinance, resolution, or charter, and both of the following are true:
 - a) Public moneys in the fund are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference; and,
 - b) The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter.

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

COMMENTS:

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

Last year, the Legislature passed and Governor Brown signed SB 1107, which permitted, but did not require, public campaign financing programs, as long as they meet specified requirements for fairness and accountability. However, section 7054 of the Education Code and section 54964 of the Government Code provide a limitation on how school and community college districts, as well as local government may engage in elections. The limitations in these sections, when read in tandem with section 85300 of the Government Code, could lead to confusion as to what is allowed for school board, community college board, and local candidates. AB 1678 would address this potential confusion by clarifying that nothing in section 7054 or section 54964 shall prohibit a school district, community college district, or local government from establishing a public financing fund, as allowed under SB 1107.

2) **Public Financing Programs and Previous Legislation:** In 1988, voters approved Proposition 73, which amended the Political Reform Act (PRA) to prohibit public funding of campaigns and set contribution limits for state and local elections, among other provisions. 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, until this year, the state and most local government agencies did not have the option to create public financing programs for electoral campaigns. (In *Johnson v. Bradley* (1992) 4 Cal. 4th 389, the California Supreme Court ruled that Proposition 73's public financing ban did not apply to charter cities, and at least six charter cities established public financing programs.) Last year, however, the Legislature approved and Governor Brown signed SB 1107 (Allen), Chapter 837, Statutes of 2016, which permitted state and local governmental entities to establish programs that provide for public campaign financing for candidates for elective office, if certain conditions are met. SB 1107 did not create any public financing programs itself, but instead authorized the creation of such programs by state or local governmental entities through separate actions by those entities.

While SB 1107 modified the PRA's prohibition against public campaign financing programs for electoral campaigns, state law includes other restrictions on the use of public funds for campaign purposes that were not affected by SB 1107. Specifically, there are provisions of the Education Code and of the Government Code, as detailed above (see "Existing Law"),

that prohibit the expenditure of public funds for the purpose of supporting the election or defeat of candidates. Notwithstanding the fact that the expressed Legislative intent of SB 1107 was to allow public campaign financing programs, the existence of these other laws that were unaffected by SB 1107 could create ambiguity about the legality of public campaign financing programs in the state. By clarifying that these existing laws do not prohibit the types of public campaign financing programs that were authorized by SB 1107, this bill should help avoid any such ambiguity or confusion.

- 3) **Pending Litigation:** Last December, former-Senator Quentin Kopp, who was one of the proponents of Proposition 73, and the Howard Jarvis Taxpayers Association, filed a lawsuit in the Sacramento Superior Court challenging the provisions of SB 1107 (*Howard Jarvis Taxpayers Association v. Brown* (2016), Case Number 34-2016-80002512). That lawsuit alleges that SB 1107 was improperly adopted by the Legislature because it was not submitted to the voters for their consideration. The case is pending.

The California Constitution generally provides that statutes that are enacted by an initiative measure can only be directly amended or repealed by the Legislature if the initiative measure allows for such changes. In the absence of language allowing the Legislature to make changes to a statutory initiative, the only method for amending a previously-enacted statutory initiative is through another statute that becomes effective only when approved by the voters. The PRA, which was an initiative measure, allowed the Legislature to amend its provisions without submitting those amendments to the voters if the Legislature's proposed amendments furthered the purposes of the PRA, and if certain other requirements were met.

Proposition 73, which also was an initiative, included a provision that allowed the Legislature to amend that measure in accordance with the procedures that applied to amendments to the PRA. Because amendments to the PRA that are not submitted to the voters must further the purposes of the PRA, amendments to Proposition 73 that are not submitted to the voters presumably also are required to further the purposes of the PRA. The language outlining the procedures for amending Proposition 73 was repealed by a subsequent ballot measure.

The lawsuit challenging SB 1107 alleges that Proposition 73 "made the prohibition of public financing of election campaigns one of the purposes of the [PRA]." The extent to which that allegation is correct, however, is unclear. Proposition 73 did not expressly amend or add to the purposes of the PRA, nor did the text of the measure contain its own enumerated purposes. Furthermore, Proposition 73 did not specify that Legislative amendments to the measure had to further the purposes of *Proposition 73*; rather, it required that amendments to Proposition 73 follow the procedure for amendments to the PRA generally. Finally, none of the enumerated purposes of the PRA directly address the issue of public campaign financing programs.

On August 11, 2016, after SB 1107 had already been approved by this committee, the Office of the Legislative Counsel sent a letter addressed to Assemblymember Chad Mayes in which it provided written confirmation of an oral opinion it reached in which it concluded that "the amendments proposed to Government Code Section 85300 by [SB 1107] would require voter approval in order to become effective." In response to that letter, and in light of the facts

detailed above, various supporters of that bill submitted a letter to the Legislature in which they concluded that SB 1107 could be adopted by the Legislature without being submitted to the voters. That letter stated that the purposes of the PRA include preventing political corruption and unfair advantages of incumbency, and concluded that public financing programs furthered those purposes.

- 4) **Suggested Amendment:** This bill amends two provisions of law that arguably could be interpreted to prohibit public agencies from adopting a public financing program in accordance with the conditions of SB 1107. There is a third provision of law, however, that similarly could be interpreted to prohibit public agencies from creating public financing programs, notwithstanding the provisions of SB 1107. Section 8314 of the Government Code makes it unlawful for any elected state or local officer to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

In order to make it abundantly clear that the provisions of SB 1107 authorized the creation of public campaign financing programs notwithstanding Section 8314 of the Government Code, committee staff recommends that this bill be amended to amend Section 8314 in a manner that is consistent with the amendments to the other two code sections affected by this bill.

- 5) **Arguments in Support:** The sponsor of this bill, the League of Women Voters of California, writes in support:

SB 1107 amended the Political Reform Act (Government Code Section 85300) to allow government agencies to adopt voluntary citizen-funded election programs like those previously permitted only in charter cities...

As part of the PRA, those provisions of SB 1107 control over any other acts of the Legislature (Government Code Sec. 81013). However, to ensure there is no confusion for local agencies, AB 1678 conforms two other provisions in law, Government Code Sec. 54964 and Education Code Sec. 7054, to Government Code Sec. 85300. SB 1107 did not spend any money or establish any particular campaign financing program. It simply opened the door to local governments that may want to consider new approaches like those that voters around the country have enacted. Such programs can enable candidates to compete more equitably for public office, amplify the voices of everyday Californians who donate small amounts, encourage more diverse participation in the political process, and give candidates an alternative to relying on large contributions.

AB 1678 promotes local control by making it clear that all California government agencies have the authority to establish a public financing fund as allowed under SB 1107.

REGISTERED SUPPORT / OPPOSITION:

Support

League of Women Voters of California (sponsor)
California Common Cause

Opposition

None on file.

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