

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

AB 1367 (Low) – As Amended March 25, 2021

SUBJECT: Political Reform Act of 1974: committee accounts and campaign funds.

SUMMARY: Increases penalties for egregious personal use, as defined, of campaign funds to three times the amount of the unlawful expenditure, as specified. Requires all recipient campaign committees that receive contributions totaling \$2,000 or more in a calendar year to establish a single campaign contribution bank account at a financial institution in California, as specified. Specifically, **this bill:**

- 1) Provides that any person who uses campaign funds in a manner that violates existing law and results in an egregious personal benefit is liable in an administrative or civil action brought by the Fair Political Practices Commission (FPPC) for an amount of up to three times the amount of the unlawful expenditure.
- 2) Defines “egregious personal benefit” to mean a direct personal benefit with a total value of \$10,000 or more to a candidate, elected officer, or individual or individuals with authority to approve the expenditure of campaign funds held by a committee.
- 3) Requires non-candidate committees that receive contributions totaling \$2,000 or more in a calendar year (i.e. “recipient” committees) to establish a campaign contribution bank account as follows:
 - a) Requires the committee to establish a campaign contribution account for the committee within 30 days of qualifying as a committee pursuant to existing law.
 - b) Requires the campaign contribution account to be established at an office of a financial institution located in California.
 - c) Requires the name and address of the financial institution where the committee has established a contribution campaign account, and the bank account number, to be included on the committee’s statement of organization, as specified.
 - d) Requires all contributions or loans made to the committee to be deposited into, and all expenditures by the committee to be made from, the campaign contribution account.
- 4) Authorizes a non-candidate committee to maintain additional bank accounts only if contributions are not deposited into and expenditures are not made from those accounts, as specified.
- 5) Codifies a regulation related to political party committees that receive contributions subject to contribution limits and the use of “all purpose” and “restricted-use” accounts, as specified.

- 6) Permits a committee, when filing a copy of a statement of organization with a local filing officer in accordance with existing law, to redact the bank account number. Prohibits a local filing officer from requiring a committee to disclose a bank account number on the copy of the statement of organization filed with the local filing officer as a condition of accepting that filing.
- 7) Requires the Secretary of State (SOS) to redact the bank account number on a statement of organization filed with the SOS before making the statement available to the public in any form, as specified.
- 8) Makes conforming changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires an expenditure of campaign funds to be reasonably related to a political, legislative or governmental purpose, as specified. Requires an expenditure of campaign funds 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. Defines “substantial personal benefit,” for the purposes of this provision, as an expenditure of campaign funds that results in a direct personal benefit with a value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.
- 3) Provides that any person who violates a provision of the PRA for which no specific penalty is provided shall be liable in a civil action brought by the FPPC, district attorney, or elected city attorney, as specified, for an amount up to \$5,000 per violation, as specified.
- 4) Provides that any person who makes or receives an honorarium, gift, or expenditure in violation of specified provisions of the PRA is liable in a civil action brought by the FPPC for an amount of up to three times the amount of the unlawful honorarium, gift, or expenditure.
- 5) Defines “committee” to mean any person or combination of person who directly or indirectly does any of the following:
 - a) Receives contributions totaling \$2,000 or more in a calendar year.
 - b) Makes independent expenditures totaling \$1,000 or more in a calendar year.
 - c) Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees.
- 6) Requires candidate-controlled committees to establish a campaign contribution account at an office of a financial institution located in the state and generally requires all candidate contributions to be deposited into the account and all candidate expenditures to be made from the account.

- 7) Requires a committee that receives contributions totaling \$2,000 or more in a calendar year to file a statement of organization, as specified.
- 8) Requires the original of the statement of organization to be filed online or electronically with the SOS and a copy of the statement of organization with the local filing officer, if any, within 10 days after the committee has qualified as a committee, as specified.
- 9) Requires a statement of organization to include, among other things, the name and address of the financial institution in which the committee has established an account and the account number.
- 10) Requires the SOS to make specified campaign and lobbying data available online. Prohibits certain data made available online from containing the street name or building number of the individuals or entity representatives listed on the electronically filed forms, or any bank account number required to be disclosed, as specified.
- 11) Requires a local filing officer for a local government agency that requires campaigns to file disclosure reports online or electronically to make specified data available online, and to redact certain information, as specified. Requires the local filing officer to make a complete copy of any statement, report, or other document available to any person upon request.

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

COMMENTS:

- 1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, concerns were raised related to the campaign bank account provisions of AB 1367. Because those issues are not easily addressed, the author has decided to remove those provisions from the bill, and move forward with the remaining substantive provisions of the bill relating to improper use of campaign funds that result in an "egregious personal benefit." Specifically, the amendments are as follows:

Starting on page 3, delete Section 1 through Section 4 of the bill.

On page 10, delete Section 6 of the bill.

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

AB 1367 will increase transparency and compliance and discourage unlawful use of campaign funds to ensure public confidence in our political process.

- 3) **Restrictions on the Use of Campaign Funds:** In general, existing law requires expenditures of campaign funds to be either *reasonably* related to a political, legislative, or governmental purpose, or *directly* related to a political, legislative, or governmental purpose in situations where the expenditure confers a substantial personal benefit on any individual with authority to approve the expenditure of campaign funds. The PRA defines "substantial personal benefit" for these purposes to mean an expenditure of campaign funds that results in a direct personal benefit with a value of more \$200 to a candidate, elected officer, or any individual

or individuals with authority to approve the expenditure of campaign funds held by a committee.

When a public official uses campaign funds for personal purposes, it is a serious violation of the PRA that erodes public confidence in the political process by creating the appearance that lawful campaign contributions are personal gifts to the public official. This erosion of public confidence is amplified when the value of the personal use is especially high.

According to background materials provided to the committee, in a 2019 enforcement case, the FPPC found that a former local public official unlawfully used campaign funds for personal uses on multiple occasions, including making a disbursement from a committee's money market account to the public official's checking account in the amount of \$35,000, and using campaign funds in excess of \$36,000 for personal travel expenses for a vacation to another country that was not directly related to any political, legislative, or governmental purpose of the committee. According to the author and sponsors of this bill, this example illustrates an egregious personal use of campaign funds and this sort of behavior harms public confidence in the state's campaign finance system, its public officials, and the political process as a whole.

- 4) **Violations of the Political Reform Act:** A violation of the PRA is generally subject to a maximum administrative penalty of \$5,000, as specified, and a violation involving unlawful personal use of campaign funds is subject to this maximum administrative penalty. Existing law, however, authorizes higher penalties for violations of certain provisions. For instance, a person who violates certain advertisement disclosure requirements is liable in a civil or administrative action for up to three times the cost of the advertisement and a person who makes or receives an honorarium, gift, or expenditure in violation of certain requirements relating to campaign funds is liable in a civil action for up to three times the amount of the unlawful honorarium, gift, or expenditure, as specified.

According to the sponsors of the bill, in determining the appropriate penalty for a particular violation of the PRA, the FPPC considers the facts of the case, the public harm involved, and the purposes of the PRA. Additionally, the FPPC considers factors such as: 1) the seriousness of the violation; 2) the presence or absence of any intention to conceal, deceive or mislead; 3) whether the violation was deliberate, negligent or inadvertent; 4) whether the violation was isolated or part of a pattern; 5) whether corrective amendments voluntarily were filed to provide full disclosure; and 6) whether the violator has a prior record of violations.

The author and sponsor contend that the current maximum penalty of \$5,000 may not be an effective deterrent to unlawful personal use of campaign funds in high amounts, and maintain that increasing the maximum penalties for egregious personal use in these cases may further discourage noncompliance.

- 5) **One Campaign Bank Account:** As detailed above, the author has proposed amendments to this bill that would remove all the provisions from this bill other than those related to the misuse of campaign funds. In light of those amendments, the provisions of this bill that seek to require non-candidate recipient committees to establish a campaign contribution bank account at a bank in California are being removed from this bill. Nonetheless, because those provisions are included in this bill as it appears in print at the time the committee is

considering it, the following information provides a brief overview of the background related to that provision.

In 1988, California voters approved Proposition 73, a measure on campaign funding, contribution limits, and the prohibition of public funding of campaigns. Among other provisions, Proposition 73 required an individual, upon filing a statement of intention to be a candidate for elective state office, to establish one campaign contribution account at an office of a financial institution located in California, and to deposit all contributions into, and make all expenditures from, that account, subject to certain exceptions.

According to background materials provided to the committee, having a separate account assists committees in the proper organization and accounting of campaign funds that are held in trust, and make it easier for committees to track their contributions and expenditures, and to avoid inadvertent unlawful expenditures or commingling with personal funds. Additionally, requiring committees to have a single campaign bank account helps the FPPC track unlawful use of campaign funds when an investigation is opened. According to the FPPC, when a committee has multiple accounts into which funds are deposited and from which payments are made, it becomes difficult to effectively trace campaign funds.

At the federal level, the Federal Election Commission (FEC) requires all non-connected political action committees (PACs) to register an official committee depository. Non-connected PACs, have two options: 1) set up one federal account to support both federal and nonfederal candidates and report all activity to the FEC, or 2) set up two accounts – one for federal elections and another for state and local elections.

6) **Arguments in Support:** The sponsor of this bill, the FPPC, writes:

AB 1367 would...increase the penalties for unlawful personal use of campaign funds to an amount of up to three times the amount of the unlawful expenditure when that use results in a direct personal benefit with a value of \$10,000 or more. Currently, a violation of the Act involving unlawful personal use of campaign funds is subject to a maximum administrative penalty of \$5,000.

This bill would...give the [FPPC] additional penalty authority when an individual egregiously uses campaign funds to personally enrich themselves. In doing so, AB 1367 would also increase public confidence that the state's campaign finance laws are being followed and enforced.

7) **Previous Legislation:** AB 2505 (Berman) of 2020, would have provided that a person who misuses campaign funds in a manner that results in an unlawful direct personal benefit with a monetary value of \$10,000 or more is subject to an administrative penalty by the FPPC of up to \$10,000 for each violation or up to three times the amount of the unlawful personal benefit, and is subject to criminal liability, as specified. As was the case for many bills introduced in 2020, AB 2505 was not heard in committee after changes to the legislative calendar and operations that were made in an effort to slow the transmission of the 2019 novel coronavirus (COVID-19) limited the number of bills that the Legislature was able to consider in 2020.

SB 423 (Umberg) of 2020, would have required all campaign committees, not only

candidate-controlled committees, that receive contributions totaling \$2,000 or more in a calendar year, to establish one campaign contribution account at a financial institution in California, as specified. SB 423 was subsequently amended and used for another purpose, and these provisions were removed from the bill.

- 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 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

Fair Political Practices Commission (sponsor)

Opposition

None received.

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