

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2284 (Patterson) – As Amended April 6, 2016

**SUBJECT:** Special elections to fill vacancies.

**SUMMARY:** Requires a Legislator who resigns before the completion of his or her term to use surplus campaign funds to pay for the resulting special election. Prohibits any surplus campaign funds remaining after paying special election costs from being used for any purpose other than repaying campaign debts or making charitable donations. Specifically, **this bill:**

- 1) Requires a state Senator or Member of the Assembly who resigns from office before the expiration of his or her term to reimburse the county or counties that hold a special election to fill the vacancy for the costs of that election, using his or her surplus campaign funds.
  - a) Provides that these expenses shall be reimbursed by the former officeholder to the extent that he or she has surplus funds available to do so. Provides that if the legislative district encompasses more than one county, the surplus funds shall be prorated among the counties in proportion to the percentage of the district that each county composes.
  - b) Provides that any surplus campaign funds held by the former officeholder shall be used to reimburse the costs of the special election and to pay outstanding campaign debts or elected officer's expenses before being used for any other purpose.
  - c) Provides that any funds remaining after payment for the costs of the special election may be used only for the purposes of settling outstanding debts or expenses, or for making donations to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.
- 2) Provides that if a state Senator or Member of the Assembly decides to resign from office before the expiration of his or her term, campaign funds held by that candidate shall be used only to pay outstanding campaign debts or reasonable expenses. Establishes a rebuttable presumption that the former officeholder decided to resign six months before he or she vacated office, and provides that the presumption may be rebutted by objective evidence, such as evidence indicating that the officeholder initiated or responded to an offer of employment on a particular date. Provides that if a former officeholder used campaign funds for a purpose not permitted by this provision, that officeholder shall be personally liable for reimbursing the costs of the special election.
- 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 Political Reform Act (PRA).
- 2) Provides that campaign funds under the control of a former candidate or elected officer are considered "surplus campaign funds" on the 90th day after the person leaves office, or on the 90th day following the end of the postelection reporting period following the defeat of the candidate, whichever occurs last. Permits surplus campaign funds to be used only for the following purposes:
  - a) The payment of outstanding campaign debts or elected officer's expenses;
  - b) The repayment of contributions;
  - c) Donations to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer;
  - d) Contributions to a political party committee, provided that the campaign funds are not used to support or oppose a candidate for elective office. Contributions made pursuant to this provision may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate-mailers;
  - e) Contributions to support or oppose a candidate for federal office, a candidate for elective office in a state other than California, or a ballot measure; or,
  - f) The payment for professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney's fees and other costs for litigation that arises directly out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer.
- 3) Requires the Governor to issue a proclamation calling a special election within 14 calendar days of the occurrence of a vacancy in a legislative office, unless that vacancy occurs after the close of the nomination period in the final year of the term of office.
- 4) Makes violations of the PRA subject to administrative, civil, and criminal penalties.

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

**COMMENTS:**

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

From roads to sheriff's deputies, county governments provide a number of critical services that play an important role in the well-being of California's communities.

Counties also face the challenges of providing these services with the budgetary constraints often faced by governments.

Since the passage of Proposition 140 (term limits) in 1990, there have been more than one hundred special elections called by the Governor to fill such vacancies, all of which impose financial hardships on the affected counties. [A recent] special election in Fresno County, for instance, is estimated to cost the county between \$530,000-575,000.... The estimated costs of special elections held between January 1, 2008 and November 2013 for Los Angeles County alone is \$27.1 million.

It is currently impossible to predict when a member of the legislature decides to step down from the very office he or she ran for, which results in a county having to cut services from one area to fund the cost of a special election. When voters choose a candidate to represent them, they are placing their trust in a representative who, fully aware of the term they are running for, is supposed to represent the best interests of their communities. Triggering a costly special election hurts the very people a candidate was elected to represent.

Giving surplus campaign cash to fellow elected officials after resignation instead of reimbursing taxpayers for this burden is wrong. This bill will end that practice. Under the provisions of this bill, a Legislator would NOT be personally liable (private/personal money) for special election expenses, UNLESS they violate this clause and spend surplus funds inappropriately before meeting their obligation to pay for the special election.

- 2) **Resignations from the California Legislature:** Since the 2001-2002 Legislative Session, there have been 32 instances in which a member of the Legislature resigned from office before the completion of his or her term. Of those 32 resignations, 28 resulted in a special election being held to fill the resulting vacancy (in the other four cases, the resignation happened close enough to the end of the member's term that a special election was not held, and the seat was left vacant for the remainder of the term instead). More than 84% of the resignations were the result of members being elected to other public offices by the voters (25 cases) or being appointed by the Governor to fill vacancies in other elective offices (two cases). In the five cases where a member of the Legislature resigned for a reason other than assuming another public office, one resigned after a criminal conviction, one resigned amid press reports about comments he made regarding an alleged relationship with a lobbyist, and three resigned from office and subsequently accepted governmental relations jobs with private organizations.
- 3) **Surplus Funds:** Once campaign funds become "surplus funds" under state law, they are subject to additional restrictions on how the funds may be used. Most notably, surplus funds may not be used by a candidate for a future election. If a member of the Legislature resigns from office, any funds that member holds in a campaign account for the term of office that he or she is resigning will become surplus funds on the 90th day following that member's resignation. For example, if a sitting member of the Assembly had campaign funds remaining in his or her account for the 2014 election, and that member resigned from the

Assembly on the day that this bill is scheduled to be heard in this committee (April 13, 2016), any funds remaining in that account on July 12, 2016 would become surplus funds. If the member had campaign funds in another account for a future election, either to the Assembly or to another state or local office, those funds would not become surplus funds until after the election for which the funds were raised.

- 4) **Restrictions on the Use of Surplus Funds After Paying for the Special Election:** To the extent that a former member of the Legislature has surplus funds in excess of the amount required to reimburse counties for the costs of a special election, this bill requires any such funds to be used exclusively for charitable contributions, or to pay any outstanding campaign debts or expenses. The former Legislator would be unable to refund campaign contributions to contributors or to use surplus funds to pay for professional services required by the committee, including paying for costs associated with preparing and filing required campaign disclosure reports. Refunding campaign contributions and paying for administrative services that are necessary to comply with state law are all expenses that are directly related to the business of the campaign committee. In light of that fact, the committee may wish to consider whether prohibiting surplus funds from being used to pay for those expenses is desirable.
- 5) **Disincentive to Resignation?** As detailed above, under current law, one permissible use for surplus campaign funds is to pay attorney's fees and other costs for litigation that arises directly out of a candidate's or elective officer's activities, duties, or status as a candidate or elected officer. If this bill became law, a candidate would be unable to use surplus campaign funds for that purpose. If a member of the Legislature was facing criminal charges or other legal trouble and was considering resigning in light of those legal difficulties, could this bill actually create an incentive for that member to remain in office, rather than resigning, in order to ensure that the member can use campaign funds for his or her legal defense?
- 6) **Resignations that Don't Trigger Special Elections:** As noted above, when a vacancy occurs in the Legislature after the close of the nomination period in the final year of the term of office, no special election is held to fill that vacancy. Instead, the seat remains vacant for the rest of the term. Under the current election calendar, where primary elections for the Legislature are held in June of even-numbered years, the close of the nomination period typically falls between the beginning and the middle of March. Under this bill, if a Legislator resigned and no special election was held to fill the vacancy, the former Legislator obviously would not need to use surplus campaign funds to pay for the costs of a special election. Nonetheless, if the former Legislator had surplus campaign funds, this bill would require those surplus funds to be used only for paying outstanding debts and expenses, or making charitable donations, as specified.
- 7) **Resignations Triggered by Elections to Other Offices:** In order to prevent a Legislator who is planning to resign from circumventing the requirement to pay for the resulting special election, this bill establishes a rebuttable presumption that a Legislator decided to resign six months before vacating office. This presumption would protect against a Legislator spending all his or her remaining campaign funds after deciding to resign but before leaving office.

It is unclear, however, how this rebuttable presumption would work in the situation where a

member was a candidate for another office. As noted above, a significant majority of Legislative resignations over the last 15 years have resulted from situations where Legislators were elected to other offices. Would the fact that a member became a candidate for another office be considered evidence that the member made the decision to resign from the Legislature on the date he or she filed candidacy documents? Or could a Legislator argue that they did not decide to resign until the election results were final, since that person presumably would not resign from the Legislature unless they were successfully elected to the other office?

- 8) **Arguments in Support:** In support of this bill, the Howard Jarvis Taxpayers Association (HJTA) writes:

HJTA faults no legislator who desires to leave their office prematurely in order to seek outside career opportunities. But in the event that occurs, it should come with consequences. Forcing the taxpayers to pick up the cost for a special election so that legislators can take a higher-paying job in the private sector, or another elected local government position, is unfair. Special elections are costly to taxpayers with expenses as high as \$1,000,000. That cost can be reduced by requiring that the departing legislator absorb all or some of it out of their campaign accounts. In addition, giving leftover money in a campaign account to charity ensures that the departing legislator won't be able to give contributions to other Members before the resignation takes effect.

- 9) **Related Legislation:** ACA 9 (Gomez), which is awaiting referral to a policy committee by the Assembly Rules Committee, would require a legislator who resigns his or her seat to pay back the salary and travel and living expenses he or she received during the incomplete term of office, unless the legislator vacated the seat for medical reasons, among other provisions.
- 10) **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**

Fresno City Councilmember Lee Brand  
Fresno County Board of Supervisors  
Howard Jarvis Taxpayers Association  
Tulare County Taxpayers Association

### **Opposition**

None on file.

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