

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1666 (Garcia) – As Introduced: February 12, 2014

SUBJECT: Political Reform Act of 1974: campaign funds: bribery fines.

SUMMARY: Increases existing restitution fines for the crime of bribery and prohibits the use of campaign funds to pay for such fines. Specifically, this bill:

- 1) Increases the restitution fines for any member of the Legislature or any member of the legislative body of a city, county, city and county, school district, or other special district who asks for or receives a bribe, as specified, in exchange for influence over his or her official action as follows:
  - a) Doubles restitution fines, in cases where no bribe has been actually received, from a minimum of two thousand dollars (\$2,000), and a maximum of ten thousand dollars (\$10,000), to instead a minimum of four thousand dollars (\$4,000), and maximum of twenty thousand dollars (\$20,000); and,
  - b) Doubles restitution fines, in cases in which a bribe was actually received, from a minimum of the actual amount of the bribe received or two thousand dollars (\$2,000), whichever is greater, and a maximum of double the amount of any bribe received or ten thousand dollars (\$10,000), or whichever is greater, to instead a minimum amount of the bribe received or four thousand dollars (\$4,000), whichever is greater, and a maximum of not more than double the amount of any bribe received or twenty thousand dollars (\$20,000), whichever is greater.
- 2) Requires the Fair Political Practices Commission (FPPC) to adjust the fine amounts specified above in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Requires the fine amounts to be rounded to the nearest ten dollars (\$10).
- 3) Prohibits campaign funds from being used to pay a restitution fine as described above.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) 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.
- 3) 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.

- 4) Provides that any person who knowingly or willfully violates the PRA is guilty of a misdemeanor.
- 5) Provides that every Member of either house of the Legislature, or any member of the legislative body of a city, county, city and county, school district, or other special district, who asks, receives, or agrees to receive, any bribe, upon any understanding that his or her official vote, opinion, judgment, or action shall be influenced thereby, or shall give, in any particular manner, or upon any particular side of any question or matter upon which he or she may be required to act in his or her official capacity, or gives, or offers or promises to give, any official vote in consideration that another Member of the Legislature, or another member of the legislative body of a city, county, city and county, school district, or other special district shall give this vote either upon the same or another question, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than two thousand dollars (\$2,000) or not more than ten thousand dollars (\$10,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars (\$2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars (\$10,000), whichever is greater. Requires the court, in imposing a fine under this section, to consider the defendant's ability to pay the fine.

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

COMMENTS:

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

AB 1666 strengthens penalties associated with bribes by increasing the fines imposed and by ensuring those convicted must pay penalties out of personal funds, not out of accounts meant for running for office.

- 2) Bribery Fines: In 2001, the Governor signed and the Legislature passed SB 923 (McPherson), Chapter 282, Statutes of 2001, which increased the fines for specified bribery offenses involving public officials. According to the author's background material provided to the committee, these fine thresholds have not been adjusted since they were implemented in 2001. This bill doubles the fines in a case where no bribe has actually been received from a fine of not less than four thousand dollars (\$4,000), instead of two thousand dollars (\$2,000), to not more than twenty thousand dollars (\$20,000), instead of ten thousand dollars (\$10,000). In addition, the bill makes corresponding changes in the case where the defendant actually received a bribe, and doubles the minimum fine amount from the greater of the amount of the bribe received or two thousand dollars (\$2,000) to four thousand dollars (\$4,000), as specified, and doubles the maximum fine from the greater of double the amount of the bribe received or ten thousand dollars (\$10,000) to twenty thousand dollars (\$20,000), as specified.

Furthermore, the author contends that if a member of the Legislature is convicted of one of the bribe scenarios described above, nothing in current law prohibits use of campaign funds to pay a restitution fine. In other words, restitution fines imposed from a bribery offense

could be paid out of the officeholder's campaign funds, instead of their personal funds. This bill strengthens the penalties associated with bribery offenses and prohibits campaign funds from being used to pay a restitution fine as described above.

- 3) Fair Political Practices Commission: The FPPC is responsible for enforcing state laws governing political campaigns, fundraising, lobbying, and conflicts of interest for elected officials. Under existing law, the FPPC is required to adjust contribution and voluntary expenditure limits within the PRA in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index.

This bill adds a new duty to the FPPC by requiring it to adjust fine amounts specified in the Penal Code for bribery offenses involving public officials. The FPPC does not, however, have jurisdiction over bribery crimes, nor does it have any authority with respect to any violations of the Penal Code. The committee may wish to consider whether it is prudent to require the FPPC to adjust fines for crimes it has no authority to enforce.

Additionally, this bill provides for the fines for bribery convictions to be adjusted for any changes in inflation, but does not similarly provide for automatic adjustments for fines imposed for convictions of other crimes. If it is a desirable policy to adjust fines to reflect inflation, then it is unclear why that policy should not be in place for all fine amounts. The committee may wish to consider amending the bill to remove the requirement for fines to be adjusted.

- 4) Related Legislation: AB 1692 (Garcia), which is also being heard in this committee today, limits the use of campaign funds and legal defense funds to pay fines and penalties that are imposed for an improper personal use of campaign funds, as specified.
- 5) 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 proposition and require a two-thirds vote of each house of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen

Opposition

None on file.

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