

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2692 (Fong) – As Introduced: February 21, 2014

SUBJECT: Political Reform Act of 1974: expenditures.

SUMMARY: Requires a person who improperly benefits from the personal use of campaign funds to forfeit the value of the personal benefit received, as specified. Specifically, this bill:

- 1) Provides that if the Fair Political Practices Commission (FPPC) determines in an administrative action that an expenditure was made that confers a substantial personal benefit to a person who had the authority to approve that expenditure, but the expenditure is not directly related to a political, legislative, or governmental purpose, that the individual who received the substantial personal benefit shall pay to the General Fund (GF) of the state an amount equal to the substantial personal benefit that he or she received.
- 2) Provides that a payment to the GF of the value of the benefit received, as required by this bill, shall be in addition to any penalty imposed by the FPPC.

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 campaign expenditures to be reasonably related to a political, legislative, or governmental purpose. Requires campaign expenditures that confer a substantial personal benefit on an individual with the authority to approve the expenditure of campaign funds to be directly related to a political, legislative, or governmental purpose. Provides that the term "substantial personal benefit" for these purposes means an expenditure that results in a direct personal benefit of more than \$200. Provides that a violation of these provisions is punishable as follows:
  - a) By a fine of up to \$5,000 per violation in an administrative proceeding by the FPPC; or,
  - b) By a penalty of up to three times the amount of the unlawful expenditure, in a civil action brought by the FPPC.

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

COMMENTS:

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

California law recognizes that ethical concerns may arise when a candidate personally benefits financially from contributions received by his or her

campaign. For that reason, the Political Reform Act 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. Additionally, state law prohibits candidates and committee officers from using campaign funds for personal expenses.

Individuals who violate the "personal use" provisions of California law are subject to civil or administrative fines, but existing law does not require a person to forfeit the personal benefit that he or she received from the illegal expenditure of campaign funds. The purpose of California's "personal use" restrictions on campaign funds is to ensure that funds solicited for campaign purposes are used for those purposes, and are not used to personally enrich candidates, officeholders, and political committee officers. To further that purpose, and to provide a greater disincentive against the improper use of campaign funds, AB 2692 requires individuals who violate the "personal use" laws to forfeit the improper benefits that they received, in addition to any fines they face for violating state law.

- 2) Personal Use of Campaign Funds: Existing law generally prohibits campaign funds from being used for personal expenses, and instead requires campaign expenditures to be reasonably related to a political, legislative, or governmental purpose. When a campaign expenditure results in a personal benefit of more than \$200 to an individual who had the authority to approve the expenditure, the expenditure must be *directly* related to a political, legislative, or governmental purpose. These provisions are intended to ensure that campaign funds are not used as a method of personally enriching candidates and officers of political committees.

As is the case with other suspected violations of the PRA, the FPPC may bring an administrative enforcement action if it believes that an individual or a committee has improperly used campaign funds for personal purposes. When the FPPC determines that a violation has occurred, it can impose a monetary penalty of up to \$5,000 per violation. Because the maximum monetary penalty available in an administrative enforcement action is not dependent on the value of the personal benefit received, it is possible that a person could receive an improper personal benefit from campaign spending that exceeds the maximum penalty that the FPPC can impose through the administrative process. The FPPC does have the ability to bring a civil lawsuit for a violation of the personal use provisions of law, in which case the maximum monetary penalty available is three times the amount of the unlawful expenditure. Such civil lawsuits, however, are uncommon, and the FPPC deals with a substantial majority of enforcement cases through its administrative enforcement process. By requiring a person to forfeit the value of an improper personal benefit that he or she received, this bill will ensure that a person who uses campaign funds for personal purposes does not receive a benefit in excess of the maximum possible administrative fine.

- 3) Arguments in Support: In support of this bill, the League of Women Voters of California writes:

The League believes that the regulation of campaign finance practices must support the public's right to know and combat corruption and undue influence, and that monitoring and enforcement must be effective. AB 2692 will help ensure that there is a direct political, legislative, or governmental purpose for any use of campaign funds that gives substantial personal benefit to a candidate, elected officer, or other individual with authority over those funds.

We support this measure that will provide additional deterrence from the improper use of campaign funds.

- 4) Related Legislation: AB 1692 (Garcia), which was approved by this committee on April 1, 2014 on a 6-0 vote, prohibits the use of campaign funds to pay a fine, penalty, judgment, or settlement that is imposed for the improper personal use of campaign funds, among other provisions.
- 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 initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

League of Women Voters of California

Opposition

None on file.

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