

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 794 (Glazer) – As Amended June 16, 2022

SENATE VOTE: (vote not relevant)

SUBJECT: Political Reform Act of 1974: contribution limits.

SUMMARY: Allows a political committee that receives a contribution that exceeds a contribution limit to accept the contribution without violating the contribution limit by returning the amount in excess of the limit, as specified. Specifically, **this bill** permits a committee that receives a contribution that exceeds specific contribution limits set forth in state law to return that contribution, or a portion thereof, that exceeds the limit without violating the applicable contribution limit if the following conditions are met:

- 1) The amount in excess of the contribution limits is returned within 72 hours of receipt, or is returned on or before the date of the election, whichever is sooner.
- 2) The committee does not make use of the contribution before returning it.

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) Imposes limits on the amounts of contributions that may be made to or received by certain candidates and committees, as specified.
- 3) Permits an elected state officer to establish an officeholder account for the purpose of paying expenses associated with holding office. Imposes limits on the amount that a person may contribute to an officeholder account and on the total amount that an officeholder account can receive in a calendar year, as specified.
- 4) Provides that a contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor within a specified time period.
- 5) Permits a committee, pursuant to a regulation adopted by the FPPC, to return a contribution, or a portion thereof, that exceeds an applicable contribution limit to the contributor within 14 days of receiving the contribution without violating specified contribution limits set forth in state law, as long as the committee does not do either of the following:
 - a) Deposit or allow deposit of the contribution with actual knowledge that the contribution exceeds the applicable limit; or,
 - b) Make use of the contribution prior to returning it.

FISCAL EFFECT: None. This bill has been keyed non-fiscal by the Legislative Counsel.

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

Under current law, if a committee receives a donation by check and that donation exceeds the limits established by the Political Reform Act of 1974, the recipient must return the entire contribution. The receipt alone is in violation of the law, unless the actual check is physically returned to the donor. For example, if the check is for \$5,000 and the contribution limit is \$4,900, then the check exceeds the limit by \$100 and the entire check must be returned. In this scenario, the committee would be in violation of the PRA if the recipient committee deposits the entire check, even if the committee reimburses the donor for the excess. However, for those committees receiving donations via online platform, FPPC regulations allow the return of a contribution, or a portion thereof, that exceeds an applicable contribution limit within 14 days of receipt if certain conditions are met. SB 794 permits a recipient to return the excess amount of a contribution over the limit without returning the entire contribution.

2) **Contribution Limits, Return of Excess Contributions, and Suggested Amendments:** In November 2000, California voters approved Proposition 34, which established limits on the size of campaign contributions made to candidates for elective state office, among other provisions. The limits on contributions by individuals contained in Proposition 34 ranged from \$3,000 (for candidates for Assembly and Senate) to \$20,000 per election (for candidates for Governor), and are required to be adjusted for inflation every two years. For 2021-22, these limits range from \$4,900 per election for candidates for Assembly and Senate to \$32,400 for candidates for Governor. Additionally, AB 571 (Mullin), Chapter 556, Statutes of 2019, established default campaign contribution limits for county and city office at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, effective January 1, 2021.

Until recently, an FPPC regulation provided that a monetary contribution that exceeded the contribution limits would not be deemed to have been accepted if the committee returned the contribution within 14 days of receipt and prior to depositing the contribution in the committee's bank account. In a December 2019 letter to the FPPC, the California Political Attorneys Association (CPAA) requested that the FPPC consider regulatory changes to permit candidates and committees to remedy excess contributions by refunding the excess amount within a reasonable time. In its letter, CPAA argued that "[i]n most instances, excess contributions are the result of human error and are inadvertent in nature, rather than bad actors intentionally contributing over the legal contribution limit."

In response to those comments, the FPPC amended that regulation in April 2020 to permit a committee to return contributions that exceed the contribution limits, and that have already been deposited by the committee, without violating the contribution limits if the excess amount is returned within 14 days of receipt and if certain other conditions are met. The FPPC staff memo prepared as part of the consideration of that regulatory change noted that an increasing number of donors were choosing to make recurring contributions that are automatically deposited into a committee's bank account. As a result, committees could be unaware of the receipt of a contribution that caused a donor to exceed the contribution limits until after that contribution was deposited by a third-party vendor into the committee's

account. At that point, because the excess contribution had been deposited, the FPPC regulation in effect at the time would not have allowed the committee to avoid a violation of the contribution limits by returning the excess contribution.

Because the regulatory change allowed a committee, for the first time, to avoid a violation of the contribution limits by returning an over-the-limit contribution after it had been deposited into the committee's account, the amended regulation included additional limitations to ensure that the purpose of contribution limits was not undermined. Specifically, the regulation allowed an over-limit contribution that had been deposited by the committee to be returned without a violation of the contribution limits only if (1) the committee did not have actual knowledge that the contribution exceeded the limit at the time it was deposited, and (2) the committee did not make use of the contribution prior to returning it. The memo explained that these conditions were intended to "prevent willful and intentional actors from accepting and depositing excessive contributions and from making expenditures they would have not made but for the deposit of the excessive contribution. These limitations alleviate concerns with candidates intentionally overstating a campaign account balance in an attempt to discourage other candidates and also prevents candidates from accepting and using excessive contributions for short-term funding." Finally, the memo indicated that one FPPC Commissioner had expressed concern about the possibility of a committee accepting a physical check that exceeded the relevant contribution limit on its face. The memo concluded that the deposit of such a check by a committee "would constitute actual knowledge of an over the limit contribution and would not be permitted" under the amendments to the regulation that the FPPC adopted.

The provisions of this bill differ in two notable respects from the FPPC regulation related to the refund of excess contributions. First, this bill requires an excess contribution to be remedied within 72 hours of receipt or before the date of the election, whichever is sooner. By contrast, the FPPC regulation gives a committee 14 days after receipt to remedy an over-limit contribution. To the extent that the provisions of this bill override the FPPC regulation, the shorter timeline for refunding excess contributions proposed by this bill could complicate compliance with the law. For example, when a person makes a campaign contribution to a committee using ActBlue—a major third-party fundraising platform—it can take as long as four days before that contribution is deposited into the committee's bank account. Requiring that a committee issue a refund of an over-limit contribution before it has been deposited into the committee's bank account in order to avoid a violation for receiving that contribution could result in inadvertent violations of the contribution limits, and undermine the purpose of the recent change to the FPPC regulation.

The second way in which this bill differs from the FPPC regulation related to excess contributions is that this bill seeks to allow a committee to *knowingly* deposit an over-limit campaign contribution. As described above by the author, the purpose of this bill is to allow a committee to deposit a check that it receives even if the committee knows that the check will cause the contributor to exceed the relevant contribution limits, as long as the committee (1) refunds enough of the contribution to bring it within the limit, and (2) does not make use of the excess amount. The deposit of such a contribution is not allowed under the existing FPPC regulation because it would be deposited with actual knowledge that the contribution exceeded the limit.

Allowing a committee to knowingly deposit an excessive campaign contribution presents policy concerns that may not be as relevant to situations where a committee deposits or allows deposit of a contribution that exceeds the limit, but does not have actual knowledge that the contribution exceeds the limit at the time it is received. For example, if a recurring credit card contribution to a candidate causes the contributor to exceed the contribution limits, the candidate generally will be able to remedy that excess contribution relatively easily, and without action by the contributor, by refunding the excessive amount back to the credit card used to make the contribution. By contrast, if a candidate knowingly deposits a check that exceeds the contribution limits and refunds the excessive amount by sending a check to the contributor, the candidate's campaign account will retain all the funds from the excessive contribution until the contributor deposits the refund check. If the contributor does not deposit the refund check—an action that is out of the control of the candidate—then it is unclear what steps the candidate must take to “cure” the acceptance of a contribution that exceeded the limits. Furthermore, during the period of time that the excess contribution remains in the committee's account, that committee could receive benefits from the excess contribution even if the committee is not permitted to make use of the excess amount. For example, if the excess amount remains in the committee's campaign account for an extended period, it could generate interest for the committee's bank account. Furthermore, depending on how the campaign is required to report the excess amount, the excess contribution could make it appear that the committee had more financial resources available to it than it actually did.

In order to address these concerns, committee staff suggests the following amendments:

- a) Add language to the bill to codify timelines in the existing FPPC regulation for a committee to return an excess contribution (or a portion thereof) in a situation where the committee does *not* have actual knowledge that the contribution exceeds the applicable limit. Codify the portion of the regulation that specifies what it means for a committee to “make use” of an excess contribution. Specify that the current provisions of this bill apply in a case where a committee deposits a contribution with actual knowledge that the contribution exceeds the applicable limit. These additions will accomplish the author's stated goal while ensuring that the purpose of the recent change to the FPPC regulation is not thwarted.
 - b) Specify that the provisions of this bill do not permit a committee to deposit a contribution with actual knowledge that the contribution is more than *double* the applicable contribution limit. This addition will help mitigate concerns related to committees receiving benefits from excess contributions held in the committee's account.
- 3) **Federal Contribution Refund Rules:** Federal law allows a campaign committee that receives an excessive contribution to remedy the violation by refunding the excessive amount within 60 days of receipt. Notably, federal law allows a committee to remedy an excessive contribution through a refund even if the committee deposited the excessive contribution with knowledge that it exceeded the relevant limit. (Federal law alternately includes procedures to allow a committee to redesignate or reattribute an excessive contribution without refunding the excessive amount.)
- 4) **Reporting of Excess Contributions:** Expanding the situations under which a committee is permitted to deposit contributions that exceed relevant contribution limits could complicate

reporting of those contributions, particularly in situations where the excess contribution is required to be publicly disclosed before the excess amount is refunded to the contributor. Although the FPPC regulation described above includes a provision that specifies how a committee must report an excess contribution, it is unclear whether the reporting approach in that regulation is sufficient to ensure proper reporting of excess contributions that are deposited by committees pursuant to this bill.

- 5) **Officeholder Accounts and Suggested Amendment:** While this bill allows a candidate or committee to remedy an over-limit campaign contribution that it receives by refunding a portion of the contribution, this bill does not currently apply to an over-limit contribution made to an officeholder account. To facilitate administration of the law and to ensure that all committees subject to contribution limits are treated equally when remedying over-limit contributions, committee staff recommends that this bill be amended to apply to contributions made to officeholder accounts.
- 6) **Prior Version of this Bill:** As approved by the Senate, this bill would have repealed the requirement that, when the Secretary of State (SOS) determines a tie vote for specified contests by lot, this action must be performed at the SOS's State Capitol office. Earlier this month, this bill was gutted-and-amended to delete those provisions of the bill and to add the current contents. Accordingly, prior votes on this bill are not relevant to the current version, and in accordance with the committee's longstanding policy, letters of support or opposition that were submitted to prior versions of this bill are not reflected in this analysis.
- 7) **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

None on file.

Opposition

None on file.

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