

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 24 (Umberg and Allen) – As Amended June 26, 2023

SENATE VOTE: 31-8

SUBJECT: Political Reform Act of 1974: public campaign financing.

SUMMARY: Allows, if approved by the voters, the state and local governments to offer public campaign financing programs. Specifically, **this bill:**

- 1) Permits a public officer or candidate to expend or accept public moneys for the purpose of seeking elective office if a state or local governmental entity establishes a dedicated fund for that purpose and if both of the following are true:
 - a) Public moneys held in the fund are available to all qualified, voluntarily participating candidates of the same office without regard to incumbency or political party preference; and,
 - b) The state or local governmental entity has established criteria for determining a candidate's qualification for such moneys, as specified.
- 2) Prohibits public moneys for the dedicated fund described above in 1) from being taken from public moneys that are earmarked for education, transportation, or public safety. Provides that this restriction does not apply to charter cities.
- 3) Makes various findings and declarations, including the following:
 - a) The increasing costs of political campaigns can force candidates to rely on large contributions from wealthy donors and special interests, which can give those wealthy donors and special interests disproportionate influence over governmental decisions.
 - b) Such disproportionate influence can undermine the public's trust that public officials are performing their duties in an impartial manner and that government is serving the needs and responding to the wishes of all citizens equally, without regard to their wealth.
 - c) Citizen-funded election programs, in which qualified candidates can receive public funds for the purpose of communicating with voters rather than relying exclusively on private donors, are currently operative in five charter cities in California, as well as numerous other local and state jurisdictions.
 - d) Citizen-funded election programs encourage competition by reducing the financial advantages of incumbency and making it possible for citizens from all walks of life, not only those with connections to wealthy donors or special interests, to run for office.
 - e) By reducing reliance on wealthy donors and special interests, citizen-funded election programs inhibit improper practices, protect against corruption or the appearance of

corruption, and protect the political integrity of our governmental institutions.

- f) The absolute prohibition on public campaign financing allows special interests to gain disproportionate influence and unfairly favors incumbents. An exception should be created to permit citizen-funded election programs so that elections may be conducted more fairly.
- 4) Requires the Secretary of State (SOS) to submit this bill's provisions to the voters for approval at the November 5, 2024, statewide general election.
- 5) Contains a severability clause.

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). (Government Code §§83100, 83111)
- 2) Prohibits public officers from expending, and candidates from accepting, public moneys for the purpose of seeking elective office. (Government Code §85300)
- 3) Permits the Legislature to amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval. (California Constitution, Article II, §10(c))
- 4) Permits the PRA to be amended or repealed only through one of the following procedures:
 - a) Amendments to the PRA that further its purposes may be enacted by statute that is passed by a two-thirds vote in each house and signed by the Governor, if at least 12 days prior to passage in each house the bill in its final form has been delivered to the FPPC for distribution, as specified; or,
 - b) The PRA may be amended or repealed by a statute that becomes effective only when approved by the electors. (Government Code §81012)
- 5) Requires every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature. (Elections Code §9040)

FISCAL EFFECT: According to the Senate Appropriations Committee, one-time SOS costs in the range of \$738,000 to \$984,000 (General Fund), in 2024-25, for printing and mailing costs to place the measure on the ballot on the November 2024 General Election ballot. Actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot.

COMMENTS:

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

Currently, local jurisdictions such as counties, districts, and general law cities, do not have the option to set up [a] public fund for campaign financing, despite the policy's popularity among voters, as voters in several charter cities have overwhelmingly approved public campaign financing measures in recent years. Unfortunately, other local governments do not have the option to enact these same policies. In 2016, bipartisan supermajorities of the legislature passed, and Governor Jerry Brown signed, SB 1107 (Allen), which would have removed the ban and given local governments and the state this option. However, the courts ruled that the question must be put before the voters. SB 24 will restore control to local governments and the state by giving counties, districts, general law cities, and the state the same option that charter cities currently have to enact public financing of campaigns. If passed, this measure will be placed on the November 2024 ballot for voter approval.

- 2) **Public Campaign Financing Programs and Previous Legislation:** In June 1974, California voters passed an initiative—Proposition 9—that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA.

In 1988, voters approved two separate initiatives that sought to regulate campaign financing by amending the PRA: Proposition 68 and Proposition 73. Proposition 68 proposed a system of public funding and expenditure limits for state legislative races, and passed with 53% of the vote. Proposition 73 prohibited public funding of campaigns and set contribution limits for state and local elections, and passed with 58% of the vote. The California Supreme Court subsequently ruled in *Taxpayers to Limit Campaign Spending v. FPPC* (1990) 51 Cal. 3d 744, that because the two measures contained conflicting comprehensive regulatory schemes they could not be merged and only one could be implemented. As such, since Proposition 73 received more affirmative votes than Proposition 68, the Court ordered the implementation of Proposition 73 and declared all provisions of Proposition 68 invalid.

In 1990, all state and local elections were conducted under the provisions of Proposition 73. Many of the provisions of Proposition 73 were ultimately ruled unconstitutional by the federal courts. The only provisions of Proposition 73 to survive legal challenge were contribution limits for special elections, restrictions on certain mass mailings by officeholders, and the prohibition on the use of public money for campaign purposes. The contribution limits for special elections that were included in Proposition 73 subsequently were repealed and replaced in another ballot measure.

As detailed above, the California Constitution permits the Legislature to amend an initiative statute by another statute that becomes effective only when approved by the voters, unless the initiative statute provides otherwise. The PRA allows its provisions to be amended without voter approval if certain conditions are met, including a requirement that the proposed amendments must “further the purposes” of the PRA.

In an effort to authorize public campaign financing programs subject to certain conditions, in 2016, the Legislature approved and Governor Brown signed SB 1107 (Allen), Chapter 837, Statutes of 2016. SB 1107 did not create any public financing programs, but instead authorized the creation of such programs by state or local governmental entities through separate actions by those entities. Because SB 1107 sought to amend a provision of

Proposition 73, which itself amended and became part of the PRA, the provisions of SB 1107 were subject to rules governing legislation that seeks to amend the PRA. SB 1107 contained legislative findings and declarations that the bill furthered the purposes of the PRA, and was enacted in a manner that complied with various procedural requirements for bills that seek to amend the PRA without the approval of voters.

Following the enactment of SB 1107, former-Senator Quentin Kopp (who was one of the proponents of Proposition 73) and the Howard Jarvis Taxpayers Association challenged the provisions of SB 1107 related to public campaign financing programs in court, alleging that those changes did not further the purposes of the PRA, and therefore could not be enacted without being approved by voters. In *Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, the Third District Court of Appeal agreed, finding that SB 1107 “directly conflicts with a primary purpose and mandate of the [PRA], as amended by subsequent voter initiatives, to prohibit public funding of political campaigns.” In its decision, the court affirmed a judgment by the Sacramento County Superior Court that enjoined the FPPC from enforcing the public financing related provisions of SB 1107.

The provisions of SB 1107 that authorized public financing programs have not been repealed since the court’s decision in *Howard Jarvis Taxpayers Assn.* Nonetheless, while those provisions remain in statute, and appear to authorize public campaign financing programs, the PRA as enforced by the FPPC continues to prohibit public officers from expending, and candidates from accepting, public moneys for the purpose of seeking elective office.

This bill proposes to repeal the provisions of SB 1107 that sought to authorize public campaign financing programs, and proposes to reenact similar provisions in a new code section that would be part of the PRA. This bill would prohibit public moneys used for such public campaign financing programs from being taken from moneys earmarked for education, transportation, or public safety purposes, a restriction that was not included in SB 1107. Furthermore, unlike SB 1107, this bill provides that it would become effective only upon approval of the voters.

- 3) **Charter Cities and Counties:** Notwithstanding the PRA’s general prohibition on the use of public money for campaign purposes, the California Supreme Court ruled that the prohibition does not apply to charter cities (*Johnson v. Bradley* (1992) 4 Cal. 4th 389). On the other hand, a state appellate court has held that the public financing ban *does* apply to charter counties (*County of Sacramento v. Fair Political Practices Commission* (1990) 222 Cal. App. 3d 687). The California Constitution generally grants charter cities greater autonomy over local affairs than charter counties have, particularly with respect to local elections.

As a result, while charter cities in California can enact public campaign financing programs, general law cities, all counties, all districts, and the state government are covered by the current ban. At least six charter cities in California (Los Angeles, Long Beach, Oakland, Richmond, Sacramento, and San Francisco) have enacted public campaign funding programs, though the program is not funded and thus is no longer available in one of those cities (Sacramento).

- 4) **Previous Measures to Permit Public Campaign Financing:** On three previous occasions, California voters have rejected ballot measures that would have repealed the prohibition against public funding of campaigns that was included in Proposition 73. In all three cases,

however, the ballot measures also proposed to enact specific public campaign financing programs for state elections—something that this bill does not propose.

Proposition 25—an initiative measure that appeared on the March 2000 statewide primary election ballot—would have provided for public financing of campaign media advertisements and voter information packets for qualifying candidates and ballot measure committees that agreed to abide by spending limits and would have repealed the PRA's prohibition against public financing systems, among other provisions. Proposition 25 failed passage, receiving 34.7% of the vote statewide.

Proposition 89—an initiative measure that appeared on the November 2006 statewide general election ballot—would have created a public campaign financing system for candidates for elective state office, and would have repealed the PRA's prohibition against public financing systems. Proposition 89 was defeated by the voters, receiving 25.7% of the vote statewide.

Proposition 15—a measure that was placed on the June 2010 statewide primary election ballot by the Legislature—would have created a public campaign financing pilot project for candidates for SOS, and would have repealed the PRA's prohibition against public financing systems. Proposition 15 was defeated by the voters, receiving 42.7% of the vote statewide.

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

Money presents one of the greatest threats to representative democracy today. It distorts incentives, makes the competition among candidates inequitable, and drowns out the voices of ordinary voters. Public financing of election campaigns reduces the influence of special interests, increases the power of small donors and ordinary voters, enables candidates to compete more equitably for public office, and diminishes barriers to entry – thereby diversifying the candidate pool.

Five charter cities (Berkeley, Long Beach, Los Angeles, Oakland, and San Francisco) have successful public financing systems in place. And voter support for such systems has been very strong – 75% of voters voted for Los Angeles' Measure H in 2011, 65% voted for Berkeley's Measure X1 in 2016, and 74% voted for Oakland's Measure W in 2022.

In 2016, the League of Women Voters of California supported SB 1107 (Allen), which would have removed the ban on public financing of campaigns. While the bill passed with a bipartisan supermajority of the legislature, and was signed into law, the courts ruled the question must be put before the voters. SB 24 will allow voters to restore control to local governments and the state by placing a measure on the ballot to repeal the ban on campaign public financing.

- 6) **Arguments in Opposition:** In opposition to a prior version of this bill, Election Integrity Project California wrote:

SB 24 would laudably make public funds available for bona fide candidates who are at a financial and name-recognition disadvantage, BUT that benefit is cancelled out by the fact that incumbents would have equal access to those funds.

This would enable them to add to their financial advantage with money they do not need. The financial differential between incumbents and candidates with special interest backing and up-and-coming challengers would remain the same.

The bill does nothing to eliminate or even reduce the influence of special interest money on politics and political campaigns.

Unless public funds are the ONLY source of campaign financing allowed, and distributed equally among all candidates meeting reasonable standards of viability, those the bill purports to incentivize and assist would be fighting the same financial disadvantage as before dipping into the public largess. There would be no change to the status quo.

- 7) **Related Legislation:** AB 270 (Lee), which is pending in the Senate Elections & Constitutional Amendments Committee, is substantively identical to this bill. AB 270 was approved by this committee on a 5-2 vote, and was approved by the Assembly on a 59-18 vote.
- 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 by the Legislature must further the purposes of the proposition and require a two-thirds vote of each house of the Legislature, or the Legislature may propose amendments to the proposition that do not further the purposes of the act by a majority vote, but such amendments must be approved by the voters to take effect. This bill would only take effect if approved by the voters.

REGISTERED SUPPORT / OPPOSITION:

Support

California Clean Money Campaign (Sponsor) (prior version)
All Rise Alameda (prior version)
Asian Americans Advancing Justice-Southern California (prior version)
Building the Base Face to Face (prior version)
California Church Impact (prior version)
California Nurses Association (prior version)
CALPIRG, California Public Interest Research Group (prior version)
Change Begins With Me (INDIVISIBLE) (prior version)
Cloverdale Indivisible (prior version)
Consumer Watchdog (prior version)
Contra Costa MoveOn (prior version)
Courage California (prior version)
Defending Our Future: Indivisible in CA (prior version)
Democracy Policy Network (prior version)
East Valley Indivisibles (prior version)
El Cerrito Progressives (prior version)
Endangered Habitats League (prior version)
Feminists in Action (formerly Indivisible CA 34 Womens) (prior version)

Fix Democracy First (prior version)
Hillcrest Indivisible (prior version)
Indi Squared (prior version)
Indivisible 30/Keep Sherman Accountable (prior version)
Indivisible 36 (prior version)
Indivisible 41 (prior version)
Indivisible Auburn CA (prior version)
Indivisible Beach Cities (prior version)
Indivisible CA-25 Simi Valley Porter Ranch (prior version)
Indivisible CA-29 (prior version)
Indivisible CA-3 (prior version)
Indivisible CA-33 (prior version)
Indivisible CA-37 (prior version)
Indivisible CA-39 (prior version)
Indivisible CA-43 (prior version)
Indivisible CA-7 (prior version)
Indivisible CA: Statestrong (prior version)
Indivisible Claremont/Inland Valley (prior version)
Indivisible Colusa County (prior version)
Indivisible East Bay (prior version)
Indivisible El Dorado Hills (prior version)
Indivisible Elmwood (prior version)
Indivisible Euclid (prior version)
Indivisible Lorin (prior version)
Indivisible Los Angeles (prior version)
Indivisible Manteca (prior version)
Indivisible Marin (prior version)
Indivisible Media City Burbank (prior version)
Indivisible Mendocino (prior version)
Indivisible Normal Heights (prior version)
Indivisible North Oakland Resistance (prior version)
Indivisible North San Diego County (prior version)
Indivisible OC 46 (prior version)
Indivisible OC 48 (prior version)
Indivisible Petaluma (prior version)
Indivisible Sacramento (prior version)
Indivisible San Bernardino (prior version)
Indivisible San Jose (prior version)
Indivisible San Pedro (prior version)
Indivisible Santa Barbara (prior version)
Indivisible Santa Cruz County (prior version)
Indivisible Sausalito (prior version)
Indivisible Sebastopol (prior version)
Indivisible SF (prior version)
Indivisible SF Peninsula and CA-14 (prior version)
Indivisible Sonoma County (prior version)
Indivisible South Bay LA (prior version)
Indivisible Stanislaus (prior version)
Indivisible Suffragists (prior version)

Indivisible Ventura (prior version)
Indivisible Windsor (prior version)
Indivisible Yolo (prior version)
Indivisible: San Diego Central (prior version)
Indivisibles of Sherman Oaks (prior version)
Initiate Justice (prior version)
League of Women Voters of California
Livermore Indivisible (prior version)
Los Angeles County Democratic Party (prior version)
Maplight (prior version)
Mill Valley Community Action Network (prior version)
Money Out Voters In (prior version)
Mountain Progressives (prior version)
Northern California Recycling Association
Nothing Rhymes With Orange (prior version)
Orchard City Indivisible (prior version)
Orinda Progressive Action Alliance (prior version)
Our Revolution Long Beach (prior version)
Public Citizen, Inc. (prior version)
Riseup (prior version)
Rooted in Resistance (prior version)
San Diego Indivisible Downtown (prior version)
SFV Indivisible (prior version)
South Bay Progressive Alliance (prior version)
Tehama Indivisible (prior version)
The Resistance Northridge-Indivisible (prior version)
Together We Will Contra Costa (prior version)
Together We Will/Indivisible - Los Gatos (prior version)
Vallejo-Benicia Indivisible (prior version)
Venice Resistance (prior version)
Voices for Progress (prior version)
Voters Right to Know (prior version)
Women's Alliance Los Angeles (prior version)
Yalla Indivisible (prior version)

Opposition

Election Integrity Project California (prior version)

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