

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1107

Introduced by Senator Allen
(Principal coauthor: Senator Hancock)
(Principal coauthor: Assembly Member Chiu)

February 17, 2016

An act to amend ~~Sections 85300 and 85320~~ *Section 85300* of, and to add ~~Sections 89519.5 and 91004.5~~ *Section 89519.5* to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 1107, as amended, Allen. Political Reform Act of 1974.

Existing law prohibits a person who has been convicted of a felony involving bribery, embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes, from being considered a candidate for, or elected to, a state or local elective office. Existing law, the Political Reform Act of 1974, provides that campaign funds under the control of a former candidate or elected officer are considered surplus campaign funds at a prescribed time, and it prohibits the use of surplus campaign funds except for specified purposes.

This bill would prohibit an officeholder who is convicted of one of those enumerated felonies from using funds held by that officeholder's candidate controlled committee for purposes other than certain purposes permitted for the use of surplus campaign funds. The bill would also require the officeholder to forfeit any remaining funds held 6 months

after the conviction became final, and it would direct those funds to be deposited in the General Fund.

The Political Reform Act of 1974 prohibits a public officer from expending, and a candidate from accepting, public moneys for the purpose of seeking elective office.

This bill would permit a public officer or candidate to expend or accept public moneys for the purpose of seeking elective office if the state or a local governmental entity established a dedicated fund for this purpose, as specified.

~~The act prohibits a foreign government or principal, as defined, from making a contribution or expenditure in connection with a state or local ballot measure, and it also sets forth civil and criminal penalties for violations of the act's provisions.~~

~~This bill would expand the scope of the prohibitions relating to foreign governments and principals by also prohibiting a foreign government or principal from making a contribution in support of, or opposition to, a state or local candidate. It would also permit a greater criminal penalty to be imposed for a violation of that prohibition, and it would establish the amount of a civil penalty for a violation of the prohibition.~~

A violation of the act's provisions is punishable as a misdemeanor. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Political Reform Act of 1974, an initiative measure, provides that the act may be amended by a statute that becomes effective upon approval of the voters.~~

~~This bill would require the Secretary of State to submit the bill to the voters for approval at the November 6, 2018, statewide general election.~~

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a ²/₃ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) All citizens should be able to make their voices heard in the*
4 *political process and hold their elected officials accountable.*

5 *(b) Elections for local or state elective office should be fair,*
6 *open, and competitive.*

7 *(c) The increasing costs of political campaigns can force*
8 *candidates to rely on large contributions from wealthy donors and*
9 *special interests, which can give those wealthy donors and special*
10 *interests disproportionate influence over governmental decisions.*

11 *(d) Such disproportionate influence can undermine the public's*
12 *trust that public officials are performing their duties in an impartial*
13 *manner and that government is serving the needs and responding*
14 *to the wishes of all citizens equally, without regard to their wealth.*

15 *(e) Special interests contribute more to incumbents than*
16 *challengers because they seek access to elected officials, and such*
17 *contributions account for a large portion of the financial*
18 *incumbency advantage, as confirmed by recent studies such as*
19 *those published in the Journal of Politics in 2014 and Political*
20 *Research Quarterly in 2016.*

21 *(f) Citizen-funded election programs, in which qualified*
22 *candidates can receive public funds for the purpose of*
23 *communicating with voters rather than relying exclusively on*
24 *private donors, have been enacted in six charter cities in*
25 *California, as well as numerous other local and state jurisdictions.*

26 *(g) Citizen-funded election programs encourage competition*
27 *by reducing the financial advantages of incumbency and making*
28 *it possible for citizens from all walks of life, not only those with*
29 *connections to wealthy donors or special interests, to run for office,*
30 *as confirmed by recent studies such as those published in State*
31 *Politics and Policy Quarterly in 2008, and by the Campaign*
32 *Finance Institute in 2015 and the National Institute of Money in*
33 *State Politics in 2016.*

34 *(h) By reducing reliance on wealthy donors and special interests,*
35 *citizen-funded election programs inhibit improper practices,*
36 *protect against corruption or the appearance of corruption, and*
37 *protect the political integrity of our governmental institutions.*

1 (i) *In Johnson v. Bradley* (1992) 4 Cal.4th 389, the California
 2 Supreme Court commented that “it seems obvious that public
 3 money reduces rather than increases the fund raising pressures
 4 on public office seekers and thereby reduces the undue influence
 5 of special interest groups.”

6 (j) *In Buckley v. Valeo* (1976) 424 U.S. 1, the United States
 7 Supreme Court recognized that “public financing as a means of
 8 eliminating improper influence of large private contributions
 9 furthers a significant governmental interest.”

10 (k) *In Arizona Free Enterprise v. Bennett* (2011) 564 U.S. 721,
 11 the United States Supreme Court acknowledged that public
 12 financing of elections “can further ‘significant governmental
 13 interest[s]’ such as the state interest in preventing corruption,”
 14 quoting *Buckley v. Valeo*.

15 (l) *In Buckley v. Valeo*, the United States Supreme Court further
 16 noted that citizen-funded elections programs “facilitate and
 17 enlarge public discussion and participation in the electoral
 18 process, goals vital to a self-governing people.”

19 (m) The absolute prohibition on public campaign financing
 20 allows special interests to gain disproportionate influence and
 21 unfairly favors incumbents. An exception should be created to
 22 permit citizen-funded election programs so that elections may be
 23 conducted more fairly.

24 **SECTION 1.**

25 **SEC. 2.** Section 85300 of the Government Code is amended
 26 to read:

27 85300. (a) Except as provided in subdivision (b), a public
 28 officer shall not expend, and a candidate shall not accept, any
 29 public moneys for the purpose of seeking elective office.

30 (b) A public officer or candidate may expend or accept public
 31 moneys for the purpose of seeking elective office if the state or a
 32 local governmental entity establishes a dedicated fund for this
 33 purpose by statute, ordinance, resolution, or charter, and both of
 34 the following are true:

35 (1) Public moneys held in the fund are available to all qualified,
 36 voluntarily participating candidates for the same office without
 37 regard to incumbency or political party preference.

38 (2) The state or local governmental entity has established criteria
 39 for determining a candidate’s qualification by statute, ordinance,
 40 resolution, or charter.

1 ~~SEC. 2. Section 85320 of the Government Code is amended~~
2 ~~to read:~~

3 ~~85320. (a) A foreign government or foreign principal shall~~
4 ~~not make, directly or through any other person, any contribution,~~
5 ~~expenditure, or independent expenditure in connection with the~~
6 ~~qualification or support of, or opposition to, a state or local~~
7 ~~candidate or ballot measure.~~

8 ~~(b) A person or a committee shall not solicit or accept a~~
9 ~~contribution from a foreign government or foreign principal in~~
10 ~~connection with the qualification or support of, or opposition to,~~
11 ~~a state or local candidate or ballot measure.~~

12 ~~(c) For the purposes of this section, a “foreign principal”~~
13 ~~includes the following:~~

14 ~~(1) A foreign political party.~~

15 ~~(2) A person outside the United States, unless either of the~~
16 ~~following is established:~~

17 ~~(A) The person is an individual and a citizen of the United~~
18 ~~States.~~

19 ~~(B) The person is not an individual and is organized under or~~
20 ~~created by the laws of the United States or of any state or other~~
21 ~~place subject to the jurisdiction of the United States and has its~~
22 ~~principal place of business within the United States.~~

23 ~~(3) A partnership, association, corporation, organization, or~~
24 ~~other combination of persons organized under the laws of or having~~
25 ~~its principal place of business in a foreign country.~~

26 ~~(4) A domestic subsidiary of a foreign corporation if the decision~~
27 ~~to contribute or expend funds is made by an officer, director, or~~
28 ~~management employee of the foreign corporation who is neither~~
29 ~~a citizen of the United States nor a lawfully admitted permanent~~
30 ~~resident of the United States.~~

31 ~~(d) This section does not prohibit a contribution, expenditure,~~
32 ~~or independent expenditure made by a lawfully admitted permanent~~
33 ~~resident.~~

34 ~~(e) A person who violates this section is guilty of a misdemeanor~~
35 ~~and shall be fined the greater of ten thousand dollars (\$10,000) or~~
36 ~~an amount equal to the amount contributed or expended.~~

37 ~~SEC. 3. Section 89519.5 is added to the Government Code, to~~
38 ~~read:~~

39 ~~89519.5. (a) An officeholder who is convicted of a felony~~
40 ~~enumerated in Section 20 of the Elections Code, and whose~~

1 conviction has become final, shall use funds held by the
 2 officeholder's candidate controlled committee only for the
 3 following purposes:

4 (1) The payment of outstanding campaign debts or elected
 5 officer's expenses.

6 (2) The repayment of contributions.

7 (b) Six months after the conviction becomes final, the
 8 officeholder shall forfeit any remaining funds subject to subdivision
 9 (a), and these funds shall be deposited in the General Fund.

10 (c) This section does not apply to funds held by a ballot measure
 11 committee or in a legal defense fund formed pursuant to Section
 12 85304.

13 ~~SEC. 4.— Section 91004.5 is added to the Government Code, to~~
 14 ~~read:~~

15 ~~91004.5.—(a) A person who intentionally violates Section 85320~~
 16 ~~is liable in a civil action brought by the civil prosecutor, for each~~
 17 ~~violation, for the greater of ten thousand dollars (\$10,000) or an~~
 18 ~~amount equal to the amount contributed or expended.~~

19 ~~(b) The civil prosecutor may not bring an action pursuant to this~~
 20 ~~section against a person being criminally prosecuted for a violation~~
 21 ~~of Section 85320 pursuant to Section 91000.~~

22 ~~(c) This section is applicable only to violations occurring after~~
 23 ~~the effective date of this section.~~

24 ~~SEC. 5.~~

25 *SEC. 4.* The provisions of this bill are severable. If any
 26 provision of this bill or its application is held invalid, that invalidity
 27 shall not affect other provisions or applications that can be given
 28 effect without the invalid provision or application.

29 ~~SEC. 6.— No reimbursement is required by this act pursuant to~~
 30 ~~Section 6 of Article XIII B of the California Constitution because~~
 31 ~~the duties imposed on a local agency or school district by this act~~
 32 ~~were expressly included in a ballot measure approved by the voters~~
 33 ~~in a statewide election, within the meaning of Section 17556 of~~
 34 ~~the Government Code.~~

35 ~~SEC. 7.— Notwithstanding Section 9040 of the Elections Code,~~
 36 ~~the Secretary of State shall, pursuant to subdivision (b) of Section~~
 37 ~~81012 of the Government Code, submit this act to the voters for~~
 38 ~~approval at the November 6, 2018, statewide general election.~~

39 *SEC. 5.* *No reimbursement is required by this act pursuant to*
 40 *Section 6 of Article XIII B of the California Constitution because*

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

8 *SEC. 6. The Legislature finds and declares that this bill furthers*
9 *the purposes of the Political Reform Act of 1974 within the meaning*
10 *of subdivision (a) of Section 81012 of the Government Code.*