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**SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**  
Senator Steven Glazer, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	AB 1367	<b>Hearing Date:</b>	7/12/21
<b>Author:</b>	Low		
<b>Version:</b>	4/21/21		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Nicolas Heidorn		

**Subject:** Political Reform Act of 1974: committee accounts and campaign funds.

**DIGEST**

This bill increases penalties for the egregious personal use of campaign funds, as defined, to up to three times the amount of the unlawful expenditure, as specified.

**ANALYSIS**

Existing law:

- 1) Establishes the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires an expenditure of campaign funds to be reasonably related to a political, legislative or governmental purpose, as specified.
- 3) Requires an expenditure of campaign funds that confers a substantial personal benefit on anyone with authority to approve the expenditure to be directly related to a political, legislative, or governmental purpose. Defines "substantial personal benefit," for the purposes of this provision, as an expenditure of campaign funds that results in a direct personal benefit with a value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.
- 4) Provides that any person who makes or receives an honorarium, gift, or expenditure in violation of specified provisions of the PRA is liable in a civil action brought by the FPPC for an amount of up to three times the amount of the unlawful honorarium, gift, or expenditure.
- 5) Provides that campaign funds shall not be used to pay a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that resulted in either a personal benefit to the candidate or officer, if it is determined that the expenditure was not reasonably related to a political, legislative, or governmental purpose, or a substantial personal benefit to the candidate or officer, if it is determined that the expenditure was not directly related to a political, legislative, or governmental purpose.

- 6) Provides, generally, that the FPPC may impose administrative penalties of up to \$5,000 per violation of the PRA.
- 7) Provides, generally, that any person who violates a provision of the PRA for which no specific penalty is provided is liable in a civil action brought by the FPPC, district attorney, or elected city attorney, as specified, for an amount up to \$5,000 per violation, as specified. Provides, for specified violations of the PRA, that a person residing in the jurisdiction may bring a civil action against the violator, as specified.
- 8) Provides, generally, that a knowing or willful violation of the PRA is a misdemeanor and that, in addition to other penalties provided by law, a violator may be fined up to the greater of \$10,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received. Provides that the Attorney General is responsible for criminal enforcement of the PRA with respect to state agencies, lobbyists, and state elections and that the district attorney of any county in which a violation occurs has concurrent powers and responsibilities with the Attorney General.
- 9) Provides that the general civil and criminal remedies for a violation of the PRA, described above in 7) and 8), do not apply to a violation of specified provisions of the PRA, including the prohibition on receiving a personal benefit from the expenditure of campaign funds.

This bill:

- 1) Provides that any person who uses campaign funds in a manner that violates existing law and results in an egregious personal benefit is liable in an administrative or civil action brought by the FPPC for an amount of up to three times the amount of the unlawful expenditure.
- 2) Defines “egregious personal benefit” to mean a direct personal benefit with a total value of \$10,000 or more to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

### **BACKGROUND**

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. In setting a penalty the FPPC considers the facts of the case, the public harm involved, and the purposes of the PRA. Also, pursuant to its regulations, the FPPC must consider (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.

The FPPC may bring a civil lawsuit against a person who makes or receives an unlawful honorarium, gift, or expenditure of campaign funds, as specified, in which case the maximum monetary penalty available is three times the amount of the unlawful expenditure. Such civil lawsuits, however, are rare, and the FPPC deals with the vast majority of its enforcement cases through its administrative enforcement process. Generally, knowing or willful violations of the PRA may also be criminally prosecuted; however, the prohibition on the personal use of campaign funds is an exception where criminal penalties are not applicable.

Because the maximum monetary penalty available in an administrative enforcement action is not dependent on the value of the personal benefit received, a person may receive an improper personal benefit from campaign spending that exceeds the maximum penalty that the FPPC can impose through the administrative process. For example, according to background materials provided to the committee, in a 2019 enforcement case, the FPPC found that a former elected county clerk-recorder unlawfully used \$130,521 in campaign funds for personal uses, including for a home remodel and for a vacation to another country. As part of a stipulated agreement, the official agreed to pay the maximum fine of \$5,000 for each of 15 personal use violations, for a total of \$75,000 – around \$55,000 less than was unlawfully used. In a 2013 enforcement case, the FPPC found that a former county supervisor unlawfully used \$131,670 in campaign funds for gambling. In a stipulated agreement, the official paid a \$5,000 fine for each of ten violations of the prohibition on personal use of campaign funds, for a total of \$50,000 – around \$80,000 less than was unlawfully used.

While the fines in these two cases were significantly lower than the amount of the unlawful personal benefit, by the conclusion of the enforcement action both officials had reimbursed the unlawfully used funds to their campaigns. In addition, both faced other legal consequences, including criminal prosecution, for other legal violations relating to their misuse of campaign funds. The former clerk-recorder was fined an additional \$75,000 by the FPPC for reporting violations and, according to press reports, is being criminally prosecuted by the county district attorney for grand theft of campaign funds and for committing perjury on campaign finance disclosure statements. The former county supervisor, who also gambled with public funds, was criminally prosecuted and sentenced to one year in jail for misappropriating public funds, filing false campaign reports, and perjury.

According to the author and sponsors of this bill, the egregious personal use of campaign funds harms public confidence in the state's campaign finance system, its public officials, and the political process as a whole. They contend that the current maximum administrative penalty of \$5,000 may not be an effective deterrent to the unlawful personal use of campaign funds that significantly exceed this fining authority.

For certain types of violations, the PRA provides enhanced administrative penalties to more strongly disincentive noncompliance. For example, a person who violates certain advertisement disclosure requirements is liable in a civil or administrative action for up to three times the cost of the advertisement. AB 1367 provides a similar enhanced civil or administrative penalty of up to three times the amount of campaign funds that was unlawfully expended to provide an egregious personal benefit to a candidate or individual with authority to approve campaign committee expenditures.

Substantial Personal Benefit Violations Statistics. The PRA prohibits an expenditure of campaign funds which results in a “substantial personal benefit” of more than \$200 to a candidate, elected officer, or individual with authority to approve the expenditure of campaign funds held by a committee. According to FPPC enforcement data, there have been 26 cases resulting in an administrative penalty for a substantial personal benefit violation since 2010, or around two cases per year. Committee staff’s review of these 26 cases identified eight cases involving a personal benefit over \$10,000.

### **COMMENTS**

- 1) According to the author: AB 1367 will discourage unlawful use of campaign funds and raise public confidence in the political process.
- 2) Setting an Appropriate Penalty. Generally, the purpose of a legal penalty is to deter violations of law, punish bad actors, and, in some cases, make restitution. The penalty needs to be sufficiently high to accomplish these goals, but not so high as to be unreasonably disproportionate to the offense and cause undue hardship. In setting a heightened penalty, this committee should consider whether the right balance between these factors is being achieved. Over the past decade, the Legislature has considered a number of approaches to strengthen the penalties for personal use of campaign funds violations. As detailed in the PRIOR LEGISLATION section below, in 2014, the Legislature passed and Governor Brown signed AB 1692 (Garcia), Chapter 884, Statutes of 2014, which prohibits using campaign funds to pay fines that were imposed for personal use violations. Other proposals that were considered, but did not become law, include requiring that the violator pay to the General Fund an amount equal to the substantial personal benefit received, in addition to any penalty imposed by the FPPC (AB 2692 (Fong) of 2014), and, similar to this bill, increasing the administrative penalty to a maximum fine of three times the amount of the unlawfully expended funds and also providing criminal penalties (AB 2505 (Berman) of 2020).
- 3) Argument in Support. In a letter sponsoring AB 1367, the FPPC states, in part, the following:

*AB 1367 would ... increase the penalties for unlawful personal use of campaign funds to an amount of up to three times the amount of the unlawful expenditure when that use results in a direct personal benefit with a value of \$10,000 or more. Currently, a violation of the Act involving unlawful personal use of campaign funds is subject to a maximum administrative penalty of \$5,000.*

*This bill would ... give the [FPPC] additional penalty authority when an individual egregiously uses campaign funds to personally enrich themselves. In doing so,*

*AB 1367 would also increase public confidence that the state's campaign finance laws are being followed and enforced.*

**RELATED/PRIOR LEGISLATION**

AB 2505 (Berman) of 2020 would have provided that a person who misuses campaign funds in a manner that results in an unlawful direct personal benefit with a monetary value of \$10,000 or more is subject to an administrative penalty by the FPPC of up to \$10,000 for each violation or up to three times the amount of the unlawful personal benefit, and is subject to criminal liability, as specified. The bill was referred to the Assembly Elections and Redistricting Committee, but not heard.

AB 1692 (Garcia), Chapter 884, Statutes of 2014, limited 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.

AB 2692 (Fong) of 2014 would have required a person who improperly benefits from the personal use of campaign funds to forfeit the value of the personal benefit received to the General Fund. The bill specified that the amount paid to the General Fund is in addition to any penalty imposed by the FPPC, as specified. AB 2692 received a unanimous vote in both houses but was vetoed by Governor Brown, who stated, in part, that “[c]urrent law provides for substantial penalties against this type of behavior. Each violation can result in a fine of \$5,000. I believe these fines are a sufficient deterrent.”

**PRIOR ACTION**

Assembly Floor:	78 - 0
Assembly Appropriations Committee:	16 - 0
Assembly Elections Committee:	7 - 0

**POSITIONS**

**Sponsor:** Fair Political Practices Commission

**Support:** None received

**Oppose:** None received

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