

SENATE THIRD READING
SB 794 (Glazer)
As Amended June 30, 2022
2/3 vote

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.

Major Provisions

- 1) Codifies a regulation that permits a committee that receives a contribution that exceeds the contribution limit to return that contribution, or a portion thereof, without violating the applicable contribution limit if the following conditions are met:
 - a) The amount in excess of the limit is returned within 14 days of receiving the contribution.
 - b) The committee does not deposit or allow deposit of the contribution with actual knowledge that it exceeds the applicable limit.
 - c) The committee does not make use of the contribution prior to returning it.
- 2) Permits a committee, notwithstanding 1), above, to deposit or allow deposit of a contribution with actual knowledge that it exceeds the applicable limit without violating the limit if the following conditions are met:
 - a) The amount in excess of the contribution limit is returned within 72 hours of receiving the contribution or before the day of the election, whichever is sooner.
 - b) The committee does not deposit or allow deposit of the contribution with actual knowledge that the contribution is more than *two times* the applicable limit.
 - c) The committee does not make use of the contribution prior to returning it.
- 3) Provides, for the purposes of this bill, that a committee makes uses of a monetary contribution if, after receiving the contribution, it makes expenditures exceeding what the committee's available cash balance would have been if the committee had not received the contribution and any other contributions that exceed the applicable limit.

COMMENTS

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. 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, a Fair Political Practices Commission (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.

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 "would constitute actual knowledge of an over the limit contribution and would not be permitted" under the amended regulation that the FPPC adopted.

This bill codifies a portion of the FPPC regulation as it relates to situations where the committee did not have actual knowledge that a contribution exceeded the applicable limit at the time the committee deposited or allowed deposit of the contribution. Additionally, this bill allows a committee to *knowingly* deposit an over-limit campaign contribution without violating the contribution limits as long as the committee complies with certain requirements, including a shortened timeline for returning the excess amount and a prohibition on knowingly depositing or allowing the deposit of a contribution that is *more than double* the relevant limit. These provisions are intended to accomplish the author's stated goal while ensuring that the purpose of the recent change to the FPPC regulation is not thwarted, and to help mitigate concerns related to committees receiving benefits from excess contributions held in the committee's account.

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.)

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.

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 Political Reform Act (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.

Please see the policy committee analysis for a full discussion of this 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."

Arguments in Support

None received.

Arguments in Opposition

None received.

FISCAL COMMENTS

None. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES

SENATE FLOOR: 36-0-4

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Hertzberg, Limón, Melendez, Stern

ASM RULES: 8-0-3

YES: Cooley, Waldron, Bennett, Mike Fong, Gipson, Maienschein, Mathis, Blanca Rubio

ABS, ABST OR NV: Flora, Lee, Villapudua

ASM ELECTIONS: 7-0-0

YES: Bryan, Seyarto, Bennett, Low, Mayes, Mullin, Blanca Rubio

UPDATED

VERSION: June 30, 2022

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FN: 0003161