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

Bill No:	SB 794	**Hearing Date:**	8/29/22
Author:	Glazer		
Version:	8/11/22		
Urgency:	No	**Fiscal:**	No
Consultant:	Scott Matsumoto		

Subject: Political Reform Act of 1974: contribution limits

DIGEST

This bill 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 or by attributing the excess amount to a different election, as specified.

ANALYSIS

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.

    b) Make use of the contribution prior to returning it.

This bill:

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) Permits a committee, instead of returning the amount of a contribution that exceeds the contribution limit as described above, to attribute the portion of the contribution that exceeds the limit to another election in accordance with regulations adopted by the FPPC, as specified.

4) Requires a committee that receives a contribution that exceeds the relevant contribution limit to inform the contributor that their contribution was in excess of the applicable limit, as specified. Requires a committee, if it attributes a contribution to a different election in accordance with this bill, to inform the contributor that the contribution was attributed and that the contributor may request a refund.

5) Provides, for the purposes of this bill, that a committee makes use 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.

BACKGROUND

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.

Contribution Limits and the Return of Excess Contributions. 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.

Since the regulatory change allowed a committee 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. Additionally, the memo stated that 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.

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. Additionally, 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. It should be noted that federal law alternately includes procedures to allow a committee to redesignate or reattribute an excessive contribution without refunding the excessive amount.

COMMENTS

1) 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) Argument in Support. In a letter supporting SB 794, the FPPC states, in part, the following:

   SB 794 would authorize a committee that receives a contribution in excess of the applicable contribution limit to retain the permissible portion and return the excess of attribute the excess to another election, instead of having to return the whole contribution amount. The bill create a reasonable allowance that takes into account the realities of campaign fundraising, while also including appropriate safeguards to ensure that this allowance is not abused, including the cap on contributions of twice the applicable limit and the requirement that the excess is returned or attributed within 72 hours.

RELATED/PRIOR LEGISLATION

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.

PRIOR ACTION

Assembly Floor:	77 - 0
Assembly Elections Committee:	7 - 0
Assembly Rules Committee:	8 - 0
Senate Floor:	36 - 0
Senate Elections and Constitutional Amendments:	5 - 0

POSITIONS

Sponsor: Author

Support: Fair Political Practices Commission

Oppose: None received

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