

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS

Isaac G. Bryan, Chair

AB 270 (Lee) – As Amended April 11, 2023

SUBJECT: 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 state and local governmental entities to establish programs that provide for public campaign financing for candidates for elective office, if all of the following criteria have been met:
 - a) The state or local governmental entity has established a dedicated fund by statute, ordinance, resolution, or charter for the purpose of providing public campaign financing for candidates for elective office;
 - b) 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,
 - c) The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter.
- 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, have been enacted in six 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 the provisions of this bill 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: Unknown. Although this bill is keyed non-fiscal, it has been double referred to the Assembly Appropriations Committee.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author, “Public financing of campaigns is the best way to empower voters, increase diversity of candidates running for office, and give voters confidence that Big Money can’t just buy their elections.”
- 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 a joint letter of support submitted by the California Clean Money Campaign and joined by many of the organizations listed below in support of this bill, the organizations write:

Voters are increasingly concerned about the problem of money in politics. A recent Gallup poll found that only 20% said they were satisfied with the nation's campaign finance laws. In a poll conducted by the California Clean Money Campaign, 79% of likely California voters said Big Money campaign contributors have too much influence over elected officials in California, and 68% said that ordinary voters have too little influence.

Public financing of campaigns addresses these concerns by increasing the power of small donors and ordinary voters to participate in campaigns and have their voices heard. Also, it reduces the barriers to entry for running for office which diversifies the candidate pool by helping qualified candidates from all walks of life represent their communities.

Fifteen states and 19 municipalities have adopted public financing systems to empower voters and help candidates run campaigns that are more focused on the people they are running to represent. A study by Maplight found that during the first cycle of the matching funds program in Berkeley (in 2018), participating campaigns' donors were spread across more of the city. In addition, the size of the average contribution fell 60% from the previous election. A 2020 study from Georgetown University found that since Seattle began Democracy Vouchers in 2017 the donor pool has become increasingly diverse.

- 6) **Arguments in Opposition:** In opposition to this bill, the California Taxpayers Association writes:

This measure raises several First Amendment issues by creating a scenario in which taxpayers would be forced to support political speech that they do not wish

to support. AB 270 sets vague parameters for the authority that local governments would have to determine which candidates qualify for public financing. It is possible that local governments would be able to arbitrarily prohibit certain candidates from receiving funding to limit the speech of some candidates for the political benefit of others.

At a time when the state is facing a \$22.5 billion deficit – and many municipalities are experiencing significant budget pressure due to inflation – the government should prioritize prudent fiscal policies to make the most of the revenue received from taxpayers.

For these reasons, the voters have repeatedly rejected public financing of elections (most recently with Proposition 89 of 2006 and Proposition 15 of 2010).

- 7) **Related Legislation:** SB 24 (Umbert), which is pending in the Senate Elections & Constitutional Amendments Committee, is substantively identical to this bill.

SB 888 (Elections & Constitutional Amendments Committee), which is pending in the Senate Elections & Constitutional Amendments Committee, proposes to repeal the provisions of SB 1107 that were enjoined from enforcement in *Howard Jarvis Taxpayers Assn.* as described above, among other provisions.

- 8) **Double Referral:** Although this bill has been keyed non-fiscal by the Legislative Counsel, it has been double referred to the Assembly Appropriations Committee. Historically, non-fiscal measures that propose placing a measure on the ballot for voter approval have been referred to the Assembly Appropriations Committee because the state can incur costs to add additional pages to the state ballot pamphlet whenever it places a measure on the ballot.
- 9) **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)
 All Rise Alameda
 Building the Base Face to Face
 California Church Impact
 CalPIRG, California Public Interest Research Group
 Change Begins With Me (INDIVISIBLE)
 Cloverdale Indivisible

Consumer Watchdog
Contra Costa Moveon
Courage California
Defending Our Future: Indivisible in CA
East Valley Indivisibles
El Cerrito Progressives
Endangered Habitats League
Feminists in Action (formerly Indivisible CA 34 Womens)
Hillcrest Indivisible
Indi Squared
Indivisible 30/Keep Sherman Accountable
Indivisible 36
Indivisible 41
Indivisible Auburn CA
Indivisible Beach Cities
Indivisible CA-25 Simi Valley Porter Ranch
Indivisible CA-29
Indivisible CA-3
Indivisible CA-33
Indivisible CA-37
Indivisible CA-39
Indivisible CA-43
Indivisible CA-7
Indivisible CA: Statestrong
Indivisible Claremont/Inland Valley
Indivisible Colusa County
Indivisible East Bay
Indivisible El Dorado Hills
Indivisible Elmwood
Indivisible Euclid
Indivisible Lorin
Indivisible Los Angeles
Indivisible Manteca
Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Normal Heights
Indivisible North Oakland Resistance
Indivisible North San Diego County
Indivisible OC 46
Indivisible OC 48
Indivisible Petaluma
Indivisible Sacramento
Indivisible San Bernardino
Indivisible San Jose
Indivisible San Pedro
Indivisible Santa Barbara

Indivisible Santa Cruz County
Indivisible Sausalito
Indivisible Sebastopol
Indivisible SF
Indivisible SF Peninsula and CA-14
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Suffragists
Indivisible Ventura
Indivisible Windsor
Indivisible Yolo
Indivisible: San Diego Central
Indivisibles of Sherman Oaks
Livermore Indivisible
Maplight
Mill Valley Community Action Network
Money Out Voters in
Mountain Progressives
Nothing Rhymes With Orange
Orchard City Indivisible
Orinda Progressive Action Alliance
Our Revolution Long Beach
Public Citizen, Inc
Riseup
Rooted in Resistance
San Diego Indivisible Downtown
SFV Indivisible
Tehama Indivisible
The Resistance Northridge-Indivisible
Together We Will Contra Costa
Together We Will/Indivisible - Los Gatos
Vallejo-Benicia Indivisible
Venice Resistance
Voices for Progress
Women's Alliance Los Angeles
Yalla Indivisible

Opposition

California Taxpayers Association
Howard Jarvis Taxpayers Association

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