
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No: SB 948 **Hearing Date:** 4/30/24
Author: Limón
Version: 4/23/24
Urgency: No **Fiscal:** No
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: contribution limitations

DIGEST

This bill clarifies and provides a procedure for transferring contribution funds if a candidate does not qualify for a primary or special election and for candidates if an elected at a primary election instead of at a general 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 of 1974 (PRA).
- 2) Permits a candidate for elective state, county, or city office to carry over contributions raised in connection with one election for elective state, county, or city office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state, county, or city office. Provides that this does not apply in a jurisdiction in which the county or city imposes a limit on contributions, as specified.
- 3) Permits a candidate for elective state, county, or city office to raise contributions for a general election before the primary election, and for a special general election before a special primary election, for the same elective state, county, or city office if the candidate sets aside these contributions and uses these contributions for the general election or special general election. Provides that if the candidate for elective state, county, or city office is defeated in the primary election or special primary election, or otherwise withdraws from the general election or special general election, the general election or special general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election or special general election contributions. Permits candidates for elective state, county, or city office may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections, as specified. Provides that this does not apply in a jurisdiction in which the county or city imposes a limit on contributions, as specified.

This bill:

- 1) Provides that if a candidate receives a majority of the votes cast for an office at a primary election, so that the candidate is elected to the office without advancing to the general election, both of the following apply:
 - a) The remaining campaign funds raised for the primary election may be carried over to a committee for any subsequent election to the same office without attributing funds to specific contributors.
 - b) Funds raised for the general election may be transferred to a committee for any subsequent election to the same office, but shall be attributed to specific contributors as provided under current law, as specified.
- 2) Provides that a candidate who does not file a declaration of candidacy to qualify for a primary election or special primary election is not “defeated in the primary election or special primary election” and does not “otherwise withdraw from the general election or special general election” is not be required to refund contributions, as specified.
- 3) Provides that a candidate who does not file a declaration of candidacy to qualify for a primary election or special primary election may transfer funds to a committee established for the same or a different office subject to the attribution rules pursuant to existing law.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

Proposition 34. At the November 7, 2000 statewide general election, voters approved Proposition 34. Proposition 34, among other provisions, established limits on campaign contributions to candidates.

Government Code Sections 85306 and 85317, originally enacted as a part of Proposition 34, set forth parameters within which candidates are permitted to transfer and carryover funds from one committee to another. Section 85306 permits candidates to “transfer campaign funds from one controlled committee to a controlled committee for elective state, county, or city office of the same candidate.” Additionally, Section 85306 requires candidates to attribute transferred contributions to specified contributors using either a “last in, first out” or “first in, first out” accounting method. The rule requiring attribution of contributions is intended to prevent circumvention of contribution limits through the transfer of campaign funds from one committee to another, in addition to providing disclosure of contributors.

Section 85317 provides: “Notwithstanding subdivision (a) of Section 85306, a candidate for elective state, county, or city elective office may carry over contributions raised in connection with one election for elective state, county, or city office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state, county, or city office.” The record of Proposition 34 did not provide any insight into the specific legislative intent behind the exception in Section 85317. This was an issue the FPPC considered when adopting regulations. The FPPC considered multiple options with different definitions of a subsequent election for the same office prior to enacting Regulation 18537.1 in 2002.

“Subsequent Elections” and Regulation 18537.1. Current law provides an exception to the general rule requiring that contributions be attributed to specific contributors when those contributions are transferred between committees, meaning the transferred contribution counts (e.g., is “attributed”) towards the relevant contribution limit for that candidate. Contributions transferred to a committee formed for a “subsequent election” do not have to be attributed, meaning they do not count for purposes the contribution limits for that office, nor does the committee receiving the funds have to identify any of the original contributors. The scope of that exception was a matter of significant debate when the FPPC originally adopted its regulatory definition of “subsequent election” more than twenty years ago due to concerns about the potential use of the exception in Section 85317 to circumvent contribution limits.

Current FPPC Regulation 18537.1(c) defines subsequent election for the same office as (1) the election to the next term of office immediately following the election/term of office for which the funds were raised (2) the general election, which is subsequent to and for the same term of office as the primary election for which the funds were raised; or (3) the special general election, which is subsequent to and for the same term of office as the special primary election for which the funds were raised.

Legislative Response. In late 2023 and early 2024, the FPPC began considering the adoption of amendments to two regulations addressing two distinct scenarios. First, an amendment concerning the refunding of contributions when a candidate chooses to withdraw from the primary election. Second, an amendment concerning the disposition of general election contributions when a candidate receives a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election.

Senator Limón and Assemblymember Zbur submitted a letter stating that it was their belief that the issues relating to subsequent elections and transfers should be resolved through the legislative process. The FPPC has postponed their regulatory amendment process for these two items to a later date to see how the legislative process relating to these proposals play out.

COMMENTS

According to the author: SB 948 codifies current law allowing a candidate - who decides before the primary - to run for a different office to transfer primary and general election contributions to a committee established for the different office, as long as certain safeguards are met. The transferred funds would have to be attributed to the original donor and contribution limits for the new office would have to be adhered to. This bill

does not establish a new process, continues to maintain transparency for campaign contributions, and simply codifies advice given by the FPPC many years ago.

The bill also allows candidates who win outright in a primary election to transfer funds raised for the general election to a committee for a subsequent election to the same office. These contributions shall be attributed to the specific donors.

RELATED/PRIOR LEGISLATION

SB 1223 (Burton), Chapter 102, Statutes of 2000, among other provisions and subject to voter approval, permitted a candidate for state elective office to carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office. SB 1223 also permitted a candidate for state elective office to carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office. SB 1223 was seen as Proposition 34 at the November 7, 2000 statewide general election where it was approved by voters.

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

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