

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 948 (Limón and Zbur) – As Amended April 23, 2024

AS PROPOSED TO BE AMENDED

SENATE VOTE: 37-0

SUBJECT: Political Reform Act of 1974: contribution limitations.

SUMMARY: Specifies that a candidate who receives campaign contributions for an election but doesn't file to run in the primary election, or who wins an election outright in the primary election without the need for a general election, can transfer campaign funds raised for the general election to a committee for a subsequent election. Requires the transferred contributions to be attributed to specific contributors and subject to any relevant contribution limits. Specifically, **this bill:**

- 1) Provides that a candidate who has raised contributions for a general election before the associated primary election, but who does not file a declaration of candidacy to qualify for the primary election, is not required to refund the contributions received for the general election. Permits such a candidate to transfer the contributions received to a committee established for the same or a different office, provided that the transferred contributions must be attributed to specific contributors, as specified. Specifies that this provision is declaratory of existing law.
- 2) Provides that if a candidate receives a majority of the votes cast for an office at a primary election such 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, but shall be attributed to specific contributors, as specified.
- 3) Makes a clarifying change.

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) Permits a candidate to transfer campaign funds from one controlled committee to a controlled committee for elective state, county, or city office of the same candidate, as specified.

Requires contributions transferred pursuant to this provision to be attributed to specific contributors, as specified, and subjects those attributed contributions to relevant campaign contribution limits. (Government Code §85306)

- 3) Permits a candidate for elective state, county, or city office to carry over campaign 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, for the purpose of this provision, that the term “carry over” means the movement of campaign funds to the candidate’s controlled committee established for a subsequent election to the same elective office without attribution to specific contributors, as specified. (Government Code §85317; 2 California Code of Regulations §18537.1)
- 4) Permits a candidate for elective state, county, or city office to raise contributions for a general election before the 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. Provides that if the candidate is defeated in the primary election, or otherwise withdraws from the general election, the 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 contributions. (Government Code §85318)
- 5) Provides that campaign contributions deposited into a candidate’s campaign account are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Government Code §89510(b))

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

COMMENTS:

- 1) **Author’s Amendments:** After the committee’s deadline for pre-committee author’s amendments, the author proposed two amendments to this bill:

A clarifying amendment to strike the word “a” and insert the word “any” on page 2, line 7 of the bill text.

An amendment to strike the words “to the same office” on page 3, line 6 of the bill text. This amendment will eliminate ambiguity about the rules governing the transfer of campaign funds in certain situations, including when an elected official is not eligible to run for another term of the same office (e.g., when the official has served the maximum number of allowable terms of office).

This bill analysis reflects those proposed author’s amendments.

- 2) **Purpose of the Bill:** 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... These contributions shall be attributed to the specific donors.

- 3) **Transfers of Campaign Contributions:** Under existing state law, when a candidate for elective state or local office receives campaign contributions, those contributions generally must be deposited into a campaign contribution account that has been established for the specific election at which the candidate is running and for the specific office that the candidate is seeking. Contributions deposited into the account are deemed to be held in trust for expenses associated with the election of the candidate or expenses associated with holding office.

There are various circumstances under which a candidate may receive a campaign contribution in connection with seeking an office at a specific election, but where the candidate does not spend the funds from that contribution on that specific campaign. For instance, it is not uncommon for a candidate to raise more money for a campaign than the candidate spends, leaving the candidate with a positive balance in their campaign account after the election. In such a situation, the candidate may seek to transfer the campaign funds remaining in the account to an account for a subsequent election to the same or a different office.

State law generally allows a candidate to transfer campaign funds in that situation, with certain restrictions. If the candidate wants to transfer funds for use in a subsequent election for the *same* elective office that the candidate previously sought, state law allows the candidate to “carry over” the funds from one account to the next without having to attribute the funds that are transferred to specific contributors. State law also allows a candidate to transfer funds to a controlled committee for a future election to a *different* elective office, but requires the candidate, when transferring the funds, to attribute the transferred contributions to specific contributors using one of two accounting methods. When transferring contributions in this manner, the funds attributed to a specific contributor cannot exceed any relevant contribution limit when aggregated with all other transfers attributed to, and contributions received from, the same contributor.

While the rules governing transfers of campaign funds between campaign committees for the same candidate are clear in certain circumstances, the rules are less clear in other situations. In particular, the rules for transferring campaign contributions that were raised by a candidate for a *general* election are unclear in some circumstances if the candidate does not appear on the ballot at that general election.

As detailed above, state law allows a candidate to receive campaign contributions for a general election for an office before the primary election occurs, but only if the candidate sets aside those contributions and uses them only for the general election. That law provides that

if a candidate who has raised money for a general election is defeated in the primary election or withdraws from the general election, then the general election contributions must be refunded to the contributors on a pro rata basis, less expenses associated with raising and administering the general election contributions.

If a candidate does not appear on the general election ballot because the candidate was elected outright in the primary election, however, the rules that govern the use of the funds raised by the candidate for that general election are less clear. Similarly, if a candidate does not appear on the general election ballot because the candidate withdrew before the *primary* election (and thus, the candidate neither was defeated at the primary election nor did the candidate withdraw from the general election), the rules governing the use of campaign funds raised for the general election are unclear.

Regarding the latter scenario, the FPPC has reached different conclusions when providing advice about the relevant rules governing the use of campaign funds raised for the general election by a candidate who withdraws before the primary election. In 2008, the FPPC was asked to provide advice about whether a candidate who received contributions for the 2006 election for State Treasurer, but who withdrew from that race before the primary election, could transfer the funds raised for the 2006 general election to a campaign committee that the same candidate established for the 2010 election for State Treasurer. In its response (*Kaufman* Advice Letter, No. A-06-106), the FPPC concluded that the candidate's withdrawal from the 2006 primary election "effectuated a withdrawal from the general election," and therefore that the funds raised for the 2006 general election had to be returned to contributors.

Less than two years later, however, the FPPC reached a different conclusion when asked for advice about whether contributions raised by a candidate for the 2010 general election for Attorney General (AG) could be transferred to the same candidate's campaign committee for the 2010 election for Governor. Even though that candidate did not run for AG in 2010 – and thus withdrew from the AG's race before the 2010 primary election – the FPPC concluded that the candidate could transfer funds raised for the 2010 general election for AG to the candidate's committee for the 2010 election for Governor, provided that the funds transferred were attributed to specific contributors and subject to the relevant campaign contribution limits (*Brown* Advice Letter, No. A-09-276). In reaching this conclusion, the FPPC acknowledged that the reasoning in the *Kaufman* advice letter would prohibit such a transfer. However, the FPPC concluded that upon closer review, its application of the law in the *Kaufman* advice letter was incorrect, and allowing a candidate who withdraws before the primary election to transfer money that was raised for the subsequent general election "is more consistent with the actual language of [the relevant provision of the PRA] and also more consistent with other provisions of the [PRA] applicable to the use of campaign funds." The FPPC has since added a notation to the *Kaufman* advice letter that it was superseded by the *Brown* Advice Letter. There have been no significant changes to the PRA's rules governing transfers of campaign funds between campaign committees for the same candidate since the FPPC issued the *Brown* advice letter.

- 4) **FPPC Regulatory Action:** At its March 8, 2024, meeting, the FPPC considered proposed amendments to its regulations governing the use of campaign contributions received by a

candidate for a general election when that candidate withdraws before the primary election or wins the election outright in the primary. At that meeting, FPPC staff proposed a regulation that would codify the conclusion of the *Kaufman* Advice Letter by specifying that a candidate who does not run or withdraws from a primary election would be required to refund any contributions received for the subsequent general election. FPPC staff additionally proposed three potential regulatory options addressing the transfer of campaign funds when a candidate is elected to office at the primary election.

In connection with that agenda item, the joint authors of this bill submitted a comment letter stating that they believed that the rules governing the transfer of campaign funds “are more appropriately resolved through the legislative process,” and that accordingly, they were authoring this bill. The authors additionally asked the FPPC to suspend its regulatory action on those matters pending consideration of this bill. The FPPC subsequently agreed to postpone consideration of those regulations pending the outcome of any legislative action.

- 5) **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.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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