



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Commissioner Hatch, Chair of Law & Policy Committee

From: Phillip Ung, Director, Legislative and External Affairs

Subject: Attachment 8: Prohibition on Use of Funds; Harassment and Discrimination RN 19 01038

Date: December 12, 2018

Background

At the March 2018 meeting, the Commission rescinded the [Mendoza Advice Letter A-18-009](#). The letter concluded then-Senator Tony Mendoza may establish a legal defense fund to defray attorney's fees related to a claims of wrongful termination, proceedings related to Senate Resolution 69 (2018), and a subsequent civil proceeding should one be filed. The letter had also stated Mr. Mendoza may use campaign and legal defense funds to defend himself from claims of sexual harassment that arose directly out of his activities, duties, or status as a candidate or elected officer.

The Act authorizes certain candidates and elective officers to establish legal defense funds to defray attorney's fees and other related legal costs in defense of a candidate who is subject to one or more civil, criminal, or administrative proceedings arising directly out of conduct of an election campaign or performance of governmental activities and duties.

The Act permits expenditures that confer a substantial personal benefit must be directly related to a political, legislative, or governmental purpose. The Act prohibits the use of campaign funds for fines, penalties, judgements, or settlements.

Analysis

This bill does the following:

1. Prohibits funds from legal defense funds, defined under the Act, from being used to pay or reimburse a candidate or elected officer for attorney's fees or other legal costs in connection with claims of unlawful practices defined under the Fair Employment and Housing Act. This would include expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.
2. Prohibits the use of campaign funds from being used to pay or reimburse a candidate or elected officer, or any individual with authority to approve campaign expenditure for attorney's fees or other legal costs in connection with claims of unlawful practices defined under the Fair Employment and Housing Act. This would include expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.

Rationale

The rescission of the *Mendoza Advice Letter* has left a potential gap in the Commission's policy of whether the payments or reimbursements are permitted for claims related to violations of the Fair Employment and Housing Act. This gap can be filled through the passage of this proposed bill that will expressly prohibit such payments and reimbursements.

Fiscal Impact

Minor and absorbable. The Commission will update manuals, the website, and communicate the new prohibition to the regulated community.

Legislative Counsel has keyed the as a state-mandated local program which generally requires the state, under the California Constitution, to reimburse local agencies and school districts for certain costs mandated by the state. However, no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of [Section 17556 of the Government Code](#).

Staff Recommendation

1. Recommend the Commission approve the Legislative Counsel draft as presented;
2. Adopt a sponsorship position; and
3. Authorize Commission staff to retain an author for bill introduction.

LEGISLATIVE COUNSEL'S DIGEST

Bill No. _____
as introduced, _____
General Subject: Political Reform Act of 1974: campaign expenditures: limitations.

(1) The Political Reform Act of 1974 authorizes certain candidates and elective officers to establish a separate legal defense fund campaign account to defray attorney's fees and other related legal costs incurred in the defense of the candidate or elective officer who is subject to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officers' governmental activities and duties, as specified.

This bill would prohibit the expenditure of funds in a legal defense fund campaign account to pay or reimburse a candidate or elected officer for attorney's fees or other legal costs, as specified, in connection with claims of unlawful practices made pursuant to specified provisions of law.

The act provides that all contributions deposited into a 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. The act provides that an expenditure to seek or hold office is within the lawful execution of this trust if it is reasonably related to a political, legislative, or governmental purpose. Expenditures that confer a substantial personal benefit must be directly related to a political, legislative, or governmental purpose. The act prohibits the use of campaign funds for fines, penalties, judgments, or settlements, except as specified.

This bill additionally would prohibit the expenditure of campaign funds to pay or reimburse a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee or the elected officer's governmental agency for attorney's fees or other costs, as specified, in connection with claims of unlawful practices made pursuant to specified provisions of law.

(2) Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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An act to amend Sections 85304 and 85304.5 of, and to add Section 89523 to, the Government Code, relating to the Political Reform Act of 1974.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 85304 of the Government Code is amended to read:

85304. (a) A candidate for elective state office or an elected state officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. These funds may be used only to defray those attorney fees and other related legal costs.

(b) A candidate may receive contributions to this account that are not subject to the contribution limits set forth in this article. However, all contributions shall be reported in a manner prescribed by the commission.

(c) Once the legal dispute is resolved, the candidate shall dispose of any funds remaining after all expenses associated with the dispute are discharged for one or more of the purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 89519.

(d) Funds in the account created pursuant to subdivision (a) shall not be used to pay or reimburse the candidate or elected officer for attorney's fees or other legal costs in connection with claims of unlawful practices made pursuant to Article 1 (commencing with Section 12940) of Chapter 6, including expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.

~~(d)~~

(e) (1) For purposes of this section and Section 85304.5, "attorney's fees and other related legal costs" includes only the following:

(A) Attorney's fees and other legal costs related to the defense of the candidate or officer.

(B) Administrative costs directly related to compliance with the requirements of this title.

(2) "Attorney's fees and other related legal costs" does not include expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or, except as expressly authorized by subdivision (c) of Section 89513, a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.

SEC. 2. Section 85304.5 of the Government Code is amended to read:

85304.5. (a) A candidate for elective office other than an elective state office or an elected officer other than an elected state officer may establish a separate account pursuant to subdivision (a) of Section 85304 and may use these funds only to defray attorney's fees and other related legal costs.

(b) A candidate for an elective office other than an elective state office may receive contributions to the separate account subject to any limitations provided by local ordinance. However, all contributions to these separate accounts shall be reported in a manner prescribed by the commission.

(c) Once the legal dispute is resolved, the candidate or elected officer shall dispose of any funds remaining in the separate accounts after all expenses associated



with the dispute are discharged for one or more of the purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 89519.

(d) Funds in the account created pursuant to subdivision (a) shall not be used to pay or reimburse the candidate or elected officer for attorney's fees or other legal costs in connection with claims of unlawful practices made pursuant to Article 1 (commencing with Section 12940) of Chapter 6, including expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.

(d)

(e) For purposes of this section, "attorney's fees and other related legal costs" has the same meaning as in Section 85304.

SEC. 3. Section 89523 is added to the Government Code, to read:

89523. Notwithstanding any other law, campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee or the elected officer's governmental agency for attorney's fees or other costs in connection with claims of unlawful practices made pursuant to Article 1 (commencing with Section 12940) of Chapter 6, including expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

