

**ASSEMBLY BILL**

**No. 1692**

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**Introduced by Assembly Member Garcia**

February 13, 2014

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An act to amend Sections 85304, 85304.5, 89511, 89512, 89513, and 89519 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1692, as introduced, Garcia. Political Reform Act of 1974.

(1) The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures, as defined, and imposing other reporting and recordkeeping requirements on campaign committees, as defined. The Fair Political Practices Commission administers and enforces the act. A violation of the act's provisions is punishable as a misdemeanor.

The act 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 define the phrase "attorney's fees and other related legal costs" for purposes of legal defense funds to include only attorney's fees and other legal costs related to the defense of the candidate or officer and administrative costs directly related to compliance with the act. The definition would exclude certain other

costs, including payment or reimbursement for a fine, penalty, judgment or settlement, except as specified.

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 offices. 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 for certain parking fines and for actions for which attorney's fees may be paid with contributions under the act.

The bill would prohibit an expenditure of campaign funds of more than \$200 for a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that resulted in a personal benefit to the candidate or officer if it is determined that the expenditure was not reasonably related to a political, legislative, or governmental purpose. The bill would also impose the \$200 limitation with respect to a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that resulted in a substantial personal benefit to the candidate or officer if it is determined that the expenditure was not directly related to a political, legislative, or governmental purpose. The bill would also apply the above-described definition for "attorney's fees and other costs" for purposes of the article concerning campaign fund expenditures.

(2) 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 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.

*The people of the State of California do enact as follows:*

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

3 85304. (a) A candidate for elective state office or an elected  
4 state officer may establish a separate account to defray attorney's  
5 fees and other related legal costs incurred for the candidate's or  
6 officer's legal defense if the candidate or officer is subject to one  
7 or more civil or criminal proceedings or administrative proceedings  
8 arising directly out of the conduct of an election campaign, the  
9 electoral process, or the performance of the officer's governmental  
10 activities and duties. These funds may be used only to defray those  
11 attorney fees and other related legal costs.

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

16 (c) Once the legal dispute is resolved, the candidate shall dispose  
17 of any funds remaining after all expenses associated with the  
18 dispute are discharged for one or more of the purposes set forth in  
19 paragraphs (1) to (5), inclusive, of subdivision (b) of Section  
20 89519.

21 (d) (1) *For purposes of this section and Section 85304.5,*  
22 *“attorney’s fees and other related legal costs” includes only the*  
23 *following:*

24 (A) *Attorney’s fees and other legal costs related to the defense*  
25 *of the candidate or officer.*

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

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

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

37 85304.5. (a) A candidate for elective office other than an  
38 elective state office or an elected officer other than an elected state

1 officer may establish a separate account pursuant to subdivision  
 2 (a) of Section 85304 and may use these funds only to defray  
 3 attorney’s fees and other related legal costs.

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

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

14 (d) *For purposes of this section, “attorney’s fees and other  
 15 related legal costs” has the same meaning as in Section 85304.*

16 SEC. 3. Section 89511 of the Government Code is amended  
 17 to read:

18 89511. (a) This article applies to campaign funds held by  
 19 candidates for elective office, elected officers, controlled  
 20 committees, ballot measure committees, committees opposed to  
 21 a candidate or measure, and any committee which qualifies as a  
 22 committee pursuant to subdivision (a) of Section 82013.

23 (b) (1) For purposes of this chapter, “campaign funds” includes  
 24 any contributions, cash, cash equivalents, and other assets received  
 25 or possessed by a committee as defined by subdivision (a) of  
 26 Section 82013.

27 (2) For purposes of this chapter, “committee” means a controlled  
 28 committee, ballot measure committee, committee opposed to a  
 29 candidate or measure, and any committee which qualifies as a  
 30 committee pursuant to subdivision (a) of Section 82013.

31 (3) For purposes of this chapter, “substantial personal benefit”  
 32 means an expenditure of campaign funds which results in a direct  
 33 personal benefit with a value of more than two hundred dollars  
 34 (\$200) to a candidate, elected officer, or any individual or  
 35 individuals with authority to approve the expenditure of campaign  
 36 funds held by a committee.

37 (4) For purposes of this article, “household” includes the  
 38 candidate’s or elected officer’s spouse, dependent children, and  
 39 parents who reside with the candidate or elected officer.

1 (5) (A) For purposes of this article, “attorney’s fees and other  
2 costs” includes only the following:

3 (i) Attorney’s fees and other legal costs related to the defense  
4 of the candidate or officer.

5 (ii) Administrative costs directly related to compliance with the  
6 requirements of this title.

7 (B) “Attorney’s fees and other costs” does not include expenses  
8 for fundraising, media or political consulting fees, mass mailing  
9 or other advertising, or, except as expressly authorized by  
10 subdivision (c) of Section 89513, a payment or reimbursement for  
11 a fine, penalty, judgment or settlement, or a payment to return or  
12 disgorge contributions made to any other committee controlled  
13 by the candidate or officer.

14 SEC. 4. Section 89512 of the Government Code is amended  
15 to read:

16 89512. (a) An expenditure to seek office is within the lawful  
17 execution of the trust imposed by Section 89510 if it is reasonably  
18 related to a political purpose. An expenditure associated with  
19 holding office is within the lawful execution of the trust imposed  
20 by Section 89510 if it is reasonably related to a legislative or  
21 governmental purpose. Expenditures which confer a substantial  
22 personal benefit shall be directly related to a political, legislative,  
23 or governmental purpose.

24 (b) Except as expressly authorized by this article, an expenditure  
25 for a fine, penalty, judgment, or settlement is not within the lawful  
26 execution of the trust imposed by Section 89510.

27 SEC. 5. Section 89513 of the Government Code is amended  
28 to read:

29 89513. This section governs the use of campaign funds for the  
30 specific expenditures set forth in this section. It is the intent of the  
31 Legislature that this section shall guide the interpretation of the  
32 standard imposed by Section 89512 as applied to other expenditures  
33 not specifically set forth in this section.

34 (a) (1) Campaign funds shall not be used to pay or reimburse  
35 the candidate, the elected officer, or any individual or individuals  
36 with authority to approve the expenditure of campaign funds held  
37 by a committee, or employees or staff of the committee or the  
38 elected officer’s governmental agency for travel expenses and  
39 necessary accommodations except when these expenditures are  
40 directly related to a political, legislative, or governmental purpose.

1 (2) For the purposes of this section, payments or reimbursements  
2 for travel and necessary accommodations shall be considered as  
3 directly related to a political, legislative, or governmental purpose  
4 if the payments would meet standards similar to the standards of  
5 the Internal Revenue Service pursuant to Sections 162 and 274 of  
6 the Internal Revenue Code for deductions of travel expenses under  
7 the federal income tax law.

8 (3) For the purposes of this section, payments or reimbursement  
9 for travel by the household of a candidate or elected officer when  
10 traveling to the same destination in order to accompany the  
11 candidate or elected officer shall be considered for the same  
12 purpose as the candidate's or elected officer's travel.

13 (4) Whenever campaign funds are used to pay or reimburse a  
14 candidate, elected officer, his or her representative, or a member  
15 of the candidate's household for travel expenses and necessary  
16 accommodations, the expenditure shall be reported as required by  
17 Section 84211.

18 (5) Whenever campaign funds are used to pay or reimburse for  
19 travel expenses and necessary accommodations, any mileage credit  
20 that is earned or awarded pursuant to an airline bonus mileage  
21 program shall be deemed personally earned by or awarded to the  
22 individual traveler. Neither the earning or awarding of mileage  
23 credit, nor the redeeming of credit for actual travel, shall be subject  
24 to reporting pursuant to Section 84211.

25 (b) (1) Campaign funds shall not be used to pay for or reimburse  
26 the cost of professional services unless the services are directly  
27 related to a political, legislative, or governmental purpose.

28 (2) Expenditures by a committee to pay for professional services  
29 reasonably required by the committee to assist it in the performance  
30 of its administrative functions are directly related to a political,  
31 legislative, or governmental purpose.

32 (3) Campaign funds shall not be used to pay health-related  
33 expenses for a candidate, elected officer, or any individual or  
34 individuals with authority to approve the expenditure of campaign  
35 funds held by a committee, or members of his or her household.  
36 "Health-related expenses" includes, but is not limited to,  
37 examinations by physicians, dentists, psychiatrists, psychologists,  
38 or counselors, expenses for medications, treatments or medical  
39 equipment, and expenses for hospitalization, health club dues, and  
40 special dietary foods. However, campaign funds may be used to

1 pay employer costs of health care benefits of a bona fide employee  
2 or independent contractor of the committee.

3 (c) Campaign funds shall not be used to pay or reimburse fines,  
4 penalties, judgments, or settlements, except those resulting from  
5 either of the following:

6 (1) Parking citations incurred in the performance of an activity  
7 that was directly related to a political, legislative, or governmental  
8 purpose.

9 (2) Any other action for which payment of attorney's fees from  
10 contributions would be permitted pursuant to this title. *However,*  
11 *an expenditure of campaign funds shall in no event exceed two*  
12 *hundred dollars (\$200) for payment of a fine, penalty, judgment,*  
13 *or settlement relating to an expenditure of campaign funds that*  
14 *resulted in either of the following:*

15 (A) *A personal benefit to the candidate or officer if it is*  
16 *determined that the expenditure was not reasonably related to a*  
17 *political, legislative, or governmental purpose.*

18 (B) *A substantial personal benefit to the candidate or officer if*  
19 *it is determined that the expenditure was not directly related to a*  
20 *political, legislative, or governmental, purpose*

21 (d) Campaign funds shall not be used for campaign, business,  
22 or casual clothing except specialty clothing that is not suitable for  
23 everyday use, including, but not limited to, formal wear, if this  
24 attire is to be worn by the candidate or elected officer and is directly  
25 related to a political, legislative, or governmental purpose.

26 (e) (1) Except where otherwise prohibited by law, campaign  
27 funds may be used to purchase or reimburse for the costs of  
28 purchase of tickets to political fundraising events for the attendance  
29 of a candidate, elected officer, or his or her immediate family, or  
30 an officer, director, employee, or staff of the committee or the  
31 elected officer's governmental agency.

32 (2) Campaign funds shall not be used to pay for or reimburse  
33 for the costs of tickets for entertainment or sporting events for the  
34 candidate, elected officer, or members of his or her immediate  
35 family, or an officer, director, employee, or staff of the committee,  
36 unless their attendance at the event is directly related to a political,  
37 legislative, or governmental purpose.

38 (3) The purchase of tickets for entertainment or sporting events  
39 for the benefit of persons other than the candidate, elected officer,  
40 or his or her immediate family are governed by subdivision (f).

1 (f) (1) Campaign funds shall not be used to make personal gifts  
2 unless the gift is directly related to a political, legislative, or  
3 governmental purpose. The refund of a campaign contribution  
4 does not constitute the making of a gift.

5 (2) Nothing in this section shall prohibit the use of campaign  
6 funds to reimburse or otherwise compensate a public employee  
7 for services rendered to a candidate or committee while on  
8 vacation, leave, or otherwise outside of compensated public time.

9 (3) An election victory celebration or similar campaign event,  
10 or gifts with a total cumulative value of less than two hundred fifty  
11 dollars (\$250) in a single year made to an individual employee, a  
12 committee worker, or an employee of the elected officer’s agency,  
13 are considered to be directly related to a political, legislative, or  
14 governmental purpose. For purposes of this paragraph, a gift to a  
15 member of a person’s immediate family shall be deemed to be a  
16 gift to that person.

17 (g) Campaign funds shall not be used to make loans other than  
18 to organizations pursuant to Section 89515, or, unless otherwise  
19 prohibited, to a candidate for elective office, political party, or  
20 committee.

21 SEC. 6. Section 89519 of the Government Code is amended  
22 to read:

23 89519. (a) Upon leaving any elected office, or at the end of  
24 the postelection reporting period following the defeat of a candidate  
25 for elective office, whichever occurs last, campaign funds raised  
26 after January 1, 1989, under the control of the former candidate  
27 or elected officer shall be considered surplus campaign funds and  
28 shall be disclosed pursuant to Chapter 4 (commencing with Section  
29 84100).

30 (b) Surplus campaign funds shall be used only for the following  
31 purposes:

32 (1) The payment of outstanding campaign debts or elected  
33 officer’s expenses.

34 (2) The repayment of contributions.

35 (3) Donations to any bona fide charitable, educational, civic,  
36 religious, or similar tax-exempt, nonprofit organization, where no  
37 substantial part of the proceeds will have a material financial effect  
38 on the former candidate or elected officer, any member of his or  
39 her immediate family, or his or her campaign treasurer.

1 (4) Contributions to a political party committee, provided the  
2 campaign funds are not used to support or oppose candidates for  
3 elective office. However, the campaign funds may be used by a  
4 political party committee to conduct partisan voter registration,  
5 partisan get-out-the-vote activities, and slate mailers as that term  
6 is defined in Section 82048.3.

7 (5) Contributions to support or oppose any candidate for federal  
8 office, any candidate for elective office in a state other than  
9 California, or any ballot measure.

10 (6) The payment for professional services reasonably required  
11 by the committee to assist in the performance of its administrative  
12 functions, including payment for attorney's fees *and other costs*  
13 for litigation which arises directly out of a candidate's or elected  
14 officer's activities, duties, or status as a candidate or elected officer,  
15 including, but not limited to, an action to enjoin defamation,  
16 defense of an action brought of a violation of state or local  
17 campaign, disclosure, or election laws, and an action from an  
18 election contest or recount.

19 (c) For purposes of this section, the payment for, or the  
20 reimbursement to the state of, the costs of installing and monitoring  
21 an electronic security system in the home or office, or both, of a  
22 candidate or elected officer who has received threats to his or her  
23 physical safety shall be deemed an outstanding campaign debt or  
24 elected officer's expense, provided that the threats arise from his  
25 or her activities, duties, or status as a candidate or elected officer  
26 and that the threats have been reported to and verified by an  
27 appropriate law enforcement agency. Verification shall be  
28 determined solely by the law enforcement agency to which the  
29 threat was reported. The candidate or elected officer shall report  
30 any expenditure of campaign funds made pursuant to this section  
31 to the commission. The report to the commission shall include the  
32 date that the candidate or elected officer informed the law  
33 enforcement agency of the threat, the name and the telephone  
34 number of the law enforcement agency, and a brief description of  
35 the threat. No more than five thousand dollars (\$5,000) in surplus  
36 campaign funds may be used, cumulatively, by a candidate or  
37 elected officer pursuant to this subdivision. Payments made  
38 pursuant to this subdivision shall be made during the two years  
39 immediately following the date upon which the campaign funds  
40 become surplus campaign funds. The candidate or elected officer

1 shall reimburse the surplus fund account for the fair market value  
2 of the security system no later than two years immediately  
3 following the date upon which the campaign funds became surplus  
4 campaign funds. The campaign funds become surplus campaign  
5 funds upon sale of the property on which the system is installed,  
6 or prior to the closing of the surplus campaign fund account,  
7 whichever comes first. The electronic security system shall be the  
8 property of the campaign committee of the candidate or elected  
9 officer.

10 SEC. 7. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.

19 SEC. 8. The Legislature finds and declares that this bill furthers  
20 the purposes of the Political Reform Act of 1974 within the  
21 meaning of subdivision (a) of Section 81012 of the Government  
22 Code.