



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 6: Candidate Controlled Ballot Measure Committee RN 19 01261

Date: December 12, 2018

Background

Generally, the Act requires a candidate to establish one campaign contribution account in the state and requires all candidate contributions to be made to the account and all candidate expenditures to be made from the account. In 1999, the Commission adopted [Regulation 18521.5](#), authorized the creation, control, and limitations of candidate controlled ballot measure committees.

General purpose ballot measure committees controlled by candidates for state elective office must include the name of the controlling candidate and expressly indicate it is a ballot measure committee. Primarily formed ballot measure committees must include the candidate's name and within indicate a ballot measure number, pursuant to [Section 84107](#).

The committee must identify on its Statement of Organization each measure the committee spent or anticipates spending \$50,000 or more beginning January 1 of odd-numbered year and ending December 31 of following even-numbered year.

If the committee makes communications that "clearly identifies" a candidate for elective state office, then contributions to the committee are subject to political party contribution limits pursuant to 85303(b) if the communication is made at the behest of the clearly identified candidate.

Generally, the committee must only make expenditures to a state or local measure or potential measure or qualification activities. Two exceptions to the general rule: a committee may return all or part of a contribution to a contributor and committee may disburse leftover funds pursuant to subdivision (b)(3) of Section 89519 or to a political party committee so long as funds are not used to contribute to a candidate or for communications expressly advocating the election, nomination or defeat of a clearly identified candidate.

The committee is expressly prohibited from any of the following:

1. Making contributions to a controlled committee of a candidate for elective office that is not operated as a candidate controlled ballot measure committee.
2. Making payments in violation of restrictions described in Sections 89511 through 89518.
3. Using committee funds in violation of Election Code 18680.

Under [Regulation 18421.8](#), an expenditure of \$100 or more, a general purpose ballot measure committee controlled by a candidate for elective state official must identify each measure for which the expenditure is made to support or oppose. This reporting requirement does not apply to expenditures made for operating costs, administrative overhead, fundraising activities, travel, compliance costs, and attorney's fees incurred in general support or opposition to a measure or potential measure, if the amount of the expenditure cannot be attributed to a specific measure.

Analysis

This bill does the following:

1. Codifies Regulation 18521.5 by adding new Section 85201.5 to the Act.
2. Permits candidates for state elective office to control a recipient committee to support or oppose the qualification or passage of a measure, if the requirements of the section are met.
3. Requires the name of a general purpose ballot measure committee expressly indicate the committee is controlled by a candidate and it is a ballot measure committee.
4. Requires the name of a primarily formed ballot measure committee expressly indicate the committee is controlled by a candidate, it is a ballot measure committee, and include a statement "a committee [for/against] Proposition __," pursuant to Section 84107.
5. Requires the committee to identify on its Statement of Organization each measure the committee spent, or anticipates spending, \$50,000 or more beginning with January 1 of odd-numbered year and ending December 31 of following even-numbered year.
6. Requires the Statement of Organization to describe the purpose of the anticipated measure or measure if an official ballot designation has not been assigned. The committee must amend its Statement of Organization to correctly identify the measure or measure after an official ballot designation has been assigned.
7. Permits the following uses of committee funds:
 - a. Expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or prequalification activities related to those measures. These types of expenditures include, but not limited to:
 - i. Reasonable and ordinary operating costs
 - ii. Administrative overhead
 - iii. Fundraising activities
 - iv. Travel

- v. Compliance costs
 - vi. Attorney's fees incurred by committee's activities
- b. Return all or part of a contribution to a contributor.
 - c. When preparing to terminate the committee, may within 60 days prior to the effective date of termination, disperse some or all leftover funds by either:
 - i. Donations to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.
 - ii. Contribution to a political party committee if funds are not used to make contributions to a candidate or for a communication advocating for the nomination, election, or defeat of a clearly identified candidate.
- 8. Prohibits a candidate from controlling a general purpose recipient committee, except for a ballot measure committee authorized by this section.
 - 9. Prohibits the committee from making contributions to a controlled committee for elective office that is not operated as a candidate controlled ballot measure committee.
 - 10. Prohibits payments in violation of restrictions described in Sections 89510 through 89518.
 - 11. Prohibits using committee funds in violation of Section 18680 of the Elections Code.

Rationale

For nearly 20 years, candidate controlled ballot measure committees were created and controlled under Commission regulation. By codifying Regulation 18521.5 and clarifying certain provisions in statute, the Commission may bring clarity and statutory certainty to the regulated community on these unique committees utilized by state and local candidates.

Fiscal Impact

No costs to the Commission. Commission is currently administering and enforcing the regulation. The proposed statute does not prescribe additional duties to the Commission.

Staff Recommendation

- 1. Recommend the Commission approve the Legislative Counsel draft with amendments to strike “elective state office” in subdivision (a) so it will read “A candidate may control a committee...,”

2. Adopt a sponsorship position for the consolidated bill, 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: candidates: controlled ballot measure committees.

(1) Existing law, the Political Reform Act of 1974, provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures and imposing other reporting and recordkeeping requirements on campaign committees. The act requires a candidate committee to establish one campaign contribution account at an office of a financial institution located in the state and generally requires all candidate contributions to be made to the account and all candidate expenditures to be made from the account. A regulation of the Fair Political Practices Commission authorizes a candidate for elective state office to control a ballot measure committee under specified conditions.

This bill would amend the act to incorporate provisions of that regulation authorizing a candidate to control a ballot measure committee under specified conditions.

(2) 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: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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An act to add Section 85201.5 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 85201.5 is added to the Government Code, to read:

85201.5. (a) A candidate for elective state office may control a committee, formed under subdivision (a) of Section 82013, to support or oppose the qualification or passage of a measure, if the requirements of this section are met.

(b) (1) If the committee is a general purpose ballot measure committee, the committee name shall expressly indicate that the committee is controlled by a candidate and that it is a ballot measure committee.

(2) If the committee is a primarily formed ballot measure committee, the committee name shall include, in addition to the information set forth in paragraph (1), the information required in Section 84107.

(c) (1) The committee shall identify on its Statement of Organization each measure on which the committee has spent, or anticipates spending, fifty thousand dollars (\$50,000) or more in the current two-year period, beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year.

(2) If an official ballot designation has not been assigned to a measure or potential measure that is required to be identified pursuant to paragraph (1), the Statement of Organization shall describe the purpose of the anticipated measure or measures. The committee shall amend its Statement of Organization pursuant to Section 84103 to correctly identify the measure or measures after an official ballot designation has been assigned.

(d) (1) Except as authorized under paragraphs (2) and (3), committee funds shall be used only to make expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or pre-qualification activities relating to those measures. These authorized expenditures include, but are not limited to, payment of the committee's reasonable and ordinary operating costs, administrative overhead, fundraising activities, travel, compliance costs, and attorney's fees incurred as a result of the committee's activities.

(2) The committee may at any time return all or part of a contribution to a committee contributor.

(3) A committee that is preparing to terminate its status as a committee may within 60 days prior to the effective date of its termination, disburse some or all of its leftover funds in either of the following ways:

(A) Pursuant to paragraph (3) of subdivision (b) of Section 89519.

(B) To a political party committee, if the funds are not used for a contribution, as defined in Section 82015, to a candidate, or for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate, as described in Section 82031.

(e) A candidate shall not control a general purpose committee, formed under subdivision (a) of Section 82013, except for a ballot measure committee as authorized under this section.

(f) This section does not authorize any of the following:

(1) A contribution of committee funds to a controlled committee of a candidate for elective office that is not operated as a candidate controlled ballot measure committee pursuant to this section.



(2) A payment of committee funds in violation of the restrictions on use of campaign funds by candidate controlled campaign committees described in Article 4 (commencing with Section 89510) of Chapter 9.5.

(3) A use of committee funds in violation of Section 18680 of the Elections Code.

SEC. 2. 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.

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