FPPC BILL ANALYSIS

Bill Number	Bill Author	Introduced/Last Amended
A.B. 220, 225	Assembly Members Bonta (220), Brough (225)	1/16/19 (Both)
Sponsor/sponsors	**Date Due**	**Division/Staff**
Author		Legal/Kevin Cornwall Exec/Phillip Ung

Subject/Purpose:

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, including the use of campaign funds for specific expenditures. The act prohibits the use of campaign funds to pay for professional services not directly related to a political, legislative, or governmental purpose. A.B. 220 and 225 would authorize the use of campaign funds to pay for child care expenses resulting (or "directly" resulting) from a candidate or officeholder engaging in campaign activities. A.B. 220 would also permit the use of campaign funds to pay for child care expenses resulting from performing official duties.

- Amends Section 89513(b) to include new subdivision (b)(4).
    - Under A.B. 220, Section 89513(b)(4) would read: "This section does not prohibit the use of campaign funds to pay or reimburse a candidate or officeholder for child care expenses resulting from the candidate or officeholder engaging in campaign activities or performing official duties."
    - Under A.B. 225, Section 89513(b)(4) would read: "This section does not prohibit the use of campaign funds to pay or reimburse a candidate for the cost of securing child care for the candidate's dependent child if the child care costs are incurred as a direct result of campaign activity."

Assembly Member Bonta has said that A.B. 220 would reduce barriers for parents, particularly women, to run and help improve gender parity in public office. (https://www.sacbee.com/news/politics-government/capitol-alert/article224634190.html.)

Background (Current Law):

Section 89513(b)(1) of the Political Reform Act provides that "[c]ampaign funds shall not be used to pay for or reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose." The Act currently does not have any provision that expressly addresses whether expenditures for

child care are permitted as expenses "directly related to a political, legislative, or governmental purpose."

However, we have previously advised that expenses incurred by a candidate in providing a baby-sitter for his or her children are reasonably related to a political purpose, but not directly related. (*Mahoney* Advice Letter, No. A-94-285.) As such, we advised that campaign fund expenditures on baby-sitting services are permissible if there is no substantial benefit to the candidate. In other words, as long as each baby-sitting payment is less than $200 per event, the campaign fund expenditure is permissible.

Last year, the FEC ruled that federal congressional candidates can use campaign funds to pay for child care costs that result from time spent running for office (FEC Advisory Opinion 2018-06). In contrast to the Political Reform Act's "directly related" standard, the FEC prohibits campaign fund expenditures made for "personal use"—that is, for expenses "that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." Like the Act, the federal rules contain no express provision relating to child care.

Analysis:

The two bills contain ambiguous terms making compliance and interpretation of allowable expenditures difficult to ascertain under either version of Section 89513(b)(4).

The Scope of Permissible "Child Care" and "Child Care Expenses" is Unclear

With regard to A.B. 220, the bill does not define "child care expenses." Presumably, the permissible expenses would include the base cost of daycare or babysitting services. Whether the permissible expenses are intended to extend beyond the bare minimum cost of child care—for example, in the event of a field trip—is unknown.

In contrast, A.B. 225 expressly applies only to "the cost of securing child care," which appears to establish a narrow scope to the permissible expenses, but remains unclear.

One ambiguity present in both bills is the lack of any definition of what "child care" is intended to encompass. As noted, the cost of daycare or a babysitter would presumably fall under that umbrella, but it is unclear whether either bill would permit expenditures, for example, on a driver to take a child to and from school (or elsewhere). Likewise, if a parent had previously homeschooled a child, would running for office allow them to pay the cost of private school tuition with campaign funds? Neither bill provides any guidance.

Another ambiguity in both bills is the lack of any limitations on who may benefit and to what extent. Could a candidate's parents, spouse, or older children be paid over the course of a campaign or while in office for babysitting the candidate's children?

Section 84307.5 generally prohibits a spouse from receiving compensation from campaign funds, it is not entirely clear whether these bills intend to supersede Section 84307.5 for childcare expenses. Moreover, there are no apparent restrictions on compensation paid to other family members for childcare.

Of note, A.B.220 does not explicitly specify the child care expenses must be for a child of the candidate or officeholder. Conversely, A.B. 225 requires that the expense be for a candidate's "dependent child," which is a term defined by FPPC Regulation section 18229.1 and includes adopted children and step children.

Lastly, whereas A.B. 220 applies to expenses incurred as a result of "campaign activities or performing official duties," A.B. 225 applies to expenses that are the direct result of "campaign activity." Typically, the FPPC analyzes whether an expenditure is directly related to a political, legislative, or governmental purpose, which could include an expenditure's relationship with a campaign activity *or* an official duty. Accordingly, it is not clear whether A.B. 225 is intended to apply exclusively to child care costs that occur as a direct result of campaign activities and *not* as a result of official duties. On the other hand, structuring the statute to apply only to campaign activities and *not* to official duties could be considered reasonable, given that once an official is elected, he or she presumably has an income that he or she could use to pay for child care (essentially replacing the lost value of personally-provided child care with the official's income). This is assuming the official is elected to a position that pays full-time wages or more than per diem wages.

Without any language defining the terms "child care" or "child care expenses," or otherwise establishing the scope of permissible expenditures, application and enforcement of the provision may prove difficult.

The Scope of "Resulting From" and "Direct Result" is Unclear.

Assembly Bill No. 220 is also ambiguous regarding the prior circumstances that would permit the use of campaign funds for child care. Specifically, it is unclear what the phrase, "*resulting from* . . . campaign activities or performing official duties," is intended to mean. A.B. 225 employs similar language, referring to expenses "incurred *as a direct result* of campaign activity," and also does not define the phrase "*direct result*." It is not entirely clear what either of these phrases is intended to mean or their relationship to the federal "irrespective" standard, noted above. For example, could a parent that paid for childcare prior to running for office still use campaign funds for child care?

While it may be that both bills are intended to apply more broadly than the federal "irrespective" standard seemingly would, the proposed statutory language is currently ambiguous in that regard. In the absence of any clarifying language, the statute may ultimately be less beneficial than the Legislature intended.

Conclusions

As introduced, there are significant concerns regarding the ambiguous statutory language of both A.B. 220 and 225. The statutory language does not define "child care" or whether there are any limitations placed on the type or value of permissible child care expenditures. Similarly, neither bill places any clear limit on who may benefit from the expenditure, which may create the potential for abuse. Further, both bills include language requiring that the child care expenses "result from" or be "the direct result of" campaign activity or, in A.B. 220's case, official duties. It is not clear whether A.B. 225 seeks to limit permissible child care expenditures to those that occur as a result of campaign activity, nor is it clear if either bill is attempting to employ a standard similar to the federal "irrespective" standard for personal use of campaign funds. If either legislation is attempting to implement such a standard, it may have an unintentionally narrow scope. Given the ambiguities of the statutory language, it may be difficult to determine compliance with current provisions if adopted into law.