Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Evan Low, Chair
AB 1089 (Mullin) – As Introduced February 17, 2017

SUBJECT: Local elective offices: contribution limitations.

SUMMARY: Establishes default campaign contribution limits for local office at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, effective January 1, 2019. Permits a local jurisdiction to establish its own contribution limits, which prevail over the default limits contained in this bill. Specifically, **this bill**:

1) Prohibits a person from making to a candidate for local elective office, and prohibits a candidate for local elective office from accepting from a person, a contribution totaling more than the limit on contributions to candidates for state Senate and Assembly from persons other than small contributor committees and political party committees, as adjusted by the Fair Political Practices Commission (FPPC), as specified. The current limit under this provision is $4,400 per contributor per election. Provides that these limits become effective January 1, 2019.

2) Permits a local government agency, by ordinance or resolution, to impose a limit on contributions to a candidate for local elective office which prevails over the limit otherwise imposed by this bill, and allows the local government to adopt enforcement standards for violations, which may include administrative, civil, or criminal penalties. Permits the limitation to be imposed by a local initiative measure. Provides that the FPPC is not responsible for the administration or enforcement of such a local government ordinance or resolution. Provides that local contribution limits that are in effect on January 1, 2019, shall prevail over the default contribution limits imposed by this bill.

3) Prohibits a candidate for *any* elective office, or a committee controlled by such a candidate, from making a contribution to any other candidate for elective office in an amount greater than the limit on contributions to candidates for state Senate and Assembly from persons other than small contributor committees and political party committees, as adjusted by the FPPC, as specified, beginning January 1, 2019. A similar prohibition currently applies to contributions made by candidates for elective *state* office (or their controlled committees) to other candidates for elective *state* office. Provides that this restriction does not apply in a jurisdiction in which the local government imposes its own limits on campaign contributions.

4) Makes conforming changes to various state laws related to contribution limits, including rules governing the transfer of campaign funds from one controlled committee to another controlled committee for the same candidate; the acceptance of campaign contributions for an election after that election has occurred; the carryover of contributions raised in connection with one election for an elective office to pay campaign expenditures incurred in connection with a subsequent election to the same office; the acceptance of campaign contributions for a general election prior to the primary election; and personal loans made by a candidate to his or her campaign committee.

5) Provides that the contribution limits in this bill do not apply to contributions made to oppose a recall against a local elected official, as specified.

6) Makes various findings and declarations.

7) Makes corresponding and technical changes.

EXISTING LAW:

1) Permits a county or city to limit campaign contributions in its local elections. Permits a special district, school district, or community college district to limit campaign contributions in elections to district offices.

2) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

3) Requires any local government agency that has enacted, enacts, amends, or repeals an ordinance or other provision of law affecting campaign contributions and expenditures to file a copy of the action with the FPPC.

4) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.

5) Provides that nothing in the PRA shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with a specified provision of the PRA dealing with "member communications."

6) Prohibits a person, other than a small contributor committee or political party committee, from making any contribution totaling more than $4,400 to any candidate for elective state office other than statewide elective office, and prohibits candidates from accepting a contribution that exceeds that amount. Requires the FPPC to adjust this limit in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index, and requires those adjustments to be rounded to the nearest $100.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

1) **Purpose of the Bill**: According to the author:

> By establishing a default local campaign contribution limit, AB 1089 safeguards our democracy down to the local level. More money should not equal more representation, even at the lowest level of elected office.
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> California needs a standard in place to ensure that local candidates are not overly reliant upon a select few wealthy donors. Only 22% of cities and 30% of counties have established contribution limits. The percentage of districts with limits is much lower. Most jurisdictions have enacted no limits whatsoever; in these jurisdictions, contributors can give unlimited amounts to candidates for office. In the past few election cycles, there have been numerous examples of candidates running for local office receiving $20,000, $50,000, or even $90,000 contributions. In some cases, more than 50 percent of a candidate's campaign funds may come from just one or two contributors.
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> Contributions of this magnitude harm public trust in the democratic process by deepening the perception or the possibility that candidates will be more responsive to their financial backers than to their constituents. For this reason, state law prevents individuals from contributing more than $4,400 to candidates running for the State Assembly or State Senate.
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> AB 1089 establishes a reasonable cap, in line with that of candidates for the Legislature, to prevent excessive contributions in jurisdictions that have no limits, while maintaining and encouraging local jurisdictions' ability to enact their own contribution limits tailored to the needs of their communities.

2) **History of Local Contribution Limits**: In 1988, voters approved Proposition 73, a campaign finance initiative that prohibited public funding of campaigns and established contribution limits for state and local elections, among other provisions. Under Proposition 73, contributions from a person to a candidate for state or local office were limited to $1,000 per fiscal year, while political parties and certain political committees could give higher amounts.

   Many of the provisions of Proposition 73, including the campaign contribution limits, were ultimately ruled unconstitutional by the federal courts. Because Proposition 73 limited the amount that a contributor could give in each fiscal year, rather than limiting the amount that a contributor could give in each election, the courts found that the contribution limits discriminated in favor of incumbents, since incumbents were much more likely than challengers to fundraise in non-election years.

   The federal case ended in 1993 when the United States Supreme Court denied certiorari in *Service Employees International Union v. FPPC*. The only provisions of Proposition 73 to survive legal challenge were contribution limits for special elections (those limits were on a per-election basis, rather than a per-year basis), limits on gifts and honoraria to state and

local elected officials, restrictions on certain mass mailings by officeholders, and a prohibition on the use of public money for campaign purposes. State and local elections were conducted under the Proposition 73 contribution limits for most of the 1990 election cycle, though the limits were struck down for the last six weeks before the 1990 general election.

In 1996, California voters approved Proposition 208, which proposed significant changes to the PRA, including establishing new contribution limits for state and local elections. Proposition 208 prohibited any person other than a political party or a small contributor committee from making contributions of more than $100 per election to candidates in small local districts (less than 100,000 residents); $250 per election for Senate, Assembly, Board of Equalization and large local districts; and $500 per election for statewide office. These limits were increased to $250, $500, and $1,000, respectively, for candidates who agreed to abide by specified voluntary expenditure limits.

On January 6, 1998, the United States District Court for the Eastern District of California entered a preliminary injunction barring the enforcement of Proposition 208. The Legislature subsequently placed Proposition 34 on the November 2000 ballot through passage of SB 1223 (Burton), Chapter 102, Statutes of 2000. The proposition, which passed with 60.1% of the vote, revised state laws on political campaigns for state elective offices and ballot propositions, and repealed almost all of Proposition 208, which was still enjoined from enforcement.

While Proposition 34 established new campaign contribution limits for elections to *state* office, it did not contain contribution limits for elections to *local* office. The limits on contributions by individuals contained in Proposition 34 ranged from $3,000 (for candidates for Assembly and Senate) to $20,000 per election (for candidates for Governor), and are required to be adjusted for inflation every two years. For 2017 and 2018, these limits range from $4,400 per election for candidates for Assembly and Senate to $29,200 for candidates for Governor. While local governments have the authority to adopt contribution limits for elections to local offices in their jurisdictions, state law does not impose limits on contributions to candidates for local office.

3) **Local Campaign Ordinances**: Under existing law, local government agencies have the ability to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. For instance, SB 726 (McCorquodale), Chapter 1456, Statutes of 1985, limited the ability of local jurisdictions to impose campaign filing requirements that differed from those in the PRA, while AB 1430 (Garrick), Chapter 708, Statutes of 2007, prohibits local governments from adopting rules governing member communications that are different than the rules that govern member communications at the state level.

   Aside from these restrictions, however, local government agencies generally have a significant amount of latitude when developing local campaign finance ordinances that apply to elections in those agencies' jurisdictions. Any jurisdiction that adopts or amends a local campaign finance ordinance is required to file a copy of that ordinance with the FPPC, and the FPPC posts those ordinances on its website. The FPPC's website currently includes

campaign finance ordinances from 22 counties, 146 cities, and two special districts.

The campaign ordinances adopted by local governments in California vary significantly in terms of their scope. Some local ordinances are very limited, while others are much more extensive. In some cases, the ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, temporal restrictions on when campaign funds may be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. In at least a few cases, however, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

According to a 2016 report prepared by California Common Cause, approximately 23 percent of cities and 28 percent of counties in the state have adopted local campaign contribution limits. Of the 124 local jurisdictions identified in the report as having adopted local campaign contribution limits, only one (Alameda County) has a limit on campaign contributions from individuals that is higher than the $4,400 per election limit that would be imposed by this bill. More than 90 percent of the cities that have adopted contribution limits have limits of $1,000 or less. By contrast, about half of the counties that adopted contribution limits have limits of $1,000 or less.

4) **Arguments in Support**: In support of this bill, California Common Cause writes:

> Allowing unlimited campaign contributions has a corrupting influence on local democracy, and contributes to voter cynicism with government. AB 1089 provides a reasonable contribution cap to stop the worst contribution abuses in jurisdictions without limits, while respecting local governments' autonomy to set contribution limits more precisely tailored to the needs of their communities, whether lower or higher than the default cap.
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> Under current law, local governments *may* enact local contribution limits, but the vast majority have *not* done so. *Seventy-eight percent* of cities and *72 percent* of counties have no local limits; the percentage of districts without limits is even higher. In jurisdictions without limits, contributors can give *any amount* to candidates for local office – even contributions exceeding the average Californian's annual salary. Common Cause's research of local contributions found many examples of contributors giving *five- and six-figure contributions* directly to candidates, including one astounding $242,000 contribution. In some cases, *more than 50 percent* of a candidate's campaign war chest came from just one or two contributors.

5) **Previous Legislation**: This bill is substantially similar to the final version of AB 2523 (Mullin) of 2016. AB 2523 failed passage on the Senate Floor on a 25-14 vote. Because AB 2523 proposed to amend the PRA without being submitted to voters for their approval, it required a two-thirds vote of each house of the Legislature for passage (27 votes in the case of the Senate).

6) **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

California Church IMPACT
California Clean Money Campaign
California Common Cause
California League of Conservation Voters
Campaign Legal Center
Friends of the Earth
League of Women Voters of California
MOVI, Money Out Voters In
Represent Us
Take Back Our Republic

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094