Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Shirley Weber, Chair
AB 2523 (Mullin) – As Amended April 6, 2016

**SUBJECT**: Local elective offices: contribution limitations.

**SUMMARY**: Establishes campaign contribution limits for local office at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, except where a local jurisdiction establishes its own limits. 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 $4,200 per contributor per election.

    a) Provides that a contribution is not deemed to be received for the purposes of this limit if it is returned to the contributor within 14 days of receipt.

    b) Provides that this limit does not apply to a candidate's contributions of his or her personal funds to his or her own campaign.

2) Permits a local government, by ordinance or resolution, to impose a limitation on contributions to candidates for local elective office which shall take precedence over the limits otherwise imposed by this bill, and allows the local government to adopt enforcement standards for a violation of that limit. Permits the limitation to be imposed by a local initiative measure. Provides that nothing in this bill prevents a local government from adopting its own penalties and its own enforcement mechanism for a violation of a local contribution limit that is established pursuant to this provision.

3) Provides that a violation of the contribution limits established by this bill is punishable by a civil fine of up to $5,000 or three times the amount that was contributed or accepted in excess of the contribution limit, whichever is greater. Provides that a knowing and willful violation of the contribution limits is a misdemeanor. Makes the district attorney of the county in which the violation occurs responsible for enforcing these civil and criminal penalties.

4) Provides that whether a violation of the contribution limits imposed by this bill is inadvertent, negligent, or deliberate, and the presence or absence of good faith, shall be considered in applying the penalties detailed above.

5) Requires a civil action or criminal prosecution for a violation of the contribution limits established by this bill to be commenced within four years after the date on which the violation occurred.

6) Defines various terms for the purposes of this bill such that those terms generally have the same or similar meanings as those terms are defined in the Political Reform Act (PRA).

7) Requires this bill to be liberally construed to accomplish its purposes.

8) Contains a severability clause.

9) Makes various findings and declarations.

10) Makes corresponding changes.

**EXISTING LAW**:

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

2) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the 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 $4,200 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:

> Currently, there is no state standard of limits on campaign contributions for candidates running for local office. This means that those local jurisdictions that have not adopted limits independently currently have no limit on the amount of money local candidates can accept. This opens the potential for the corrupting influence of money. Ensuring the integrity of our elections process should be a priority, and more money should not equal more representation, even at the lowest level of elected office. Local elected officials often have the most direct influence on the governance, and California needs a standard in place to ensure that local candidates are not overly reliant upon a select few wealthy donors.
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> AB 2523 establishes a standard $4,200 limit on campaign contributions to candidates running for local elected office in jurisdictions that have not adopted their own contribution limits. By establishing a reasonable cap to prevent excessive contributions in jurisdictions that have no limits and simultaneously maintaining and encouraging local jurisdictions' ability to enact their own contribution limits tailored to the needs of their communities, this measure safeguards our democracy down to the local level. Thirty-four other states have enacted a statewide limit for local campaign contributions. California should be among them.

2) **History of 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 2015 and 2016, these limits range from $4,200 per election for candidates for Assembly and Senate to $28,200 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 19 counties, 141 cities, and one special district.

   The campaign ordinances adopted by local governments in California vary significantly in terms of their scope. Some local ordinances are very limited in scope, 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 recent 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 contribution limit that is higher than the $4,200 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) **FPPC and Campaign Regulation**: With a few limited exceptions, provisions of state law regulating campaign finance generally are found within the PRA, and the FPPC has the primary responsibility for administering and enforcing those provisions. Given the FPPC's role as the primary entity responsible for administering, interpreting, and enforcing the state's campaign finance laws, it could be argued that this bill indirectly amends the PRA, and therefore should be subject to restrictions that apply to bills that seek to amend the PRA. The fact that local contribution limits previously have been imposed at the state level through amendments to the PRA (as described above) could provide some support to the argument that the imposition of local contribution limits in state law is a policy that falls within the scope of the PRA.

   On the other hand, as originally enacted, the PRA did not impose campaign contribution limits, and none of the enumerated purposes of the PRA relate to imposing restrictions on campaign contributions. Instead, the PRA's enumerated purposes generally focus on *disclosure* of campaign receipts and expenditures. Provisions of state law that explicitly allow local jurisdictions to enact their own contribution limits are currently located in the Elections Code and the Education Code, not in the PRA, and were first enacted by the Legislature in the same year that the PRA was approved by the voters (although those provisions were signed into law after the adoption of the PRA). Finally, the PRA expressly provides that its provisions do not "prevent[] the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with" the PRA. All these factors support the argument that this bill is not an indirect amendment of the PRA.

   Regardless of whether this bill is an indirect amendment to the PRA, however, the committee may wish to consider whether it makes sense, as a policy matter, to make its provisions part of the PRA, and to have it enforced and interpreted by the FPPC. On the one hand, making the FPPC responsible for enforcing campaign contribution limits for hundreds of local government agencies likely would significantly increase the workload at the FPPC, which could have a significant expense and could negatively impact the administration and

enforcement of this bill and of the current provisions of the PRA. On the other hand, because the PRA regulates campaign disclosure, it already governs local campaign contributions and spending. In fact, as noted above, this bill generally adopts the PRA's definitions of various terms. Bringing this bill's restrictions within the PRA, and having it be administered by the same entity that generally administers the state's other campaign laws, could promote greater consistency in the interpretation and enforcement of the state's campaign finance laws. Additionally, candidates and campaign committees would have a single point of contact for inquiries, advice, and opinions about compliance with campaign finance laws.

Furthermore, having the FPPC enforce the provisions of this bill may lead to more timely and robust enforcement. The FPPC has the authority to impose fines of up to $5,000 for violations of the PRA through an administrative enforcement process. A substantial majority of enforcement actions for violations of the PRA are handled through that administrative process, thereby eliminating the need for more time-consuming and resource-intensive civil or criminal actions in the courts. As currently drafted, this bill does not offer an administrative enforcement process—any violation of the contribution limits imposed by this bill would have to be pursued civilly or criminally (except in situations where local jurisdictions have established their own administrative enforcement process). Moreover, it is unclear whether it would be workable or realistic to establish a new administrative enforcement process solely for the purposes of enforcing this bill. By moving the provisions of this bill into the PRA, however, the FPPC would have the ability to use its existing administrative process to bring enforcement actions against violators.

Finally, even if the FPPC does not enforce the default contribution limits, this bill nonetheless likely will increase the FPPC's workload. The existence of contribution limits tends to be associated with an increase in independent expenditures, so this bill may increase advice requests and enforcement actions related to independent expenditures, including rules that limit coordination between candidates and independent expenditure committees. Additionally, attempts to circumvent contribution limits could result in an increase in laundering of campaign contributions. Because laws governing independent expenditures and the laundering of campaign contributions are contained in the PRA, the FPPC would have jurisdiction and enforcement authority over these matters even if it does not enforce the contribution limits imposed by this bill.

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

> Under current law, local governments may enact local contribution limits, but the vast majority have not done so. Only 23 percent of cities and 28 percent of counties have enacted local limits; the percentage of districts with limits is even lower. 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 $50,000 to $90,000+ contributions. In some cases, more than 50 percent of a candidate's campaign war chest came from just one or two contributors.
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> Unfettered campaign contributions undermine democracy. Whenever a candidate

is financially dependent on just a handful of contributors there is a risk that they will value their contributors' interests over those of the people they serve. Moreover, requiring candidates to seek support in smaller amounts but from a broader number of contributors has a democratizing effect, and can help the competitiveness of community-supported candidates who do not have access to wealthy patrons.

6) **Concerns Expressed**: While not taking an official position, Urban Counties of California (UCC) submitted a letter to the committee expressing concerns with this bill. Many of those concerns appear to be addressed by recent amendments to the bill. Two of the concerns expressed by UCC, however, do not appear to be addressed by recent amendments. Specifically, UCC writes that it is "unclear if there are sufficient resources for [district attorneys] to handle the potential volume of cases" that would result from the bill, and UCC expresses concern that "there could be a conflict of interest for [the district attorney's] office to handle all of the enforcement."

7) **Technical Amendments**: This bill repeals provisions of law that allow counties, cities, and districts to limit campaign contributions in local elections, and instead provides that local governments may enact contribution limits that prevail over the default limits established by this bill. This bill does not, however, repeal Section 35177 of the Education Code, which is a similar provision of law that allows school districts to limit campaign contributions and expenditures. To ensure consistency and avoid ambiguity, committee staff recommends that this bill be amended to repeal Section 35177 of the Education Code.

   This bill expressly permits a local government to impose its own contribution limits that differ from those that are otherwise imposed by this bill. The bill's language is ambiguous, however, on the question of whether *existing* local ordinances that impose campaign contribution limits would prevail over the limits set by this bill, or if a local jurisdiction would have to re-adopt local contribution limits. Committee staff recommends that this bill be amended to clarify that any existing local ordinances that impose campaign contribution limits will continue to be valid if this bill becomes law, and the limits set by those ordinances will prevail over the default limits set by this bill.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Clean Money Campaign
California Common Cause
League of Women Voters of California
MOVI, Money Out Voters In

**Opposition**

None on file.

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