

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 2911 (McKinnor) – As Amended April 16, 2024

SUBJECT: Campaign contributions: agency officers.

SUMMARY: Increases, from \$250 to \$1,500, the threshold at which campaign contributions received by specified public officials can cause those officials to be disqualified from participating in or influencing decisions related to licensing, permitting, and similar entitlements for use if the contributions were received from an entity with a financial interest in that decision, as specified. Specifically, **this bill:**

- 1) Increases, from \$250 to \$1,500, the campaign contribution threshold that triggers the applicability of the following provisions of the Levine Act of 1982 (Levine Act), as amended in 2022:
 - a) A prohibition on an officer of the agency accepting, soliciting, or directing a campaign contribution of more than the threshold from a party, party's agent, participant, or participant's agent with a matter pending before the agency involving a license, permit, or other entitlement for use during the time the matter is pending before the agency and for 12 months following the date a final decision is rendered in the matter.
 - b) A requirement for an officer of the agency to disclose on the record of a proceeding the receipt of any campaign contribution of more than the threshold from a party to or participant in the proceeding in the preceding 12 months if the proceeding involves a license, permit, or other entitlement for use.
 - c) A prohibition on an officer of the agency making, participating in making, or attempting to influence the decision in any proceeding involving a license, permit, or other entitlement for use if the officer willfully or knowingly received a contribution of more than the threshold from a party, party's agent, participant, or participant's agent in the proceeding in the 12 months before the proceeding and the officer did not return that contribution within 30 days of knowing, or the time the officer should have known, of the contribution and the proceeding.
 - d) A requirement for a party to a proceeding before an agency involving a license, permit, or other entitlement for use to disclose on the record of the proceeding any contribution of more than the threshold made within the preceding 12 months by the party, or the party's agent, to any officer of the agency.
 - e) A prohibition on a party to or participant in a proceeding involving a license, permit, or other entitlement for use pending before an agency from making a contribution of more than the threshold to an officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.
- 2) Makes conforming changes.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 2) Does all the following pursuant to the Levine Act:
 - a) Defines the following terms, for the purposes of the Levine Act:
 - i) “Party” to mean any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - ii) “Participant” to mean any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as specified.
 - iii) “Agency” to mean a state or local government agency, except that it does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization (BOE), or constitutional officers. (Government Code §84308(a))
 - b) Prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from a party or agent of a party with a license, permit, or other entitlement for use pending before the agency, or from a participant in that matter or an agent of the participant if the officer knows or has reason to know that the participant has a financial interest in the matter, during the time the matter is pending before the agency and for 12 months following the date a final decision is rendered in the matter. (Government Code §84308(b))
 - c) Requires any officer of an agency, as defined, who received a contribution of more than \$250 from a party with a matter pending before the agency involving a license, permit, or other entitlement for use, or a participant in that matter, in the 12 months before the proceeding, to disclose the contribution on the record of the proceeding. (Government Code §84308(c))
 - d) Prohibits any officer of an agency, as defined, who willfully or knowingly received a contribution of more than \$250 from a party or agent of the party with a matter pending before the agency involving a license, permit, or other entitlement for use, or a participant or agent of the participant in that matter if the officer knows or has reason to know that the participant has a financial interest in the decision, in the 12 months before the proceeding from making, participating in making, or attempting to influence the decision in the proceeding, as specified. (Government Code §84308(c)) Allows an officer to participate in the proceeding if the officer returns the contribution within 30 days of knowing, or the time the officer should have known, of the contribution and the proceeding. (Government Code §84308(d)(1))

- e) Permits an officer who accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date a final decision is rendered in a proceeding involving a license, permit, or other entitlement for use from a party, party's agent, participant, or participant's agent, to cure the violation by returning the contribution or the portion exceeding \$250 within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest. Provides that an officer is permitted to cure such a violation only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution, and requires the officer or the officer's controlled committee to maintain records of curing the violation. (Government Code §84308(d)(2))
- f) Requires a party to a proceeding before an agency involving a license, permit, or other entitlement for use to disclose on the record of the proceeding any contribution of more than \$250 made within the preceding 12 months by the party, or the party's agent, to any officer of the agency. Prohibits a party to or participant in a proceeding involving a license, permit, or other entitlement for use pending before an agency from making a contribution of more than \$250 to an officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding. (Government Code §84308(e))

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Campaign finance transparency is a pillar of a strong democracy. State and local campaign finance laws have evolved over the years to make campaign finance information easier to understand, reflect technological innovations and to increase basic transparency about who contributes to candidate and independent expenditure campaigns. 2022 amendments to the Levine Act claimed to address a perceived problem with local campaign finance laws, but has ended up increasing the amount of dark money used in state and local elections. The 2022 law's arbitrarily low contribution limit has made it difficult for state and local candidates to communicate directly with voters and has resulted in an increased use of non-candidate controlled independent expenditures financed with dark money. AB 2911 will encourage campaign donors to contribute directly to a candidate, increase the transparency of those donations and discourage the use of dark money in state and local elections. AB 2911 will also save local governments millions of dollars in compliance, allowing limited local resources to be better spent on essential services for residents.

- 2) **Levine Act of 1982 and SB 1439 (Glazer) of 2022:** The Levine Act, named after its author Assemblymember Mel Levine, restricts campaign contributions made to officers of state and local agencies by parties to a proceeding pending before those agencies. Enacted in 1982, the Levine Act was a response to reports that members of a state agency sought to raise money from individuals and entities that had permit requests pending before the agency. The Levine Act is unique among the provisions of the PRA in that it is the only area in which a campaign contribution can be the basis for a disqualifying conflict of interest. The PRA otherwise does

not treat campaign contributions as a potential basis for conflicts of interest.

The Levine Act is narrowly drafted to apply only to proceedings involving licenses, permits, or other entitlements for use. Proceedings of a more general nature and with broader applicability are not covered by the Levine Act. Additionally, until recently, the Levine Act only applied to decisions made by agencies with membership that was *not* directly elected by voters. It did not apply to the judicial branch, local governmental bodies whose members were elected directly by the voters, members of the Legislature and the BOE, or constitutional officers. Aside from clean-up legislation in 1984 (AB 2992 (M. Waters), Chapter 1681, Statutes of 1984) that made various clarifying and other changes to facilitate enforcement, the Levine Act was largely unchanged for the first 40 years that it was in effect.

In 2022, the Legislature passed and Governor Newsom signed SB 1439 (Glazer), Chapter 848, Statutes of 2022, which made substantial changes to the Levine Act. Perhaps most notably, SB 1439 significantly broadened the reach of the Levine Act by making it applicable to local agencies whose members are directly elected by the voters. As a result, since January 1, 2023, the restrictions of the Levine Act have applied to every county board of supervisors, city council, and school board in the state, along with special districts that were not previously subject to the law.

SB 1439 also made various other changes to the Levine Act, including increasing the period of time following a covered agency action, from three months to 12 months, during which an officer subject to the Levine Act is prohibited from accepting, soliciting or directing a contribution of more than \$250 from a party or participant in the matter, and during which a party or participant in the matter is prohibited from making such a contribution. SB 1439 also created a “cure” process to allow an officer to avoid liability if the officer returned a prohibited contribution that the officer received in the 12 months following a covered action within 14 days, as specified.

Supporters of SB 1439 argued that the changes made by that bill were important for protecting against quid pro quo corruption and its appearance in the types of governmental decisions – licensing, permitting, and contracting – that pose a high risk of pay-to-play exchanges because the impacts of those decisions are disproportionately felt by the parties that are seeking the award of those licenses, permits, and contracts. SB 1439 was approved by this committee by a 5-0 vote and was approved by the Assembly by a 66-0 vote.

- 3) **Implementation of SB 1439:** Although there were no letters of opposition or concerns submitted to this committee during its consideration of SB 1439, affected entities have raised considerable questions and concerns about its implementation after the bill was signed into law. In February 2023, the Family Business Association of California, a number of other trade and industry business associations, and two local elected officials challenged the provisions of SB 1439 in the Sacramento Superior Court, arguing that the bill was an unconstitutional amendment of the PRA and an unconstitutional restriction on the rights of campaign contributors and elected officials to free speech and the freedom of association. The court rejected that challenge, finding that SB 1439 furthers the purposes of the PRA as enacted by the voters. The court additionally found that there was sufficient evidence that SB 1439 sought to address quid pro quo corruption or its appearance, and was “closely drawn to

avoid abridgment of associational rights.” The Superior Court’s decision was not appealed.

Separately, the FPPC has grappled with a number of issues in connection with the implementation of SB 1439. In response to a request from the League of California Cities, the FPPC issued a legal opinion (*Kendrick* Opinion, No. O-22-002) less than three months after SB 1439 was signed by the Governor, and just nine days before it took effect, in which the FPPC concluded that SB 1439 did not prohibit a local elected official from taking part in a proceeding involving a license, permit, or other entitlement for use based on contributions received before the January 1, 2023, effective date of the bill.

The FPPC also adopted extensive regulations implementing SB 1439 in June 2023, including regulations that codified the *Kendrick* Opinion and clarified the application and definitions of various terms in SB 1439. The FPPC has issued a dozen advice letters concerning the provisions of the Levine Act since the passage of SB 1439, and has conducted multiple trainings and webinars related to SB 1439 and its requirements.

- 4) **Levine Act’s \$250 Disqualification Threshold:** The campaign contribution threshold that can trigger disqualification under the Levine Act has been changed only once in the 40 years since its enactment. Specifically, SB 491 (Marks), Chapter 764, Statutes of 1989, changed the threshold from contributions of \$250 or more to contributions of more than \$250, effectively an increase of \$0.01.

According to an inflation calculator operated by the federal Bureau of Labor Statistics, when adjusted for inflation, \$250 in 1982 has approximately the same purchasing power as about \$800 today.

- 5) **Local Contribution Limits:** Under existing law, local governments generally have the authority to adopt campaign contribution limits for elections to local offices in their jurisdictions. The restrictions imposed by the Levine Act, as amended in 2022, operate independently of any local contribution limits that apply in a jurisdiction. That is, a contribution made to a candidate for local office is subject to any relevant local campaign contribution limit even if that contribution would not trigger the provisions of the Levine Act. Similarly, a contribution made to a candidate for local office may trigger the restrictions of the Levine Act even if that contribution is below the local campaign contribution limit.

This bill proposes to increase the disqualification threshold under the Levine Act from \$250 to \$1,500. Many local jurisdictions have campaign contribution limits that are higher than \$250, but lower than \$1,500. In those jurisdictions, the local campaign contribution limits would continue to apply even if this bill is enacted in its current form. For example, if a local jurisdiction had a \$1,000 campaign contribution limit, contributions to candidates for local office would continue to be limited to \$1,000 even if the Levine Act threshold is raised to \$1,500 as proposed by this bill.

- 6) **Arguments in Support:** In support of this bill, the California Building Industry Association writes:

Recent changes to Government Code Section 84308 have resulted in a *de facto* prohibition on contributions to candidates for local elected officials. Housing project applicants are not willing to risk recusal of a local official in determining the outcome of much needed housing, particularly given the track record that contributions are not having an impact on decision-making. Moreover, the requirement to aggregate contributions from the applicant and the applicant's agents who are needed to produce all the environmental and economic studies, design, planning and legal documents necessary to get a project approval, adds more risk and uncertainty, particularly because it is difficult or impossible to know whether and how much each of these independent entities have contributed...

Most importantly, we are concerned that, because of this *de facto* prohibition on contributions to candidates for local office, only very wealthy people who can finance their own campaigns will run for local office. That will not yield elected officials who are balanced in their views, nor will they be representative of the people.

7) **Arguments in Opposition:** In opposition to this bill, California Common Cause writes:

The "Levine Act" was enacted in 1983 in response to coastal commissioners who explicitly solicited and received large campaign contributions from people who had business pending before them...Elected officials were left out of this reform, likely due to the Legislature's focus on the controversy at the time. However, elected local government officers routinely grant permits, licenses, and contracts – it is a key function of local government. In 2022, to rectify this and address numerous related scandals, the Legislature passed SB 1439 (Glazer) to expand the existing conflict of interest restrictions from appointed boards and commissions to local elected officials...

AB 2911 would increase the contribution threshold in the Levine Act from \$250 to \$1500, far above what the threshold would be even if it had adjusted for inflation over time...This proposed increase would also negate the Levine Act's protections in many California cities...The City of Los Angeles, for instance, has a contribution limit of \$800 per election for city council offices. This would mean that in most of these cities who have chosen to enact their own contribution limitations, AB 2911 would make the protections of the Levine Act moot despite a maximum contribution still being significant in those jurisdictions.

8) **Related Legislation:** SB 1243 (Dodd), which is pending in the Senate Elections & Constitutional Amendments Committee, proposes various changes to the Levine Act as modified by SB 1439, including raising the threshold for contributions regulated by the Levine Act from \$250 to \$1,000, limiting the prohibition on contributions made during and after a proceeding to the 9 months before and after a final decision in a proceeding is made, and extending the period during which an officer may cure a violation. SB 1243 additionally would specify that a person is not a "participant" for the purposes of a decision that is subject to the restrictions of the Levine Act if the person's financial interest in the decision results

solely from an increase or decrease in membership dues, and exempts specified housing development projects from the Levine Act's provisions.

SB 1181 (Glazer), which is pending in the Senate Elections & Constitutional Amendments Committee, would require the agenda for a proceeding that is a public meeting to include a notice describing the provisions of the Levine Act, as modified by SB 1439.

- 9) **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.
- 10) **Recent Amendments:** The March 19, 2024, version of this bill proposed to revert the Levine Act to the form that existed in 2022 before the passage of SB 1439. Authors amendments adopted on April 16, 2024, however, substantially amended the bill to include the current contents. It is unclear whether position letters related to the prior version of the bill are relevant to the current version. Accordingly, this committee analysis does not reflect position letters submitted to the committee that relate to the prior version of the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association
PowerCA Action

Opposition

California Common Cause

Analysis Prepared by: Ethan Jones / ELECTIONS / (916) 319-2094