

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 3123 (Jones-Sawyer) – As Amended March 21, 2024

SUBJECT: Los Angeles County Metropolitan Transportation Authority: board code of conduct: lobbying rules.

SUMMARY: Repeals a law that restricts entities seeking contracts with the Los Angeles County Metropolitan Transportation Authority (LA Metro) from making campaign contributions of more than \$10 to LA Metro board members, employees, and their immediate families. Revises and recasts code of conduct and lobbying laws that apply exclusively to LA Metro. Specifically, **this bill:**

- 1) Repeals a law requiring LA Metro to adopt an ordinance similar to state law limits on the acceptance of gifts by public officials, as specified, and instead provides that gifts received by LA Metro board members and employees are governed by state law and LA Metro's administrative code.
- 2) Repeals a law that does all of the following with respect to entities seeking contracts with LA Metro:
 - a) Prohibits the entity, or an owner, employee, or immediate family member of an owner or employee of such an entity, from making a campaign contribution of more than \$10 to a member, alternate member, or employee of LA Metro, or to an immediate family member of a member, alternate member, or employee.
 - b) Prohibits a member, alternate member, or employee of LA Metro, or any member of their immediate families, from accepting, soliciting, or directing a campaign contribution of more than \$10 from an entity that is seeking a contract with LA Metro or that has contracted with LA Metro in the preceding four years, or from an owner, employee, or immediate family member of an owner or employee, of such an entity.
 - c) Prohibits a member, alternate member, or employee of LA Metro from participating in or influencing a contracting decision if the person knowingly accepted a campaign contribution of more than \$10 in the preceding four years from a participant or participant's agent involved in the contract decision.
 - d) Prohibits a member, alternate member, or employee of LA Metro who participated as a decision maker in a contract awarded by LA Metro, as specified, from accepting employment for three years after leaving LA Metro with any company, vendor, or business entity that was awarded a contract in which that person participated.
- 3) Revises and recasts laws regulating lobbying of LA Metro, as follows:
 - a) Exempts the following from the types of communications that are considered "lobbying" of LA Metro:

- i) Attending or participating in a prebid or preproposal conference;
 - ii) Submitting a response to a solicitation issued by LA Metro or an LA Metro official;
 - iii) Participating in an interview regarding a solicitation at the request of LA Metro or an LA Metro official;
 - iv) Responding to a request for information from LA Metro or an LA Metro official regarding a solicitation or existing contract;
 - v) A representative of a news media organization gathering news and information or disseminating the same to the public, even if the organization, in the ordinary course of business, publishes news items, editorials or other commentary, or paid advertisements, that urge action upon LA Metro matters;
 - vi) Providing oral or written testimony that becomes part of the record of a public hearing, provided that a person providing testimony pursuant to this provision who has already qualified as a lobbyist and is testifying on behalf of a client must identify the client on whose behalf the lobbyist is testifying; and,
 - vii) A communication from an elected public official acting in their official capacity.
- b) Provides that a person is considered a “lobbyist” only if the person meets both of the following criteria in a three month period:
- i) The individual has at least one lobbying contact with an LA Metro official or employee in an attempt to influence LA Metro action; and,
 - ii) The individual is compensated to engage in at least 15 hours of lobbying activity, as specified, in connection with attempts to influence LA Metro action.
- c) Repeals a provision of law that limits registration fees that may be charged to lobbyists, lobbying firms, and lobbyist employers to an amount necessary to pay the direct costs of implementing the lobbying laws, and instead allows the LA Metro ethics officer to determine the amount of the fees.
- d) Provides that when a lobbyist employer discloses the total amount of payments to lobbyists it employed on a periodic disclosure report, those payments may be disclosed in the following ranges: less than or equal to \$250; more than \$250 but less than or equal to \$1,000; more than \$1,000 but less than or equal to \$10,000; or more than \$10,000.
- e) Repeals a prohibition on a lobbyist, lobbying firm, or lobbyist employer making a gift to an LA Metro official of more than \$10 in a calendar month, and instead prohibits any of those entities from making a gift to an LA Metro official if making the gift is prohibited by state law or LA Metro’s administrative code.

- f) Allows the LA Metro ethics officer to do all of the following:
 - i) Require the disclosure of additional information, beyond that required under state law, on lobbying registration and disclosure reports;
 - ii) Establish processes for terminating the registration of a lobbyist, lobbyist employer, or lobbying firm;
 - iii) Conduct audits of lobbying registration and disclosure reports, as specified;
 - iv) Impose a late fee of \$10 per day, up to a maximum of \$300, on any person or entity that does not file a lobbying registration or disclosure report by the deadline.
 - v) Issue guidance and advice about LA Metro's lobbying rules.
- g) Makes other minor, clarifying, and technical changes.
- 4) Requires the LA Metro ethics officer to interpret relevant authorities and provide advice to LA Metro relating to codes of conduct, lobbying, governmental ethics, campaign finance, fair procurement practices, and conflicts of interest, and to propose amendments to the codes of conduct to the board when appropriate. Provides that any advice provided by the ethics officer is confidential and entitled to all applicable privileges.
- 5) Provides that the ethics officer may be removed only if either of the following occur:
 - a) A two-thirds majority of the members of the board votes for removal; or,
 - b) The ethics officer violates a federal or state law or regulation, a local ordinance, or a policy or practice of LA Metro, relative to ethical practices, including, but not limited to, the acceptance of gifts or contributions.
- 6) Prohibits a LA Metro board member or their staff from using or threatening to use official action or authority against, or attempting to interfere with, any person acting in good faith to report or otherwise provide information to LA Metro regarding any activity that may be a violation of the LA Metro's code of conduct found in state law.
- 7) Repeals rules of conduct for LA Metro board meetings, and instead provides that rules of conduct shall be governed by LA Metro board's adopted rules and procedures.
- 8) Requires LA Metro board members and their staff to exercise caution in accepting a gift from any person or entity that is considering submitting a proposal or a bid for an LA Metro contract award.
- 9) Provides that an existing law prohibiting LA Metro board members from directing LA Metro staff, contractors, or proposed contractors to make a charitable contribution to a specified agency does not prohibit a board member from making a permissible solicitation or request for a charitable contribution if the solicitation or request complies with applicable state law.

- 10) Repeals a requirement that LA Metro staff must report to the inspector general any attempt by a LA Metro board member to communicate with staff to influence an award of a contract by LA Metro.
- 11) Repeals a law that prohibits LA Metro board members and their staff from accepting any honoraria, as specified. This provision is similar to a provision of existing law that applies generally to public officials, including LA Metro board members and their staff.
- 12) Repeals laws that prohibit LA Metro board members and their staff from participating in an LA Metro decision in which they know or have reason to know that they have a financial interest. These provisions are similar to provisions of existing law that apply generally to public officials, including LA Metro board members and their staff.
- 13) Prohibits LA Metro board members or their staff from making, participating in, or attempting to influence any LA Metro decision if they are incapable of providing fair treatment to a matter before the board due to bias, prejudice, or because they have prejudged a matter.
- 14) Makes various minor, clarifying, technical, and conforming changes.

EXISTING LAW:

- 1) Creates LA Metro consisting of 14 members, including five members of the Los Angeles County Board of Supervisors, the Mayor of the City of Los Angeles, five other members who are mayors or city council members in the county, two public members appointed by the Mayor of the City of Los Angeles, and one nonvoting member appointed by the Governor. (Public Utilities Code §130051)
- 2) Prohibits any of the following from making a campaign contribution over \$10 to a board member, alternate member, or employee of LA Metro, or to an immediate family member of a board member, alternate member, or employee:
 - a) A construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity, which is seeking a contract with LA Metro.
 - b) An owner, employee, or immediate family member of an owner or employee of any of the entities identified above in a). (Public Utilities Code §130051.20(a)(1) and (2))
- 3) Prohibits a board member, alternate member, or employee of LA Metro, or an immediate family member of a board member, alternate member, or employee, from accepting, soliciting, or directing a campaign contribution over \$10 from any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with LA Metro, or that has contracted with LA Metro in the preceding four years. (Public Utilities Code §130051.20(a)(3) and (5))
- 4) Prohibits a board member, alternate member, or employee of LA Metro, from participating in or influencing a contract decision if they knowingly accepted a campaign contribution over \$10 in the preceding four years from any participant or participant's agent involved in the

contract decision. (Public Utilities Code §130051.20(a)(4))

- 5) Prohibits a board member, alternate member, or employee of LA Metro who participated as a decision maker in a contract awarded by LA Metro, as specified, from accepting employment for three years after leaving LA Metro with any company, vendor, or business entity that was awarded a contract in which that person participated. (Public Utilities Code §130051.20(b))
- 6) Requires LA Metro, prior to the approval of any contract, to adopt ordinances that regulate the acceptance of gifts by members and employees of LA Metro and that regulate lobbying of LA Metro, as specified. (Public Utilities Code §§130051.17 & 130051.18)
- 7) Establishes a code of conduct governing LA Metro, which provides for the appointment of an ethics officer, establishes rules of conduct for LA Metro board meetings, prohibits board members from directing specified individuals to make charitable contributions, limits the acceptance of honoraria by board members and their staff, and prohibits board members and their staff from participating in decisions in which they know or have reason to know that they have a financial interest, among other provisions. (Public Utilities Code §§130600-130730)
- 8) Prohibits an officer of a public agency from accepting, soliciting, or directing a campaign 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))
- 9) Requires any officer of an agency, as defined, who received a campaign 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))
- 10) Prohibits any officer of an agency, as defined, who willfully or knowingly received a campaign 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))
- 11) Permits an officer who accepts, solicits, or directs a campaign 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))

- 12) 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 campaign 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 campaign 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: Unknown. State-mandated local program; contains a crimes and infractions disclaimer; contains reimbursement direction.

COMMENTS:

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

With the enactment of Senate Bill 1439 (Glazer), which amended the Levine Act in 2023, the state made its intention clear of having uniform ethics law governing all contract decisions by local and state officials, no matter the makeup of a board or commission. AB 3123 helps bring the Los Angeles County Metro Board into alignment with current state law, the Levine Act, which already applies to the Board in their primary elected positions. This bill will help strengthen the Board's ethics rules and ensure they are consistent with every other agency in the state.

- 2) **LA Metro Ethics and Lobbying Rules:** LA Metro was created by AB 152 (Katz), Chapter 60, Statutes of 1992, as modified by AB 3547 (Katz), Chapter 586, Statutes of 1992, through the consolidation of the Los Angeles County Transportation Commission and the Southern California Rapid Transit District. Among other provisions, these bills included a requirement for the LA Metro board to adopt an ordinance that limited the acceptance of gifts by LA Metro officials. The language of that requirement was similar to restrictions found in the Political Reform Act (PRA) that apply generally to the acceptance of gifts by any public official, including by members and employees of local agencies like LA Metro. Because the provisions of the PRA also apply to LA Metro, members and employees of LA Metro are subject to two different sets of rules governing the acceptance of gifts—those found in the PRA, and the unique gift rules found in the Public Utilities Code that apply only to LA Metro. While these rules are similar, they are not identical, potentially creating confusion and challenges for compliance.

The bills creating LA Metro also required the board to adopt an ordinance regulating lobbying of LA Metro. While the PRA regulates lobbying of the Legislature and state agencies, it does not generally regulate lobbying of local agencies, nor do other parts of state

law generally provide for regulation of lobbying at the local level. Instead, local jurisdictions are free to adopt ordinances that regulate efforts to lobby the members and employees of their jurisdictions. While AB 152 and AB 3547 gave LA Metro some flexibility over the details of the lobbying ordinance that it chose to adopt, those bills also established a general framework for that ordinance. That framework appears to be loosely based on rules found in the PRA that govern lobbying at the state level, though it applies to lower levels of activity and to more indirect methods of lobbying than the PRA's regulation of lobbying at the state level.

In 1997, concerns about the operations of LA Metro and failures to reform its practices and procedures led to several bills being introduced to address problems and deficiencies in the agency. SB 89 (Hayden), Chapter 657, Statutes of 1997, restricted entities that sought or entered into contracts with LA Metro from making campaign contributions of more than \$10 to LA Metro board members, employees, and their immediate families. SB 89 also prohibited former LA Metro board members and employees from accepting employment with any entity that was awarded specified contracts.

The restrictions on campaign contributions by LA Metro contractors that were contained in SB 89 appear to have been modeled after a provision of the PRA that is commonly known as the "Levine Act." That law is described in more detail below.

Also in 1997, the Legislature enacted AB 584 (Villaraigosa), Chapter 900, Statutes of 1997, which required LA Metro to appoint an inspector general and established a code of conduct for LA Metro. Among other provisions, AB 584 included even more rules restricting gifts to LA Metro board members and their staff, restricted honoraria to board members and their staff, and prohibited board members and their staff from participating in LA Metro decisions in which they know or have reason to know that they have a financial interest.

At a high level, this bill generally seeks to streamline provisions of law governing the operations of LA Metro. Among other provisions, this bill proposes to repeal numerous provisions of the Public Utilities Code that apply exclusively to LA Metro, but that also are largely duplicative of state laws that apply generally to local agencies, including LA Metro. Examples of such provisions include laws related to financial conflicts of interest, the receipt of gifts, and the receipt of honoraria by LA Metro board members and their staff. Repealing these LA Metro-specific rules in favor of having similar general state laws govern the operations of LA Metro may help reduce the complexity of compliance for LA Metro board members, their staff, and LA Metro employees without significant substantive changes to the rules that govern the conduct of those public officials.

In at least one instance, however, the changes proposed by this bill would result in notable changes to the rules governing the conduct of LA Metro officials. That change is discussed in more detail below.

- 3) **Levine Act 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 Board of Equalization, or constitutional officers.

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.

Since the creation of LA Metro in 1992, it has been subject to the Levine Act as a local agency whose membership is not directly elected by voters. Notwithstanding the fact that the Levine Act already applied to LA Metro, the Legislature subsequently adopted other “pay to play” rules that apply exclusively to LA Metro through the passage of SB 89 (Hayden), as described above. Since the passage of SB 89, LA Metro has been subject both to the provisions of that bill (sometimes referred to as the “Hayden bill”) and to the Levine Act.

The “pay to play” provisions that were found in SB 89 appear to have been modeled after provisions of the Levine Act, though there are a few significant differences between the two laws. Notably, the campaign contribution conflict threshold is considerably lower in SB 89 (\$10) than in the Levine Act (\$250). SB 89 also restricts campaign contributions over the threshold to LA Metro employees, and to the immediate families of LA Metro board members and employees. By contrast, the Levine Act applies only to campaign contributions to agency officers and candidates for agency office, and not to staff or family members. SB 89 and the Levine Act also differ on the period of time during which the campaign contribution restrictions apply, and on the entities that are covered by the contribution restrictions. Finally, SB 89 includes a provision not found in the Levine Act that prohibits former LA Metro board members and employees from accepting employment with any entity that was awarded specified contracts.

The author and the sponsor of this bill argue that the 2022 enactment of SB 1439 (Glazer) demonstrates the state’s intent to “hav[e] uniform ethics law governing all contract decisions by local and state officials, no matter the makeup of a board or commission.” While SB 1439 did significantly expand the jurisdictions to which the Levine Act applies, it is less clear whether the adoption of that bill speaks to a legislative intent about the rules that should apply to LA Metro. When the Legislature approved SB 89 in 1997, the Levine Act already

applied to LA Metro; the Legislature nonetheless decided that it was important to enact additional “pay to play” restrictions that applied exclusively to LA Metro in light of concerns about LA Metro’s operations. Bill analyses of SB 89 indicate that its provisions were designed to address undue influence by contractors in the award of contracts by LA Metro, but do not provide detailed insight about why the Legislature thought that the Levine Act’s provisions were insufficient to protect against such influences.

The application of two similar but not identical laws related to campaign contributions and contracts at LA Metro undoubtedly creates significant challenges for compliance. That is a dynamic, however, that LA Metro has been subject to since the passage of SB 89 in 1997. Repealing the “pay to play” rules from SB 89 likely would help ease compliance challenges at LA Metro, but also will ease certain restrictions that currently apply to LA Metro board members, their staff, and LA Metro employees. Whether those restrictions continue to be justified, and whether the policy benefits of those restrictions outweigh the compliance burdens associated with having two sets of overlapping rules, are policy questions that are best answered by those who are most familiar with LA Metro’s operations. Accordingly, it will be important for members of the Legislature who represent Los Angeles County to weigh in on the content of this bill.

- 4) **Technical Amendments:** As currently drafted, this bill may have the effect of eliminating a restriction on gifts from lobbyists of more than \$10 in a calendar month to LA Metro staff. The sponsor of this bill indicates that it is not their intent to eliminate that restriction. Accordingly, committee staff recommends an amendment to preserve that restriction.

This bill includes an exception to an existing law restricting charitable solicitations by LA Metro board members that could be construed to allow board members to directly solicit charitable contributions from LA Metro staff and contractors. According to the sponsor of this bill, the intent of that provision is not to allow such direct solicitations. Instead, the intent is to clarify that existing law does not prohibit LA Metro board members from participating in broader charitable efforts if any contributions that result from those efforts would not be considered to be reportable behested payments by the LA Metro board member under existing law. Accordingly, committee staff recommends an amendment to clarify that exception.

- 5) **Arguments in Support:** The sponsor of this bill, LA Metro, writes in support:

The State recently enacted reforms to ethics laws that apply to all local and state elected officials. With the enactment of SB 1439 (Glazer), which amended the Levine Act in 2023, the state made its intention clear: there should be a uniform ethics law governing all contract decisions by local and state officials, no matter the makeup of a board or commission. However, LA Metro is also still subject to a 30-year-old law (the “Hayden Bill”) that imposes different statutory standards on members of Metro’s Board regarding contract decisions and receipt of campaign contributions from contractors.

The Metro Board seeks to be consistent with all other officials in the state, making contract decisions under the standards and guidance of the Levine Act.

This is the statute that governs their primary elected positions as members of the LA County Board of Supervisors, the Mayor of the City of Los Angeles, and local city elected officials. The current incongruent approach, with different statutory standards and requirements, creates significant difficulties with compliance and increases liability risk for all parties, simply because Metro Board members are currently subject to both the Levine Act and the “Hayden Bill” in their roles as Metro Board Members. AB 3123 is needed in order to bring consistency to the proceedings of the Metro Board of Directors.

- 6) **Related Legislation:** AB 2911 (McKinnor), which is also being heard in this committee today, increases the disqualification threshold under the Levine Act from \$250 to \$1,500.

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 increasing the disqualification threshold 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.

- 7) **Double-Referral:** This bill was double-referred to the Assembly Transportation Committee, where it was heard on April 15, 2024, and approved by an 11-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Metropolitan Transportation Authority (Sponsor)

Opposition

None on file.

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