Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 1181 (Glazer) – As Amended June 19, 2024

SENATE VOTE: (vote not relevant)

SUBJECT: Campaign contributions: agency officers.

SUMMARY: Makes various changes to a state law commonly referred to as the "Levine Act" that restricts campaign contributions to agency officials from entities with business before the agency involving a license, permit, or other entitlement for use. Specifically, **this bill**:

1) Provides that the following types of actions are not a "license, permit, or other entitlement for use" for the purposes of the Levine Act, and thus are not subject to its restrictions:

   a) Contracts valued under $50,000.

   b) Contracts where no party receives financial compensation.

   c) Contracts between two or more agencies.

   d) The periodic review or renewal of development agreements unless there is a material modification or amendment proposed to the agreement. Non-material modifications or amendments may be approved by agency staff.

   e) Periodic reviews or renewal of competitively bid contracts unless there are material modifications or amendments proposed to the agreement that are valued at more than 10 percent of the value of the contract or $50,000, whichever is less. Non-material modifications or amendments may be approved by agency staff.

   f) Modification of or amendments to contracts that are otherwise exempt, other than competitively bid contracts.

2) Specifies that "competitively bid contracts," which are not subject to the Levine Act's restrictions, are contracts that are required by law, agency policy, or agency rule to be awarded to the highest or lowest responsible bidder with a responsive bid.

3) Provides that a proceeding involving a license, permit, or other entitlement for use is considered to be "pending" for the purposes of the Levine Act as follows:

   a) For an officer, in either of the following situations:

      i) Any item involving the license, permit, or other entitlement for use is placed on the agenda for discussion or decision at a public meeting of the body.

ii) The officer knows a proceeding involving a license, permit or other entitlement for use is before the agency for its decision or other action, and it is reasonably foreseeable the decision will come before the officer in the officer's decisionmaking capacity.

b) For a party or party's agent, or a participant or participant's agent, when that proceeding is before the agency for its decision or other action.

4) Provides that the Levine Act's restrictions do not apply to either of the following:

   a) To a city attorney or county counsel who is providing legal advice to their agency, and who does not have the authority to make a final decision in the proceeding.

   b) To an elected officer if the officer or the body of which they are a member does not have the authority to make any decision or recommendation in the proceeding.

5) Extends the period of time during which an officer may return a contribution that would otherwise require disqualification under the Levine Act, and thus be permitted to participate in the relevant proceeding, such that the officer can return a contribution as late as 30 days from the time the officer makes any decision in the proceeding.

6) Provides, for the purposes of the Levine Act, that contributions of an agent shall not be aggregated with contributions from a party or a participant. Prohibits an agent of a party or a participant from making a contribution in any amount to an officer during the proceeding and for 12 months following the date of the final decision. Provides that these provisions are not severable from each other.

7) Codifies regulations that were adopted by the Fair Political Practices Commission (FPPC) that specify when a person is and is not an "agent" for the purposes of the Levine Act.

8) Requires an agenda for a proceeding under the Levine Act that is a public meeting to include the following notice:

   Parties to a proceeding are required to disclose if they made contributions over $250 within the prior 12 months to a decisionmaker. If a decisionmaker accepted more than $250 during the 12 months preceding the decision, the decisionmaker is required to recuse themself from the decision. Parties and participants with a financial interest are prohibited from making more than $250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

9) Makes conforming and technical changes.

EXISTING LAW:

1) Creates the 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 other than 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 after. (Government Code §84308(b))

   c) Prohibits any officer of an agency 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 or influencing 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))

   d) 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))

e) 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))

f) Provides that a proceeding involving a license, permit, or other entitlement for use is considered pending only under the following circumstances:

   i) For an officer, a proceeding involving a license, permit, or other entitlement for use is pending when:

      (1) The decision is before the officer for the officer's consideration. If the officer is a member of a governing body, this includes any item placed on the agenda for discussion or decision at a public meeting of the body; or

      (2) The officer knows or has reason to know a proceeding involving a license, permit or other entitlement for use is before the jurisdiction of the agency for its decision or other action, and it is reasonably foreseeable the decision will come before the officer in the officer's decisionmaking capacity.

   ii) For a party or party's agent, or a participant or participant's agent, a proceeding involving a license, permit or other entitlement for use is pending when it is before the jurisdiction of the agency for its decision or other action. (2 Code of California Regulations §18438.2(b))

g) Provides that the following contributions shall be aggregated in determining whether a contribution of more than $250 has been made during a 12-month period by a party to or participant in a proceeding involving a license, permit, or other entitlement for use:

   i) Contributions made by the party or participant.

   ii) Contributions made by an agent of the party or participant during the shorter of:

      (1) The previous 12-month period; or

      (2) The period beginning on the date the party or participant first hired the agent as either a paid employee, contractor, or consultant.

   iii) Contributions made by an individual or entity, as specified, that would be required to be aggregated with the party, participant, or agent under existing law because of the party's, participant's, or agent's involvement in directing and controlling the contribution. (2 Code of California Regulations §18438.5)

h) Provides that a person is the "agent" of a party to, or a participant in, a covered proceeding only if the person represents that party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding. Provides that if an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."

   i) Provides for this purpose that "communication with the governmental agency for the purpose of influencing the proceeding" does not include the following:

      (1) Drawings or submissions of an architectural, engineering, or similar nature prepared by a person for a client to submit in a proceeding before the agency if:

         (a) The work is performed pursuant to the person's profession; and,

         (b) The person does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the official; or,

      (2) Purely technical data or analysis provided to an agency by a person who does not otherwise engage in direct communication for the purpose of influencing the proceeding. (2 Code of California Regulations §18438.3)

FISCAL EFFECT: Unknown

COMMENTS:

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

   In 2022, the Legislature passed one of the most significant reforms in the last 50 years, the Pay to Play bill, SB 1439. This measure prohibited political contributions over $250 from parties seeking contracts with local governments to the elected local officials who make contracting decisions. However, much of this law is not transparent and can be nuanced and complex for the public to understand.

   To improve transparency and consistency, this bill would require the agenda for a proceeding, which is a public meeting, to disclose the details of the Levine Act. Californians deserve to know that their elected officials are making decisions that benefit the voters.

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 since 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 more than 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 developed by the federal Bureau of Labor Statistics, when adjusted for inflation, $250 in 1982 has approximately the same purchasing power as about $800 today. This bill does not change the disqualification threshold under the Levine Act, though related pending legislation (described below) does propose to change that threshold.

5) **Excluded Contracts**: This bill proposes to exempt various proceedings from being covered by the Levine Act. Specifically, this bill provides that none of the following types of proceedings are subject to the Levine Act's restrictions:

   a) **Contracts valued under $50,000.**

   b) **Contracts where no party receives financial compensation.** Governments frequently enter into contracts that establish legal obligations and responsibilities for parties to the contract without providing for any compensation. For example, a governmental body may enter into a data sharing agreement with another entity. These types of contracts do not appear to be the types of proceedings that the Levine Act was designed to address.

   c) **Contracts between two or more agencies.** Government agencies may enter into contracts for a variety of reasons, including coordinating the delivery of services. Generally speaking, these are not the types of proceedings that the Levine Act was designed to address.

d) **Periodic reviews or renewals of development agreements without material modifications or amendments.** In an advice letter issued in late 2023, the FPPC concluded that a city's mandated annual review of a development agreement triggered the restrictions of the Levine Act. Because the Levine Act prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than $250 from a party to a covered proceeding during the time the matter is pending before the agency and for 12 months after, the fact that previously-approved development agreements are subject to an annual review effectively could serve as a de facto ban on campaign contributions by the parties to that development agreement. Exempting reviews that do not result in material modifications or amendments will more narrowly tailor the Levine Act's application to the types of decisions that present a higher risk of quid pro quo corruption or its appearance.

e) **Periodic reviews or renewal of competitively bid contracts without material modifications or amendments.** Competitively bid contracts often may be amended or modified in minor ways, including via change orders that have limited financial impacts on the total value of the contract. Exempting non material modifications and amendments will more narrowly tailor the Levine Act's application to the types of decisions that present a higher risk of quid pro quo corruption or its appearance.

f) **Modification of or amendments to contracts that are otherwise exempt, other than competitively bid contracts.**

6) **Competitively Bid Contracts**: Existing law excludes competitively bid contracts from the types of proceedings that are covered by the Levine Act, but does not define that term. While the FPPC has adopted regulations that define that term, those regulations do not account for situations where a competitively bid contract is required to be awarded to the *highest* bidder (e.g., when a jurisdiction is selling property), nor do the regulations account for situations where a contract is required to be competitively bid by policy or rule, rather than by law. This bill codifies a definition of competitively bid contracts that includes those situations, which should help ease potential compliance challenges for local governments by clearly excluding those contracts from the provisions of the Levine Act.

7) **"Pending" Actions**: Various provisions of the Levine Act apply while a covered decision is "pending" before a governmental body, but the Levine Act does not define what it means for a decision to be pending. The FPPC has defined that term by regulation, with the term being defined in a different way for public officials than for parties, participants, and their agents.

   This bill codifies the FPPC's regulatory definition of pending as it applies to parties, participants, and their agents. Additionally, as the term applies to public officials, this bill codifies a modified version of the FPPC's regulatory definition. The primary difference is that the existing regulation provides that a decision is considered to be pending before an officer if the officer knows or has reason to know that a covered proceeding is before the jurisdiction of the agency for its decision or other action, and it is reasonably foreseeable the decision will come before the officer in the officer's decisionmaking capacity. This bill deletes the "has reason to know" portion of that definition. Certain types of actions may be before the jurisdiction of an agency for several years before the elected officers of that

agency make a decision on the action, and stakeholders have expressed concern that the subjective nature of the "has reason to know" portion of the definition creates uncertainty and compliance challenges for elected officials.

8) **Aggregation of Agent Contributions**: Under a regulation adopted by the FPPC to interpret and implement the Levine Act, contributions made by a party or participant's agent are required to be aggregated with contributions made by the party or participant in determining whether the campaign contribution threshold has been reached. Stakeholders have argued that the aggregation rules create unreasonable complexity. In particular, local governments have indicated that identifying agents of parties and participants has been especially challenging for those governments in attempting to determine whether members of a governing board are disqualified from participating in a decision.

   This bill seeks to address those challenges by providing that contributions made by an agent shall not be aggregated with contributions made by a party or participant to a proceeding. To ensure that this change does not undermine the purposes of the Levine Act, however, this bill also prohibits agents to parties and participants from making campaign contributions of *any* amount to agency officials while the proceeding is pending and for 12 months thereafter. To address concerns that that the ban on agent contributions could be invalidated by a court, thereby allowing for contributions by agents that are *not* aggregated with those by parties and participants, this bill further provides that the elimination of the aggregation of agent contributions and the ban on agent contributions are non-severable.

9) **Technical Amendments**: To correct technical errors, committee staff recommends the following amendments to this bill:

   On page 6, line 36, after "compensation" insert: "and appears before"
   On page 6, line 36, after "with" insert: "an"

10) **Arguments in Support**: In a joint letter of support for this bill, California Common Cause and the California Clean Money Campaign write:

    > In 2022, the Legislature passed SB 1439 (Glazer) with bipartisan support to end a loophole in the Political Reform Act's pay-to-play protections that exempted local elected officials. Specifically the PRA now states that a party seeking a contract, permit, or license from a local government cannot give a campaign contribution over $250 to the local officials who have influence over that contract, permit, or license, while that party's business is pending and for one year after…
    >
    > However, since its adoption in 2022, local agencies have experienced some challenges around implementing all the requirements of SB 1439. SB 1181 is a carefully crafted bill to address and lessen those challenges…
    >
    > SB 1181 will substantially ease the burden on local elected officials and stakeholders while ensuring that Sec. 84308 continues to speak to the concerns of California voters by protecting against *quid pro quo* corruption, its appearance, and against interference with merit-based public administration. Such corruption

and its appearance threaten the confidence in our system of representative government. This bill would better focus the law on limiting the most dangerous opportunities for big money special interests to curry influence with critically important local officials.

11) **Arguments in Opposition**: In opposition to this bill, the County of Fresno writes:

> SB 1181… requires agendas for public meetings to include a notice stating the disclosure requirements and contribution limitations that a party to a proceeding involving a license, permit, or other entitlement of use must abide by in accordance with existing law, as specified. SB 1181 also clarifies when a person is an agent of a party to, or participant in, a pending proceeding. Although the recent amendments define certain contracts not subject to the requirements of SB 1181, this legislation would still place additional procedural requirements on counties in addition to those required by SB 1439 (Glazer).
>
> SB 1181 proposes additional requirements that will not serve any purpose other than to inconvenience and inhibit county processes.

12) **Related Legislation**: AB 2911 (McKinnor), which is pending in the Senate Elections & Constitutional Amendments Committee, proposes raising the threshold for contributions regulated by the Levine Act from $250 to $1,500. AB 2911 was approved by this committee on a 7-0 vote, and was approved on the Assembly Floor by a 63-0 vote.

    SB 1243 (Dodd), which is also being heard in this committee today, proposes various changes to the Levine Act, including raising the threshold for campaign contributions regulated by the Levine Act from $250 to $1,000.

13) **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 Clean Money Campaign
California Common Cause

Opposition

County of Fresno

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