

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1728 (Garcia) – As Introduced: February 14, 2014

SUBJECT: Political Reform Act of 1974.

SUMMARY: Makes all officials who are elected to local water boards subject to existing provisions of state law limiting contributions to officials from entities with business before the agency involving a license, permit, or other entitlement for use. Specifically, this bill:

- 1) Provides that local government agencies that are formed pursuant to the Water Code are subject to the following provisions of the Levine Act of 1982 (Act), even if the members of the agency are directly elected by the voters:
 - a) A prohibition against accepting, soliciting or directing a contribution of more than \$250 from a party or participant 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 three months following the date a final decision is rendered in the matter.
 - b) A requirement to disclose on the record of a proceeding the receipt of any contribution of more than \$250 from a party to or participant in the proceeding in the 12 previous months if the proceeding involves a license, permit, or other entitlement for use.
 - c) A prohibition against 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 received a contribution of more than \$250 from a party or participant 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.
- 2) Provides that for the purposes of proceedings before a local government agency formed pursuant to the Water Code, the term "license, permit, or other entitlement for use" includes all contracts except those that are competitively bid.
- 3) Specifies that a person who is paid to act on another person's behalf in a proceeding that is otherwise covered by the Act, triggers the restrictions of the Act.

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).
- 2) Prohibits any officer of an agency, as defined, from accepting, soliciting or directing a contribution of more than \$250 from a party or participant 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 three months following the date a final decision is

rendered in the matter.

- 3) Requires any officer of an agency, as defined, who received a contribution of more than \$250 from a party or participant with a matter pending before the agency involving a license, permit, or other entitlement for use in the 12 months before the proceeding, to disclose the contribution on the record of the proceeding.
- 4) Prohibits any officer of an agency, as defined, who received a contribution of more than \$250 from a party or participant with a matter pending before the agency involving a license, permit, or other entitlement for use in the 12 months before the proceeding from making, participating in making, or attempting to influence the decision in the proceeding. 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.

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

COMMENTS:

- 1) Purpose of the Bill: According to the author, "AB 1728 requires members of local water boards excuse themselves from decisions when contributors are involved. AB 1728 includes officials of local government agencies formed pursuant to the provisions of the Water Code and applies to proceedings to award licenses or permits for use."
- 2) Levine Act of 1982: The Act, named after its author Assemblymember Mel Levine, restricts campaign contributions made to officers of most state and local agencies by parties to a proceeding pending before those agencies. Enacted in 1982, the 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 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 Act is narrowly drafted to apply only to decisions made by agencies with membership that is not directly elected by voters, and 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 Act.

The Act generally does not apply to the judicial branch, local governmental bodies whose members are elected directly by the voters, members of the Legislature and the Board of Equalization, or constitutional officers. However, when an officer who is otherwise exempted serves as a voting member of an agency that is subject to the Act, then the contribution restrictions of the Act do apply to that officer. For example, someone elected to a county board of supervisors is not subject to the Act simply for sitting on the board of supervisors; but, if that official also sits on a regional transit agency, which is subject to the Act, then the officer would be required to comply with the contribution restrictions that apply to all other members of the regional transit agency.

Because the Act does not apply to local governmental bodies whose members are elected directly by the voters, the Act applies to some special districts, but not others.

- 3) Water Districts: According to information from the 2010 report, "What's So Special About Special Districts? (Fourth Edition)," prepared by the Senate Committee on Local Government, there are more than 700 different water districts of various types in California. In most cases, the governing boards of these water districts are elected, and as a result are not subject to the provisions of the Act. There are at least some water districts, however, that are governed by appointed boards of directors, or by boards of directors that are a combination of elected and appointed members. Those districts are subject to the Act under existing law.

This bill makes all districts that are formed pursuant to the Water Code subject to the Act, regardless of whether the district is governed by an elected board or an appointed board. As a result, this bill would significantly increase the number of governmental entities that are subject to the restrictions in the Act.

- 4) Is There a Problem? In background material provided by the author in support of the need for this bill, the author argues that the expansion of the Act to include proceedings before water boards that are governed by elected members is appropriate in light of the state's drought and the development of a water bond proposal that may include funding for a number of water projects throughout the state. The author argues that this bill is a "modest expansion" of the Act that is needed to prevent corruption and the appearance thereof in decision making by elected water boards around the state.

As noted above, however, the Act is unique in that it is the only area of the PRA where campaign contributions can create a conflict of interest that require an official to recuse himself or herself from participating in a governmental action. That restriction was narrowly tailored to address a situation where members of a state agency actively solicited campaign contributions from lists of individuals who had applications for licenses and permits pending before the agency. In arguing for the need for the restrictions imposed by this bill, the author has provided a news article referencing a case in which the Central Basin Municipal Water District (District) awarded a contract to a nonprofit organization, when the President of that organization and his family members had made campaign contributions to four of the five board members. The members of the District are directly elected by voters, so it is not subject to the restrictions of the Act. If the District had been subject to the Act, however, it is unclear based on the information included in the article whether or not the provisions of the Act would have been triggered with respect to the contract that was awarded to the nonprofit organization. The committee has not been made aware of other situations where elected members of water districts have engaged in the types of behavior that led to the adoption of the Act in 1982. It is unclear whether the expansion of the Act in the manner that is proposed by this bill is appropriately tailored to address the author's concerns.

- 5) Technical Issue: One provision of this bill appears to specify that a person who is paid to act on another person's behalf in a proceeding that is otherwise covered by the Act, triggers the restrictions of the Act. However, the Act and related regulations that have been adopted by the FPPC already provide that the restrictions in the Act apply when an agent of a person supports or opposes a decision on behalf of that person. As a result, the effect of the language on page 5, lines 3 to 8 of this bill, is unclear. In light of that fact, committee staff

recommends that those provisions be deleted from this bill.

- 6) Previous Legislation: AB 1241 (Norby) of 2011 would have exempted officials who are directly elected to an agency from the Act for agencies that are governed by a board that contains both elected and appointed members. AB 1241 was approved by the Assembly on a 65-6 vote, but failed passage on the Senate Floor on a 19-20 vote.

AB 2164 (Norby) of 2010 was substantially similar to AB 1241. AB 2164 was approved by the Assembly on a 60-2 vote, but was held in the Senate Committee on Elections, Reapportionment, and Constitutional Amendments.

- 7) 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.
- 8) Double-Referral: After this bill was referred to this committee by the Assembly Rules Committee, the Assembly Rules Committee instructed that this bill should be referred to the Assembly Local Government Committee upon approval by this committee. Accordingly, any motion to approve this bill should provide for the bill to be re-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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