

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON ELECTIONS

Isaac G. Bryan, Chair

SB 1439 (Glazer) – As Amended June 21, 2022

SENATE VOTE: 34-0

SUBJECT: Campaign contributions: agency officers.

SUMMARY: Makes all local government agencies subject to existing provisions of state law that restrict contributions to public officials from entities with business before the agency involving a license, permit, or other entitlement for use. Expands the period of time that restriction applies, and expands that restriction to apply to contributions made by the spouse of the person who is the subject of a proceeding involving a license, permit, or other entitlement for use if the contribution is made from a joint bank account. Specifically, **this bill:**

- 1) Provides that local government agencies whose members are directly elected by the voters are subject to the following provisions of the Levine Act of 1982 (Levine Act):
 - 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 a specified period of time 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) Extends, from three months to 12 months, the period of time following the date that an agency renders a final decision in a matter involving a license, permit, or other entitlement for use 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 a contribution of more than \$250 to an officer of the agency.
- 3) Expands the provisions of the Levine Act, as they relate to campaign contributions from a party in a proceeding, such that they apply to campaign contributions from the *spouse* of the party if the contribution is made from the spouses' joint bank account.

- 4) Permits an officer who is subject to the Levine Act, and 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, 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.

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) 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, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers.
 - b) Prohibits an officer of an agency from accepting, soliciting, or directing 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, 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.
 - 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.
 - d) Prohibits 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 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. 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.

- 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 three months following the date a final decision is rendered by the agency in the proceeding.

FISCAL EFFECT: According to a Senate Appropriations Committee analysis of an earlier version of this bill, the FPPC indicates that it would incur first-year costs of \$466,000, and \$445,000 annually thereafter, to implement the provisions of the bill (General Fund).

COMMENTS:

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

This bill seeks to apply the same prohibitions that exist for state and local agencies to local elected agencies. Current state law counter-intuitively permits local elected officials running for re-election to solicit and accept sizable contributions from those who are seeking permits or licenses before them but prohibits identical contributions to an appointed official running for office who is acting in exactly the same capacity. If a local elected official, such as a county supervisor, is appointed to a license-granting board, the official would be barred under current law from accepting contributions from those seeking the official's approval. However, a city councilmember running against the supervisor would be able to seek and receive contributions from the same permit-seekers. Beyond counter-intuition, the problem of special interests seeking to influence local decision-making is longstanding, well-documented, and real. SB 1439 ensures the same pay-to-play prohibitions that apply to state agency appointees or appointed local officials when approving a license, permit, or entitlement for use also apply to local elected officials when acting in an identical capacity.

- 2) **Levine Act of 1982:** The Levine 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 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 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 Levine Act.

The Levine 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 Levine Act, then the contribution restrictions of the Levine Act do apply to that officer. For example, someone elected to a county board of supervisors is not subject to the Levine 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 Levine Act, then the officer would be required to comply with the contribution restrictions with respect to proceedings before the regional transit agency.

This bill would significantly broaden the reach of the Levine Act by making it applicable to local agencies whose members are directly elected by the voters. As a result, the restrictions of the Levine Act would apply for the first time to every county board of supervisors, city council, and school board in the state, along with special districts that are not already subject to the law.

- 3) **Contributions by Spouses:** In addition to broadening the agencies to which the Levine Act applies, this bill would specify that a contribution made by the *spouse* of a party to a proceeding would trigger the disclosure and disqualification provisions of the Levine Act if that contribution is made from the spouses' joint bank account. In support of this provision, the author and supporters of this bill note that a 2016 *Los Angeles Times* investigation found that donors linked directly and indirectly to a real estate developer gave more than \$600,000 to Los Angeles officials who were vetting an apartment project known as Sea Breeze, including campaign contributions totaling \$19,600 made by the developer's spouse to eight local officials. The developer in that case subsequently pleaded guilty to a felony count of conspiracy to commit campaign money laundering. As part of his plea, the developer admitted that he recruited family members, employees, and others to act as straw donors to funnel money to local politicians in an effort to get approval for the rezoning of the parcel where the Sea Breeze project was proposed to be built.

Notwithstanding the concern about the potential that contributions made by the spouse of a party to a proceeding could frustrate the purposes of the Levine Act, it is unclear how a public official would know whether a contribution received by the official was made from a joint bank account. Although checks for joint bank accounts often include the names of both account holders, they are not required to do so. In the case of campaign contributions made by debit or credit card, it is even less clear how a candidate would know if that contribution was made from a joint account. While this bill requires the party to a proceeding to disclose specified contributions made by the party's spouse from a joint bank account on the record of the proceeding, nothing in this bill relieves an elected officer from their obligations under the Levine Act if the party fails to make that disclosure as required by law. In fact, in at least one situation, the FPPC fined a public official who failed to disqualify herself, as required by the Levine Act, from participating in a proceeding where the party to that proceeding failed to disclose the disqualifying contribution on the record of the proceeding.

- 4) **Enforcement Actions under the Levine Act:** According to its summary of enforcement actions, the FPPC has brought administrative enforcement actions for violations of the Levine Act that resulted in a fine in 13 cases against 17 entities. Below is a list and summary of some of the violations of the Levine Act:

In 1990, the Mayor of Los Angeles and a Los Angeles City Councilmember, both of whom were serving as appointed members of the Los Angeles County Transportation Commission,

each were fined \$2,000 for failing to disclose campaign contributions of \$250 or more received during the preceding 12 months from a party seeking a non-competitive bidding contract and for failing to disqualify themselves from participation in the decision affecting the campaign contributor.

In 1997, a Planning Commissioner for the City of Los Altos Hills was fined \$1,500 for accepting a \$1,000 contribution from a contributor only 24 days after voting on the contributor's project as a planning commissioner. The contributor was fined \$1,500 for making that contribution.

In 1999, a San Bernardino County Supervisor was fined \$12,500 for failing to publicly disclose contributions and disqualify himself from participating and voting on matters concerning contracts of the supervisor's contributors which were before the Inland Valley Development Agency in 1994 and 1995. The county supervisor was an appointee to the Inland Valley Development Agency.

In 2006, a Placentia City Councilmember was fined \$6,500 for accepting a contribution of more than \$250 from a party to proceedings involving the award of contracts within three months following the date final decisions were rendered in those proceedings while serving as an appointed member of the Orange County Sanitation District.

In 2019, a former Planning Commissioner for the City of Huntington Beach was fined \$2,000 for making a decision involving No Ka Oi Live Entertainment, and then accepting a contribution from the company that exceeded the contribution limit within three months of making that decision.

5) **Related Local Restrictions:** One of the supporters of this bill—California Common Cause—notes that a number of California cities have prohibitions or restrictions on campaign contributions from developers and city contractors to elected city officials, including Alhambra, Baldwin Park, Claremont, Costa Mesa, Culver City, Gardena, Glendale, Los Angeles, Malibu, National City, Oakland, Pasadena, Pomona, San Bernardino, San Francisco, San Marcos, Santa Ana, Santa Monica, Scotts Valley, Solana Beach, Temple City, Upland, West Covina, and Yorba Linda. While these cities' restrictions on campaign contributions by developers and contractors are somewhat analogous to the restrictions imposed by the Levine Act, most of those cities' ordinances differ in notable respects from the Levine Act and the amendments proposed by this bill. While some of these cities' restrictions are as broad as the Levine Act, others are considerably narrower. In particular, many of these cities' restrictions are focused on contributions made by contractors or developers, and are not more broadly applicable to all permits, licenses, and entitlements for use like the Levine Act. In many cases, the cities' restrictions apply only to proceedings related to contracts for more than a specified dollar amount. Furthermore, these local restrictions generally do not apply to contributions made by a spouse of a party to a proceeding.

6) **Arguments in Support:** In support of a prior version of this bill, California Common Cause wrote:

SB 1439 speaks to the concerns of California voters by protecting against quid pro quo corruption and its appearance, and protecting against interference with

merit-based public administration. Such corruption and its appearance threaten the confidence in our system of representative government. They provide opportunities for big money special interest to buy undue influence over critically important local officials.

Reforms aimed at reducing corruption in contracting are not novel, at the federal, state, or local level. There is a long history of laws, and expansion of laws, aimed at preventing pay-to-play schemes for federal contracts. Further, at least 15 other states limit or prohibit campaign contributions from some or all state contractors or licensees and 18 California cities that California Common Cause could find limit or prohibit campaign contributions from developers or city contractors with business before the city.

- 7) **Previous Legislation:** AB 1728 (Garcia) of 2014 would have provided that local government agencies that are formed pursuant to the Water Code are subject to the Levine Act, even if the members of the agency were directly elected by the voters. AB 1728 was vetoed by Governor Brown, who stated in his veto message that “The Levine Act was narrowly crafted to apply to local government entities whose membership includes individuals who are not elected directly by voters. Expanding the Act to one subset of special districts, namely water boards, would add more complexity without advancing the goals of the Political Reform Act.”
- 8) **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 (prior version)
 California Common Cause (prior version)
 California Environmental Voters (prior version)
 Consumer Watchdog (prior version)
 Fair Political Practices Commission (prior version)
 Govern for California
 League of Women Voters of California
 Represent.us, Los Angeles-San Gabriel Valley Chapter (prior version)

Opposition

None on file.

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