

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

SB 328 (Dodd) – As Amended June 28, 2023

SENATE VOTE: 33-5

SUBJECT: Political Reform Act of 1974: contribution limits.

SUMMARY: Establishes default campaign contribution limits for county boards of education, school districts, community college districts, and special districts, at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, effective January 1, 2025. Permits a local jurisdiction to establish its own contribution limits which prevail over the default limits contained in this bill. Specifically, **this bill:**

- 1) Expands an existing law that imposes default contribution limits for elective county and city office such that it applies to *all* local elective offices, as follows:
 - a) Makes all local elective offices subject to an existing law that prohibits a person from making to a candidate for elective county or city office, and that prohibits a candidate for elective county or city office from accepting from a person, a contribution totaling more than the limit on contributions to candidates for state Senate and Assembly from persons other than small contributor committees and political party committees, as adjusted by the Fair Political Practices Commission (FPPC), as specified. The current limit under this provision is \$5,500 per contributor per election.
 - b) Permits *any* local government agency, by ordinance or resolution, to impose a limit on contributions to a candidate for local elective office that prevails over the limit otherwise imposed by this bill, and allows the local government to adopt enforcement standards for violations, which may include administrative, civil, or criminal penalties. Permits the limitation to be imposed by a local initiative measure if the local government agency is authorized to enact ordinances by initiative. Provides that the FPPC is not responsible for the administration or enforcement of such a local government ordinance or resolution. Provides that local contribution limits that are in effect on January 1, 2025, shall prevail over the default contribution limits imposed by this bill.
 - c) Prohibits a candidate for *any* elective state or local office, or a committee controlled by such a candidate, from making a contribution to any other candidate for elective office in an amount greater than the limit on contributions to candidates for state Senate and Assembly from persons other than small contributor committees and political party committees, as adjusted by the FPPC, as specified. Provides that this restriction does not apply in a jurisdiction in which the local government imposes its own limits on campaign contributions.
 - d) Makes conforming changes to various state laws related to contribution limits, including rules governing the transfer of campaign funds from one controlled committee to another controlled committee for the same candidate; the acceptance of campaign contributions for an election after that election has occurred; the carryover of contributions raised in connection with one election for an elective office to pay campaign expenditures incurred

in connection with a subsequent election to the same office; the acceptance of campaign contributions for a general election prior to the primary election; and personal loans made by a candidate to the candidate's campaign committee.

- e) Provides that the contribution limits in this bill do not apply to contributions made to oppose a recall against a local elected official, as specified.
- 2) Makes corresponding and technical changes.
- 3) Provides for this bill to become effective on January 1, 2025.

EXISTING LAW:

- 1) Permits a special district, school district, or community college district to limit campaign contributions in elections to district offices. (Education Code §§35177, 72029; Elections Code §10544)
- 2) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 3) Requires any local government agency that has enacted, enacts, amends, or repeals an ordinance or other provision of law affecting campaign contributions and expenditures to file a copy of that action with the FPPC. (Government Code §81009.5(a))
- 4) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively. (Government Code §81009.5(b))
- 5) Provides that nothing in the PRA shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with a specified provision of the PRA dealing with "member communications." (Government Code §§85312, 85703)
- 6) Prohibits a person, other than a small contributor committee or political party committee, from making any contribution totaling more than \$5,500 to any candidate for elective state office other than statewide elective office, and prohibits candidates from accepting a contribution that exceeds that amount. Requires the FPPC to adjust this limit in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index, and requires those adjustments to be rounded to the nearest \$100. (Government Code §§83124, 85301(a); Code of California Regulations, Title 2, §18545(a)(1))
- 7) Prohibits a person from making to a candidate for elective county or city office, and prohibits a candidate for such an office from accepting from a person, a contribution totaling more than the limit on contributions to candidates for state Senate and Assembly from persons

other than small contributor committees and political party committees, as adjusted by the FPPC. Permits a county or city, by ordinance or resolution, to impose a limit on contributions to a candidate for elective county or city office which prevails over this limit, and allows the county or city to adopt enforcement standards for violations, which may include administrative, civil, or criminal penalties. Permits this limit to be imposed by a local initiative measure. Provides that the FPPC is not responsible for the administration or enforcement of such a county or city ordinance or resolution. (Government Code §§85301(d), 85702.5)

FISCAL EFFECT: According to the Senate Appropriations Committee, the FPPC indicates that it would incur first-year costs of about \$1.5 million, and \$1.4 million annually thereafter, to implement the provisions of the bill (General Fund).

COMMENTS:

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

Too often, we're seeing eye-popping amounts donated to candidates for smaller community offices. These well-financed campaigns favor the wealthy at the exclusion of grassroots candidates. Placing reasonable limits on the money in these races will help ensure fairness in local elections while encouraging a more diverse field that is more reflective of our communities. No candidate for local office needs contributions larger than those for a Senate or Assembly district.

2) **History of Local Contribution Limits & Previous Legislation:** In 1988, voters approved Proposition 73, a campaign finance initiative that prohibited public funding of campaigns and established contribution limits for state and local elections, among other provisions. Under Proposition 73, contributions from a person to a candidate for state or local office were limited to \$1,000 per fiscal year, while political parties and certain political committees could give higher amounts.

Many of the provisions of Proposition 73, including the campaign contribution limits, were ultimately ruled unconstitutional by federal courts. Because Proposition 73 limited the amount that a contributor could give in each fiscal year, rather than limiting the amount that a contributor could give in each election, the courts found that the contribution limits discriminated in favor of incumbents, since incumbents were much more likely than challengers to fundraise in non-election years. State and local elections were conducted under the Proposition 73 contribution limits for most of the 1990 election cycle, though the limits were struck down for the last six weeks before the 1990 general election.

In 1996, California voters approved Proposition 208, which proposed significant changes to the PRA, including establishing new contribution limits for state and local elections. Proposition 208 prohibited any person other than a political party or a small contributor committee from making contributions of more than \$100 per election to candidates in small local districts (less than 100,000 residents); \$250 per election for Senate, Assembly, Board of Equalization and large local districts; and \$500 per election for statewide office. These limits were increased to \$250, \$500, and \$1,000, respectively, for candidates who agreed to abide by specified voluntary expenditure limits.

On January 6, 1998, the United States District Court for the Eastern District of California entered a preliminary injunction barring the enforcement of Proposition 208. The Legislature subsequently placed Proposition 34 on the November 2000 ballot through passage of SB 1223 (Burton), Chapter 102, Statutes of 2000. The proposition, which passed with 60.1% of the vote, revised state laws on political campaigns for state elective offices and ballot propositions, and repealed almost all of Proposition 208, which was still enjoined from enforcement.

While Proposition 34 established new campaign contribution limits for elections to *state* office, it did not contain contribution limits for elections to local office. The limits on contributions by individuals contained in Proposition 34 ranged from \$3,000 (for candidates for Assembly and Senate) to \$20,000 per election (for candidates for Governor), and are required to be adjusted for inflation every two years. For 2023 and 2024, these limits range from \$5,500 per election for candidates for Assembly and Senate to \$36,400 for candidates for Governor.

While local governments generally have the authority to adopt contribution limits for elections to local offices in their jurisdictions, until recently, state law did not impose limits on contributions to candidates for local office. In 2019, however, the Legislature approved and the Governor signed AB 571 (Mullin), Chapter 556, Statutes of 2019, which established default campaign contribution limits for county and city office at the same level as the limit on contributions from individuals to candidates for Senate and Assembly, beginning January 1, 2021. Those default limits are enforced by the FPPC. A county or city is free to establish its own contribution limits which prevail over the default limits in AB 571. If a county or city does so, however, those limits are not enforced by the FPPC, and the local jurisdiction is responsible for enforcement and administration of the limits.

While AB 571 applied only to counties and cities, earlier legislation by the same author sought to impose a similar policy for *all* local governments, including school districts, community college districts, and special districts. That legislation—AB 2523 (Mullin) of 2016 and AB 1089 (Mullin) of 2017—was approved by the Assembly Elections & Redistricting Committee (the predecessor to this committee), but both bills failed at other points in the legislative process.

- 3) **Local Campaign Ordinances:** Under existing law, local government agencies have the ability to adopt campaign ordinances that apply to elections within their jurisdictions, though the PRA imposes certain limited restrictions on those local ordinances. For instance, SB 726 (McCorquodale), Chapter 1456, Statutes of 1985, limited the ability of local jurisdictions to impose campaign filing requirements that differed from those in the PRA, while AB 1430 (Garrick), Chapter 708, Statutes of 2007, prohibits local governments from adopting rules governing member communications that are different than the rules that govern member communications at the state level.

Aside from these restrictions, however, local government agencies generally have a significant amount of latitude when developing local campaign finance ordinances that apply to elections in those agencies' jurisdictions. Any jurisdiction that adopts or amends a local campaign finance ordinance is required to file a copy of that ordinance with the FPPC, and the FPPC posts those ordinances on its website. The FPPC's website currently includes campaign finance ordinances from 26 counties, 183 cities, one school district, one

community college district, and one special district.

The campaign ordinances adopted by local governments in California vary significantly in terms of their scope. Some local ordinances are very limited, while others are more extensive. In some cases, the ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, temporal restrictions on when campaign funds may be raised, and voluntary public financing of local campaigns, among other provisions. In many cases, local campaign finance ordinances are enforced by the district attorney of the county or by the city attorney. In at least a few cases, however, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

Although it is possible that some school, community college, and special districts have adopted local ordinances or other laws affecting campaign contributions and expenditures and have failed to file copies of those policies with the FPPC as required by existing law, the fact that only three districts have filed such policies with the FPPC suggests that a substantial majority of those districts have not imposed campaign contribution limits for elections for district governing board members. (In some cases, however, contribution limits adopted by a city apply to candidates for seats on the governing board of a school or community college district that is wholly or partially located within that city.)

It is unclear how often candidates for school, community college, or special district governing boards in California receive campaign contributions that are larger than the \$5,500 limit that would be imposed by this bill. Nonetheless, some candidates for those boards in 2022 received campaign contributions that were considerably larger than the limit that is proposed by this bill. According to a September 3, 2022, article in the *San Bernardino Sun*, two candidates for the Chino Valley Unified School District school board received individual \$50,000 campaign contributions from the owners of a Southern California company. In Sacramento County, two candidates for the board of education at the June 2022 election received cumulative contributions of \$135,000 and more than \$82,000, respectively, from a political committee sponsored by charter school advocates, while three school board candidates at the November 2022 election received cumulative amounts ranging from \$48,000 to nearly \$78,000 in campaign contributions from a political committee sponsored by a labor union.

- 4) **Independent Expenditures and Self-Funded Candidates:** This bill would set default limits on campaign contributions for candidates running for all local elective offices. However, it does not restrict two other common sources of major campaign spending: independent expenditures and candidates contributing to their own campaigns. Courts have ruled that limiting spending on independent expenditures or on the amount that a candidate contributes to their own campaign would violate the rights of free speech and association.

When campaign contribution limits are put in place, it often leads to an increase in independent expenditures. For example, in the 2000 election cycle, state legislative elections in California were conducted without contribution limits, and the total spent on independent expenditures for all legislative races was less than \$500,000. By contrast, after contribution limits were put into place for legislative elections with the passage of Proposition 34, the next two election cycles saw more than \$8 million (in 2002) and more than \$15 million (in 2004) spent on independent expenditures in legislative races. In the 2022 election cycle,

independent expenditures in state legislative elections surpassed \$78 million.

In fact, the campaign activities of major contributors in local elections in 2022 suggest that they may spend more money on independent expenditures if direct campaign contributions are limited. For example, a political committee contributed more than \$215,000 in 2022 to two board of education candidates in a county without contribution limits also spent over \$480,000 on independent expenditures supporting two candidates for county boards of education in other counties where the candidates *were* subject to contribution limits.

Implementing campaign contribution limits could also give a further advantage to candidates who have the financial means to fund their own campaigns. A candidate who does not have significant personal wealth—and who must rely on campaign contributions received from other individuals to fund their campaign and to communicate with voters—may find it more difficult to raise the funds necessary to compete against a self-funded candidate if the amount of money that can be contributed by any single source is limited.

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

Allowing unlimited campaign contributions has a corrupting influence on local democracy, and contributes to voter cynicism about government. Whenever a candidate is financially dependent on just a handful of contributors there is a risk that they will value their contributors' interests over those of the people they serve. Moreover, requiring candidates to seek support in smaller amounts from a broader number of contributors has a democratizing effect, and can help the competitiveness of community-supported candidates who do not have access to wealthy patrons.

For these reasons, California Common Cause sponsored and strongly supported prior legislation that established default campaign contribution limits for city and county races... SB 328, beginning January 1, 2025, extends that approach to local jurisdictions currently without limits — school districts, community college districts, and other special district elections — thus putting reasonable anti-corruption limitations in place while respecting local governments' autonomy to set contribution limits more precisely tailored to the needs of their communities, whether lower or higher than the default cap.

- 6) **Arguments in Opposition:** In opposition to a prior version of this bill, the California Federation of Teachers wrote:

Current law provides school board races may have contribution limits. In competitive elections where there are no contribution limits and a robust reporting system, the disclosure of contributions is more transparent and likely can be located in one location. In elections where there are contribution limits, the disclosure of contributions must be sought through multiple committees with often obscure names.

This legislation would create limits for local school district, community college, and other special district elections. As such, CFT believes that this would

inadvertently reduce disclosure and not reduce special interest money in elections...

Senate Bill 328 would push every local race into the darkness of election cycles dominated by well-funded independent campaigns rather than allowing the public coordination between candidates and their support groups. Under SB 328, the well-funded voice of [independent expenditure (IE)] committees overpower the ability of candidates and supporters to work together. Local races are meant to encourage local action, with local people, and with transparency and accountability. When local races become dominated by IEs, these races become yet another casualty to obscure independent committees funded by the super-wealthy and no longer represent the true participation of traditional local campaigns.

- 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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (prior version)
Fair Political Practices Commission (prior version)
League of Women Voters of California

Opposition

California Federation of Teachers, AFL-CIO (prior version)

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