
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: SB 328 **Hearing Date:** 3/21/23
Author: Dodd
Version: 2/7/23
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: contribution limits

DIGEST

This bill applies the same contribution limitations for candidates seeking city and county elective offices to candidates seeking all other local elective offices.

ANALYSIS

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 of 1974 (PRA).
- 2) Permits a special district, school district, or community college district to limit campaign contributions in elections to district offices.
- 3) Prohibits a person from making to a candidate for elective county or city office, and 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 FPPC, as specified. These limits became effective January 1, 2021.
- 4) 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 the limit otherwise imposed by this bill, and allows the county or city 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. Provides that the FPPC is not responsible for the administration or enforcement of such a county or city ordinance or resolution. Provides that local contribution limits that are in effect on January 1, 2021, shall prevail over the default contribution limits imposed by this bill.
- 5) Prohibits a candidate for any elective state, county, or city office, or a committee controlled by such a candidate, from making a contribution to any other candidate for elective state, county, or city 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, beginning January 1, 2021. A similar prohibition currently applies to contributions made by candidates for elective state office (or their controlled committees) to other candidates for elective state office. Provides that this restriction does not apply in a jurisdiction in which the county or city imposes its own limits on campaign contributions.

- 6) Provides that the contribution limits for a county or city do not apply to contributions made to oppose a recall against a county or city elected official if the jurisdiction imposed their own contribution limit, as specified.
- 7) 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 the action with the FPPC.
- 8) Allows the governing body of any local government agency with a population of three million to contract with the FPPC for the administration, implementation, and enforcement of a local campaign finance or government ethics law, as specified.
- 9) 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.

This bill:

- 1) Applies the same contribution limitations for candidates seeking city and county elective offices to candidates seeking all other local elective offices.
- 2) Provides that a local government may, by ordinance or resolution, impose a limit on contributions to a candidate for elective local office which prevails over the limit. Requires that this contribution limit must be in effect on January 1, 2021.
- 3) Provides that the contribution limits for do not apply to all local government contributions made to oppose a recall against a county or city elected official if the jurisdiction imposed their own contribution limit, as specified. Provides that this restriction does not apply in a jurisdiction in which the county or city imposes its own limits on campaign contributions.
- 4) Provides that a prohibition for a candidate for any elective state, county, or city office, or a committee controlled by such a candidate, from making a contribution to any other candidate for elective state, county, or city office in an amount greater than the limit on contributions to candidates does not apply in a jurisdiction in which the county or city imposes its own limits on campaign contributions, as specified.
- 5) Makes various corresponding and technical changes.

BACKGROUND

History of Local Contribution Limits. 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. Since 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 they were much more likely than challengers to fundraise in non-election years.

The federal case ended in 1993 when the United States Supreme Court denied certiorari in *Service Employees International Union v. FPPC*. The only provisions of Proposition 73 to survive legal challenge were contribution limits for special elections (those limits were on a per-election basis, rather than a per-year basis), limits on gifts and honoraria to state and local elected officials, restrictions on certain mass mailings by officeholders, and a prohibition on the use of public money for campaign purposes. 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.

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.

However, aside from these restrictions, local government agencies generally have had 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 23 counties, 160 cities, and three special districts.

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 much more extensive. In some cases, the ordinances include campaign contribution limits, reporting and disclosure requirements that supplement the requirements of the PRA, 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. However, in at least a few cases, local jurisdictions have set up independent boards or commissions to enforce the local campaign finance laws.

According to a 2016 report prepared by California Common Cause, approximately 23 percent of cities and 28 percent of counties in the state have adopted local campaign contribution limits. Of the 124 local jurisdictions identified in the report as having adopted local campaign contribution limits, only one (Alameda County) has a limit on campaign contributions from individuals that is higher than the \$4,700 per election limit that would be imposed by this bill. More than 90 percent of the cities that have adopted contribution limits have limits of \$1,000 or less. About half of the counties that adopted contribution limits have limits of \$1,000 or less.

Recent Legislation. In 2019, the Legislature passed and Governor Newsom signed AB 571 (Mullin), Chapter 556, Statutes of 2019. AB 571 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, effective January 1, 2021. AB 571 also permitted a county or city to establish its own contribution limits, which would prevail over these default limits. This bill would expand these provisions to local offices, such as school boards and special districts.

COMMENTS

- 1) 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 and people of color. 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.

The author's office also noted that local elections for school boards and special districts have historically received very little support or attention from political parties or political action committees, the only major exception being employee groups. This has dramatically changed in the last few years. From national organizations to local efforts, this local government has become the new battleground in the culture wars that often play out in our political system. These elections have also historically received very little, if any, media attention. This dynamic continues and had produced a potentially dangerous combination: massive outside spending with very little public awareness.

- 2) Suggested Amendments. There are three suggested amendments for the committee to consider.
- a) Local Government Agency. The PRA defines a "local government agency" as a county, city, or district of any kind including school district, or any other local or regional subdivision, or any department, division, bureau, office, board, commission, or other agency of the foregoing. This bill's language refers to a "local government" instead of a "local government agency." To avoid any potential confusion, committee staff recommends the bill be amended to replace "local government" with "local government agency."
 - b) Flexibility for Newly Affected Local Agencies. Pursuant to AB 571, a local government was provided the ability to impose a contribution limit that differed from the state contribution limit. That section of the bill, Government Code 85702.5, became operative on January 1, 2021. This was one year after AB 571 would have taken effect.

This bill provides that a local government's limit on contributions to a candidate for elective local office is the contribution limit in effect on January 1, 2021. If no action occurred, then the contribution limit defaults to the state contribution limit. In other words, all elective local governments would have needed to establish and put into effect a contribution limit by January 1, 2021, to differ from the established state contribution limits. As a result, this would not provide any flexibility of the newly affected elective local agencies to consider their own contribution limits unless they had done so prior to 2021.

Committee staff recommends that the bill be amended to provide time to allow local governments affected by the provisions of this bill to have the ability to establish their own contribution limits in a similar manner that was provided for counties and cities. Committee staff recommends that the deadline for non-county or municipal governments be January 1, 2025.
 - c) Effective Date. When AB 571 was being implemented, questions were raised relating to whether contributions received before the bill's effective date would

count towards the contribution limits imposed by the bill. This topic was considered by the FPPC. The FPPC was asked whether contributions made prior to AB 571's effective date, January 1, 2021, for an election held after January 1, 2021, are aggregated with any contribution from the same contributor to the same recipient made after the effective date. The FPPC concluded that contributions made prior to AB 571's effective date for an election held after that date are not aggregated with any contribution from the same contributor to the same recipient made after the legislation's effective date.

To avoid a similar scenario should the bill be chaptered, committee staff recommends the bill specify that the provisions of the bill apply to contributions made to candidates for school districts, community college districts, or other special districts on or after the bill's operative date.

- 3) Argument in Support. In a letter supporting SB 328, the League of Woman Voters for California, stated, in part, the following:

We have observed high levels of contributions in school board and other district elections. The rationale behind limiting contributions to city and county election candidates is equally applicable to district contests.

Reasonable limits on campaign contributions should be established to reduce undue influence by special interests on the political process. Very large contributions can damage the public's trust in the democratic process by deepening the perception or the possibility that candidates will be more responsive to their financial backers than to their constituents. SB 328 would establish a realistic default limit on contributions, would not affect jurisdictions that have adopted their own local contribution limits, and would not prevent a local government from adopting a higher or lower limit.

- 4) Double-Referral. If approved by this committee, this bill will be re-referred to the Senate Committee on Education for further consideration.

RELATED/PRIOR LEGISLATION

AB 571 (Mullin), Chapter 556, Statutes of 2019, 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, effective January 1, 2021. AB 571 also permitted a county or city to establish its own contribution limits, which would prevail over these default limits, as specified.

AB 1089 (Mullin) of 2017 would have imposed default contribution limits for all levels of local government (including school districts and special districts). AB 1089 was held on the Assembly Appropriations Committee's suspense file. Additionally, the final version of AB 2523 (Mullin) of 2016 was substantially similar to AB 1089. AB 2523 failed passage on the Senate Floor on a 25-14 vote (27 votes were required for passage).

AB 2880 (Harper), Chapter 394, Statutes of 2018, authorized the FPPC to administer and enforce a local campaign finance ordinance or government ethics law upon mutual

agreement between the FPPC and a local agency with a population of less than three million people, as specified. As a result of AB 2880, any local jurisdiction that wants to establish campaign contribution limits but that does not want to create its own mechanism for enforcement of those limits has the option of contracting with the FPPC (subject to the agreement of the FPPC) for that purpose.

POSITIONS

Sponsor: Author

Support: League of Woman Voters of California

Oppose: None Received

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