SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS

Senator Catherine Blakespear, Chair

2023 - 2024 Regular

Bill No:	SB 948	**Hearing Date:**	4/30/24
Author:	Limón		
Version:	4/23/24		
Urgency:	No	**Fiscal:**	No
Consultant:	Scott Matsumoto		

Subject: Political Reform Act of 1974: contribution limitations

DIGEST

This bill clarifies and provides a procedure for transferring contribution funds if a candidate does not qualify for a primary or special election and for candidates if an elected at a primary election instead of at a general election, as specified.

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 candidate for elective state, county, or city office to carry over contributions raised in connection with one election for elective state, county, or city office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state, county, or city office. Provides that this does not apply in a jurisdiction in which the county or city imposes a limit on contributions, as specified.

3) Permits a candidate for elective state, county, or city office to raise contributions for a general election before the primary election, and for a special general election before a special primary election, for the same elective state, county, or city office if the candidate sets aside these contributions and uses these contributions for the general election or special general election. Provides that if the candidate for elective state, county, or city office is defeated in the primary election or special primary election, or otherwise withdraws from the general election or special general election, the general election or special general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election or special general election contributions. Permits candidates for elective state, county, or city office may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections, as specified. Provides that this does not apply in a jurisdiction in which the county or city imposes a limit on contributions, as specified.

This bill:

1) Provides that if a candidate receives a majority of the votes cast for an office at a primary election, so that the candidate is elected to the office without advancing to the general election, both of the following apply:

   a) The remaining campaign funds raised for the primary election may be carried over to a committee for any subsequent election to the same office without attributing funds to specific contributors.

   b) Funds raised for the general election may be transferred to a committee for any subsequent election to the same office, but shall be attributed to specific contributors as provided under current law, as specified.

2) Provides that a candidate who does not file a declaration of candidacy to qualify for a primary election or special primary election is not "defeated in the primary election or special primary election" and does not "otherwise withdraw from the general election or special general election" is not be required to refund contributions, as specified.

3) Provides that a candidate who does not file a declaration of candidacy to qualify for a primary election or special primary election may transfer funds to a committee established for the same or a different office subject to the attribution rules pursuant to existing law.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

Proposition 34. At the November 7, 2000 statewide general election, voters approved Proposition 34. Proposition 34, among other provisions, established limits on campaign contributions to candidates.

Government Code Sections 85306 and 85317, originally enacted as a part of Proposition 34, set forth parameters within which candidates are permitted to transfer and carryover funds from one committee to another. Section 85306 permits candidates to "transfer campaign funds from one controlled committee to a controlled committee for elective state, county, or city office of the same candidate." Additionally, Section 85306 requires candidates to attribute transferred contributions to specified contributors using either a "last in, first out" or "first in, first out" accounting method. The rule requiring attribution of contributions is intended to prevent circumvention of contribution limits through the transfer of campaign funds from one committee to another, in addition to providing disclosure of contributors.

Section 85317 provides: "Notwithstanding subdivision (a) of Section 85306, a candidate for elective state, county, or city elective office may carry over contributions raised in connection with one election for elective state, county, or city office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state, county, or city office." The record of Proposition 34 did not provide any insight into the specific legislative intent behind the exception in Section 85317. This was an issue the FPPC considered when adopting regulations. The FPPC considered multiple options with different definitions of a subsequent election for the same office prior to enacting Regulation 18537.1 in 2002.

"Subsequent Elections" and Regulation 18537.1. Current law provides an exception to the general rule requiring that contributions be attributed to specific contributors when those contributions are transferred between committees, meaning the transferred contribution counts (e.g., is "attributed") towards the relevant contribution limit for that candidate. Contributions transferred to a committee formed for a "subsequent election" do not have to be attributed, meaning they do not count for purposes the contribution limits for that office, nor does the committee receiving the funds have to identify any of the original contributors. The scope of that exception was a matter of significant debate when the FPPC originally adopted its regulatory definition of "subsequent election" more than twenty years ago due to concerns about the potential use of the exception in Section 85317 to circumvent contribution limits.

Current FPPC Regulation 18537.1(c) defines subsequent election for the same office as (1) the election to the next term of office immediately following the election/term of office for which the funds were raised (2) the general election, which is subsequent to and for the same term of office as the primary election for which the funds were raised; or (3) the special general election, which is subsequent to and for the same term of office as the special primary election for which the funds were raised.

Legislative Response. In late 2023 and early 2024, the FPPC began considering the adoption of amendments to two regulations addressing two distinct scenarios. First, an amendment concerning the refunding of contributions when a candidate chooses to withdraw from the primary election. Second, an amendment concerning the disposition of general election contributions when a candidate receives a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election.

Senator Limón and Assemblymember Zbur submitted a letter stating that it was their belief that the issues relating to subsequent elections and transfers should be resolved through the legislative process. The FPPC has postponed their regulatory amendment process for these two items to a later date to see how the legislative process relating to these proposals play out.

COMMENTS

According to the author: SB 948 codifies current law allowing a candidate - who decides before the primary - to run for a different office to transfer primary and general election contributions to a committee established for the different office, as long as certain safeguards are met. The transferred funds would have to be attributed to the original donor and contribution limits for the new office would have to be adhered to. This bill

does not establish a new process, continues to maintain transparency for campaign contributions, and simply codifies advice given by the FPPC many years ago.

The bill also allows candidates who win outright in a primary election to transfer funds raised for the general election to a committee for a subsequent election to the same office. These contributions shall be attributed to the specific donors.

RELATED/PRIOR LEGISLATION

SB 1223 (Burton), Chapter 102, Statutes of 2000, among other provisions and subject to voter approval, permitted a candidate for state elective office to carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office. SB 1223 also permitted a candidate for state elective office to carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office. SB 1223 was seen as Proposition 34 at the November 7, 2000 statewide general election where it was approved by voters.

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

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SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Senator Catherine Blakespear, Chair
2023 - 2024 Regular

Bill No:	SB 1243	**Hearing Date:**	4/30/24
Author:	Dodd		
Version:	3/18/24		
Urgency:	No	**Fiscal:**	No
Consultant:	Scott Matsumoto		

Subject: Campaign contributions: agency officers

DIGEST

This bill makes various changes to time periods, monetary thresholds, deadlines, and definitions in the Levine Act, as specified.

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) Defines the following terms and phrases:

   a) "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.

   b) "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. Provides a person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

   c) "Agency" to mean an any state or local government agency, except that it does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, or constitutional officers. The definition applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

   d) "Officer" to mean any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

e) "License, permit, or other entitlement for use" to mean all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

f) "Contribution" to mean and includes contributions to candidates and committees in federal, state, or local elections.

3) Provides that a public official has a financial interest in a decision if it reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any other of the following:

a) Any business entity in which the public official has a direct or indirect investment worth $2,000 or more.

b) Any real property in which the public official has a direct or indirect interest worth $2,000 or more.

4) Prohibits, while a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency from accepting, soliciting, or directing a contribution of more than $250 from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest, as specified. Provides that this prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer's own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

5) Requires each officer of the agency who received a contribution within the preceding 12 months in an amount of more than $250 from a party or from any participant to disclose that fact on the record of the proceeding prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency. Prohibits an officer of an agency from making, participating in making, or in any way attempting to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than $250 within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as specified.

6) Permits an officer to participate in the proceeding if an officer receives a contribution which would otherwise require disqualification and returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use.

7) Permits an officer to cure a violation by returning the contribution, or the portion of the contribution in excess of $250, within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest, if an officer accepts, solicits, or directs a

contribution of more than $250 during the 12 months after the date a final decision is rendered in the proceeding

8) Provides an officer may cure a violation only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

9) Requires an officer's controlled committee, or the officer if no controlled committee exists, to maintain records of curing any violation, as specified.

10) 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 in an amount of more than $250 made within the preceding 12 months by the party or the party's agent.

11) Prohibits a party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant, or agent to a participant, in the proceeding from making a contribution of more than $250 to any 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.

12) Provides that when a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to specified disclosure and prohibition requirements.

This bill:

1) Provides that a person is not a "participant" if their financial interest in the decision results solely from an increase or decrease in membership dues.

2) Specifies that the periodic review on contracts is included under a definition of "license, permit, or other entitlement for use."

3) Raises the threshold for contributions regulated by the Levine Act from $250 to $1,000.

4) Modifies the prohibition on contributions made during and after a proceeding to the nine months before and after a final decision in a proceeding is made, as specified.

5) Provides that in determining whether a contribution has exceeded $1,000, the contributions of an agent shall not be aggregated with contributions from a party or participant.

6) Exempts housing development projects that conform with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

7) Makes technical and corresponding changes.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

The Levine Act. In 1982, the Legislature passed and Governor Brown signed AB 1040 (Levine), Chapter 1049, Statutes of 1982. AB 1040, also known as the Levine Act, prohibited an elected or appointed officer, alternate, or candidate for office who serves on a specific quasi-judicial board or commission from accepting, soliciting, or directing a contribution of $250 or more from any person or their agent who has an application for a license, permit, or other entitlement for use pending before the body and for three months following the date a decision is rendered on the application or until the end of the officer's term, whichever is longer, or from any person, or their agent, who actively opposes the application. Legislative bodies, such as city councils, county boards of supervisors, and the Legislature were excluded from these provisions unless the officer served on a specific board or commission. Additionally, constitutional officers who serve on a board or commission as a requirement of their constitutional office were also not subject to these provisions.

AB 1040 was in response to reports in the *Los Angeles Times* that several coastal commissioners had solicited and received large campaign contributions from persons who had applications pending before them. One of the purposes of the Levine Act was to assure that appointed members of boards or commissions were not influenced by the receipt of campaign contributions from the individuals and parties appearing before them, and that officials were not able to use their position of authority to unduly influence applicants to make contributions to their campaigns.

Since the chaptering of AB 1040, a number of bills were enacted to help clarify the prohibition and terminology following the initial implementation. This was seen in AB 2992 (Waters), Chapter 1681, Statutes of 1984, when many of the current prohibitions and changes took place, such as a clarification that competitively bid, labor, or personal employment contracts were excluded from the prohibition and not considered part of the meaning for "license, permit, or other entitlement for use."

SB 1439 (Glazer). In 2022, the Legislature passed and Governor Newsom signed SB 1439 (Glazer), Chapter 848, Statutes of 2022. SB 1439 modified and added to the Levine Act. First, the legislation removed an exemption for local government agencies whose members are directly elected by the voters. Following the bill's enactment, local government officials were required to follow the existing provisions that applied to agencies with membership that was not directly elected by voters and only to certain proceedings involving licenses, permits, or other entitlements of use unless certain conditions were met.

Second, SB 1439 also extended, 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.

Finally, SB 1439 provided a process to cure a violation should it occur and if certain conditions are met. Specifically, the bill permitted 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. The 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.

What is an Agent? Existing law makes multiple references to a party's and a participant's agent. While it is not defined in statute, as it relates to the Levine Act, the FPPC has defined it in regulations. Specifically, in FPPC regulation 18438.3, a person is the "agent" of a party to, or a participant in, a pending proceeding involving a license, permit or other entitlement for use 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. Additionally, 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."

The regulation provides for what "communication with the governmental agency for the purpose of influencing the proceeding" does not include. It does not include 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. Furthermore, it also does not include 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 the work is performed pursuant to the person's profession and if 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.

Financial Impact on an Organization's Members. Following the chaptering of SB 1439, the FPPC provided information, advice, and guidance. This includes providing guidance for parties, participants, and agents as it relates to Government Code Section 84308.

As it relates to SB 1243, one of the questions in the FPPC's guide for parties, participants, and agents relates to a union representative providing public comment and indicates that the governmental decision will have a financial impact on its members. Specifically, whether a union is considered a "participant" if a union representative provides public comment in support or in opposition of a governmental decision and indicates the decision will have a financial impact on its members. The FPPC provided the following response:

> *If a union representative provides public comment in support or in opposition of a governmental decision and indicates the decision will have a financial impact on its members, is the union considered a "participant?" To be a "participant," a person or entity (including a non-profit organization) must have a financial interest in the*

proceeding. A non-profit organization such as a union does not necessarily have a financial interest in a proceeding solely because it would be beneficial to the organization's members. Rather, the proceeding would need to have a reasonably foreseeable, material financial effect on the organization itself. The relevant standards for determining a reasonably foreseeable, material financial effect on a nonprofit organization are:

- *Change in Receipts: The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than: $1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than $10,000.*

- *Change in Expenses: The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: $250,000; or one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than $2,500.*

- *Impact on Real Property: The official knows or has reason to know that the organization has an interest in real property and: the property is a named party in, or the subject of, the decision; or there is clear and convincing evidence the decision would have a substantial effect on the property.*

Accordingly, unless it is reasonably foreseeable that a non-profit organization would experience any of the above financial effects (e.g., the union's receipt of union dues increases by $1,000,000 as a result of the increased union wages caused by a government contract), the non-profit organization will not qualify as a "participant" and an officer is not prohibited from receiving more than $250 from the organization advocating for or against a particular decision in an entitlement proceeding.

SB 1243 specifies that a person is not a "participant" if their financial interest in the decision results solely from an increase or decrease in membership dues.

When is a Proceeding "Pending?" Under existing law, it is prohibited, while a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency from accepting, soliciting, or directing a contribution of more than $250 from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest. SB 1243 specifies that many of the disclosures and limitations revolves around the nine months before date of a final decision.

The FPPC provided guidance on what is currently considered "pending" as it relates to a proceeding. For an officer, an entitlement for use proceeding has commenced and is considered "pending" only when:

- The decision is before individual for their consideration. If the individual 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

- The individual knows or have reason to know the proceeding is before the jurisdiction of the individual's agency for its decision or other action, and it is reasonably foreseeable the decision will come before the individual in their decision-making capacity.

For a party or a party's agent, or a participant or participant's agent, an entitlement for use proceeding is "pending" when it is before the jurisdiction of the agency for its decision or other action. In other words, for a party and a party's agent, an entitlement for use proceeding is considered pending the moment the proceeding is initiated, most often triggered by the party's filing of an application with the agency.

Recent Litigation. Following the enactment of SB 1439, the Family Business Association of California, the California Restaurant Association, the California Retailers Association, the California Building Industry Association, the California Business Properties Association, the California Business Roundtable, the Sacramento Regional Builders Exchange, the California Manufacturers and Technology Association, Garrett Gatewood (Councilmember for the City of Rancho Cordova), and Pat Hume (Supervisor for Sacramento County) collectively pursued litigation and brought a motion for judgment on the pleadings directed to the FPPC and the FPPC's Chair, Richard Miadich. (*Family Business Association of California vs. Fair Political Practices Commission; case number: 34-2023-00335169-CU-MC-GDS*)

The plaintiffs sought injunctive and declaratory relief by seeking to have SB 1439 declared unconstitutional under the California Constitution and the United States Constitution. In the end, the court ruled that SB 1439 does not violate the United States Constitution or the California Constitution. The ruling was not appealed by the plaintiffs.

COMMENTS

1) According to the author: SB 1243 amends the Levine Act to provide a workable, transparent process for addressing perceived conflicts of interest. The existing law has presented implementation problems, has had a chilling effect on political participation and unintentionally promotes dark money independent expenditures which are less transparent to the public.

2) Furthering the Purposes of the PRA. SB 1243 amends the Levine Act and the additional provisions provided by SB 1439. By raising the monetary threshold, changing the cure period, modifying the time periods, and providing additional exceptions to the provisions of the Levine Act, it is not illogical for an individual to ponder whether these changes furthers the purposes of the PRA. Amendments to the PRA done through legislation are only permissible if it furthers the purposes of the PRA. This committee should consider whether the provisions of the bill furthers the purposes of the PRA.

3) Contribution Threshold. Under the Levine Act, the contribution threshold that can trigger disqualification is $250. This has remained relatively the same since the original Levine Act was chaptered. The only change made was pursuant to SB 491 (Marks), Chapter 764, Statutes of 1989, and changed the threshold from contributions of $250 or more to contributions of more than $250. According to an

inflation calculator operated by the federal Bureau of Labor Statistics, when adjusted for inflation, $250 in 1982 has approximately the same purchasing power as about $800 today.

SB 1243 raises the contribution thresholds of the Levine Act to $1,000. This would be four times the current contribution threshold. The committee should consider whether the $1,000 threshold is appropriate or if the threshold should be higher or lower than $1,000.

4) Periodic Review of Contracts. Under the definition of a "license, permit, or other entitlement for use," SB 1243 includes the periodic review of contracts. This would be considered a contract under existing law and subject to the provisions of the Levine Act. However, according to the author, the periodic review of contracts was intended to be included with the other exemptions (i.e. competitively bid, labor, or personal employment contracts) for what is considered a "license, permit, or other entitlement for use." That being said, the committee should consider whether the periodic review of contracts should be exempted, whether the periodic review of contracts is appropriate, and whether the periodic review should be exempted but narrowed, such as to the periodic review of development agreements.

5) Before a Final Decision? Under existing law, while a proceeding involving a license, permit, or other entitlement for use *is pending*, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than $250 from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest.

SB 1243 changes the contribution threshold and the time period. In other words, *beginning nine months before the date a final decision is rendered* for a license, permit, or other entitlement for use, and for nine months following the date a final decision is rendered in the proceeding, an officer of an agency would be prohibited from accepting, soliciting, or directing a contribution of more than $1,000 from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest.

One issue that arises is that a final decision will not be known until a final decision is actually made a governing body. When a party files for a license, permit, or other entitlement for use it is unknown when the final decision will eventually occur. This has the potential to create confusion because the date of a final decision on a matter could be a moving date. Being able to look back nine months from an unknown or moveable date would be difficult to anybody to track.

When something is pending as it pertains to the Levine Act (described in Background), there is a more definite and fixed date. The committee should consider the ramifications how the time periods before a proceeding are calculated.

6) Cure Period. Under existing law, if an officer accepts, solicits, or directs a contribution over the contribution limit prescribed by the Levine Act 12 months after the date a final decision is rendered, the officer has 14 days to cure the violation by returning the contribution, or the portion of the contribution in excess of the

contribution limit. SB 1243 extends that period to 30 days. The committee should consider whether the 30 days is the appropriate amount of time for an officer to cure a violation.

7) Aggregation and Agents. SB 1243 provides that when determining whether a contribution has exceeded $1,000, the contributions of an agent shall not be aggregated with contributions from a party or participant. An agent represents a party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding. By allowing a party or participant as well as their agent(s) to all contribute to an elected official making a decision on their pending matter, it has the potential to inject additional contributions from a party or participant through their agents. The committee should consider whether this is appropriate and acceptable approach or if another approach is needed.

8) Is a Uniform Approach Needed? Under existing law, a "participant" is a person who is not the applicant or the subject of a proceeding 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. Current law also provides a person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency. SB 1243 specifies that a person is not a "participant" if their financial interest in the decision results solely from an increase or decrease in membership dues. This could potentially apply to any organization that collects membership dues, such as a local club, gym, civic organization, chamber of commerce, union, store, etc. However, participants not associated with a membership organization would not be included under the proposed change.

   Additionally, SB 1243 exempts housing development projects that conform with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. These housing development projects are exempted from the provisions of the Levine Act. Any other projects outside of these housing development projects would not be exempt.

   The committee should consider whether these exemptions should be made. If the committee feels exemptions should be made, then the committee should consider whether exemptions should be done in a uniform way to ensure that one interest does not have an advantage over another interest.

9) Argument in Support. In a letter supporting SB 1243, a coalition business and building industry organizations stated, in part, the following:

   SB 1243 is a measure designed to resolve some confusion and unreasonable applications of Government Code Section 84308 related to campaign contributions to local elected officials.

   Recent overreaching and overly broad changes to Government Code Section 84308 have resulted in a de facto prohibition on contributions to candidates for local elected officials. Applicants for a permit, license or land use entitlement are

not willing to risk recusal of a local official in determining the outcome of much needed housing, particularly given the track record that contributions are not having an impact on decision-making.

[...]

Most importantly, we are concerned that, because of this de facto prohibition on contributions to candidates for local office, only very wealthy people who can finance their own campaigns will run for local office. That will not yield elected officials who are balanced in their views, nor will they be representative of the people. SB 1243 takes a step in the direction of correcting this result by the combination of all of its amendments to Section 84308 in the bill.

10) Argument in Opposition. In a letter opposing SB 1243, California Common Cause stated, in part, the following:

While California Common Cause is committed to working with local governments and interested parties on good faith reasonable attempts to improve implementation and compliance with the law, SB 1243 contains many provisions that would reopen the door to corruption and the appearance of corruption rather than reasonably improving implementation. Among the many concerning provisions of the bill are the following:

- *SB 1243 exempts housing developments from the disclosure and contribution limitation rules which apply to every other party with a contract, license, or permit before the local elected officials, allowing for undue influence by wealthy developers. […]*
- *SB 1243 modifies the time period in which campaign contributions are limited to allow for large contributions while a decision is currently pending before the local government. […]*
- *SB 1243 eliminates long-standing practices on aggregating campaign contributions directly from a party and from their agents to determine whether certain thresholds are met, opening the door for a gray area of campaign money laundering. […]*
- *SB 1243 does not further the purposes of the PRA, which is legally required for any legislation amending the PRA.*

RELATED/PRIOR LEGISLATION

SB 1181 (Glazer) of 2024 requires a notice on agendas to include disclosure requirements and contribution limitations pursuant to the Levine Act. SB 1181 is pending consideration in the Committee on Appropriations.

AB 2911 (McKinnor) of 2024 amends the Levine Act to raise the contribution threshold for contributions to $1,500.

SB 1439 (Glazer), Chapter 848, Statutes of 2022, applied existing campaign contribution prohibitions for state and local agencies and applied it to local elected agencies, such as city councils and boards of supervisors, and expanded the timeframe

prohibiting specific contributions following an official's action from three months to 12 months, as specified.

AB 1728 (C. Garcia) of 2014 would have made 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. AB 1728 was vetoed by Governor Brown who stated in his veto message, "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."

AB 1241 (Norby) of 2011 would have exempted officials who are directly elected to an agency from the Levine 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 and Constitutional Amendments.

SB 491 (Marks), Chapter 764, Statutes of 1989, and changed the Levine Act's threshold from contributions of $250 or more to contributions of more than $250.

AB 2992 (Waters), Chapter 1681, Statutes of 1984, clarified when many of the current prohibitions and changes took place, such as a clarification of the definitions of the terms used in statute. For example, AB 2992 clarified that competitively bid, labor, or personal employment contracts were excluded from the prohibition and not considered part of the meaning for "license, permit, or other entitlement for use."

AB 1040 (Levine), Chapter 1049, Statutes of 1982, also known as the Levine Act, prohibited an elected or appointed officer, alternate, or candidate for office who serves on a specific quasi-judicial board or commission from accepting, soliciting, or directing a contribution of $250 or more from any person or their agent who has an application for a license, permit, or other entitlement for use pending before the body and for three months following the date a decision is rendered on the application or until the end of the officer's term, whichever is longer, or from any person, or their agent, who actively opposes the application.

POSITIONS

Sponsor: Author

Support: BOMA California
Building Industry Association of the Greater Valley
Building Industry Association of San Diego County
California Apartment Association
California Builders Alliance
California Building Industry Association

California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Labor Federation
California Retailers Association
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters
County of Los Angeles
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Family Business Association of California
Home Builders Association of Kern County
Home Builders Association of the Central Coast
League of California Cities
Lincoln Area Chamber of Commerce
NAIOP California
North State Building Industry Association
Rancho Cordova Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Regional Builders Exchange
San Francisco City Attorney's Office
Shingle Springs Cameron Park Chamber of Commerce
State Building and Construction Trades Council of California
Western States Council of Sheet Metal Workers
Yuba-Sutter Chamber of Commerce

Oppose: California Clean Money Campaign
California Common Cause
675 individuals

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SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS

Senator Catherine Blakespear, Chair

2023 - 2024 Regular

Bill No:	SB 1170	**Hearing Date:**	4/30/24
Author:	Menjivar		
Version:	2/14/24		
Urgency:	No	**Fiscal:**	No
Consultant:	Scott Matsumoto		

Subject: Political Reform Act of 1974: campaign funds

DIGEST

This bill permits campaigns funds to be for reasonable and necessary mental healthcare expenses to address mental health issues that arise during a campaign, as specified.

ANALYSIS

Existing law:

1) Establishes 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) Requires an expenditure of campaign funds to be related to a political, legislative or governmental purpose, as specified.

3) Prohibits campaign funds, among other prohibitions, from being used to pay health-related expenses for a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or members of their households. Provides that "health-related expenses" includes, but is not limited to, examinations by physicians, dentists, psychiatrists, psychologists, or counselors and expenses for medications, treatments, medical equipment, hospitalization, health club dues, and special dietary foods. Provides that campaign funds may be used to pay employer costs of health care benefits of a bona fide employee or independent contractor of the committee.

4) Provides that the PRA may be amended to further its purposes by statute if the measure is passed in each house by a two-thirds vote and signed by the Governor, as specified. Provides that the PRA may be amended or repealed when approved by voters.

This bill:

1) Permits, from the date upon which a candidate committee is established to the date that the election results are certified, campaign funds to be used to pay or reimburse a non-incumbent candidate for reasonable and necessary mental healthcare expenses to address mental health issues that arise during a campaign or have

been adversely impacted by campaign activities if the candidate does not have health insurance or has been denied coverage for these mental healthcare expenses by their health insurance.

2) Requires campaign funds utilized for mental healthcare expenses to be reported and such disclosures must note the underlying campaign-related circumstances or events that have given rise to the need for mental health expenses. Provides that "mental healthcare expenses" refers to expenses for services including therapy, psychological, or psychiatric counseling services, provided in a group or private setting, either virtually or in person, by a professional licensed by the California Board of Behavioral Sciences, or an associate accruing the house for such a license, to address mental health issues.

3) Makes technical and corresponding changes.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

Use of Campaign Funds. The PRA strictly regulates the use of campaign funds by candidates, elected officials, and others who control the expenditure of those funds. Existing law generally requires expenditures of campaign funds to be either reasonably related to a political, legislative, or governmental purpose. Any expenditure of campaign funds that confers a substantial personal benefit on anyone with authority to approve the expenditure of campaign funds needs to be directly related to a political, legislative, or governmental purpose of the committee. A substantial personal benefit means an expenditure of campaign funds which results in a direct personal benefit with a value of more than $200.

Recent Research. In August of 2023, California Women's List analyzed the mental health impacts of hostility directed at candidates pursuing federal, state, or local offices in California. The study received 103 responses from people of various gender identities who ran for elected office in California between 2016 and 2022.

According to the study, approximately 80 percent of all respondents reported experiencing new mental health or wellness-related symptoms that stemmed from hostility experienced during their campaigns. The report noted that the most commonly experienced problems were sleep disturbance and fatigue, excessive anxiety and worry, and diminished ability to think or concentrate. To address these issues, the study recommended the Legislature amend the PRA to allow candidates to use campaign funds for mental health services.

COMMENTS

1) According to the author: Harassment and threats are pervasive on the campaign trail, with those who are underrepresented in government disproportionately

reporting severe hostility, stalking, and even physical violence. The mental health toll that harassment and stalking take can be detrimental to a candidate's campaign, especially for women, women of color, and LGBTQ+ folks. We cannot stop harassment from occurring, but by allowing campaign funds to be used for mental health care costs, we can support candidates' sense of well-being as we strive to increase the diversity of voices in government. Research has found that around 80% of respondents reported experiencing new or worsened mental health or well-being symptoms that they believed were caused, in whole or in part, by hostility experienced on the campaign trail. Such symptoms include increased anxiety, sleep disturbance, panic attacks, and dissociative reactions. SB 1170 will address this by allowing non-incumbent candidates running for political office to use campaign funds for campaign-related mental health care services.

2) Furthering the Purposes of the PRA. Existing law prohibits the use of campaign funds for health-related expenses. The PRA specifies that "health-related expenses" includes, but is not limited to, examinations by physicians, dentists, psychiatrists, psychologists, or counselors and expenses for medications, treatments, medical equipment, hospitalization, health club dues, and special dietary foods. This bill seeks to allow campaign funds to be used for mental healthcare expenses. Amendments to the PRA done through legislation is only permissible if it furthers the purposes of the PRA. This committee should consider whether the use of campaign funds for mental healthcare expenses furthers the purposes of the PRA.

3) Argument in Support. In a letter supporting SB 1170, Fund Her stated, in part, the following:

> *As candidates embark on their political campaigns, they often encounter significant hostility and stress on the campaign trail. This hostility manifests in various forms, including online abuse, harassment, stalking, and even physical violence. The impact of such hostility on the mental health and well-being of candidates cannot be understated. Research has shown that a staggering 80% of candidates experience new or worsened mental health symptoms as a result of the hostility they face during their campaigns. These symptoms range from anxiety and sleep disturbances to panic attacks and dissociative reactions.*
>
> *[…]*
>
> *SB 1170 takes a sensible first step toward addressing this pressing issue. By allowing candidates to use campaign funds for mental healthcare expenses that are not covered by insurance, this bill ensures that all candidates have access to the support they need to cope with the real impacts of campaign hostilities. It also helps to remove barriers that prevent candidates from diverse backgrounds from participating fully in the democratic process and running for elected office to represent their communities.*

RELATED/PRIOR LEGISLATION

AB 220 (Bonta), Chapter 384, Statutes of 2019, permitted candidates to use campaign funds for childcare expenses incurred while the candidate is engaging in campaign activities.

SB 1431 (Roberti), Chapter 1452, Statutes of 1989, among other provisions relating to the use of campaign funds, prohibited the use of campaign funds for health-related expenses of a candidate, elected official, or their immediate family.

POSITIONS

Sponsor: California Women's List

Support: Farrah N. Khan, Mayor of the City of Irvine
Brennan Center for Justice
Board of Supervisors, County of Los Angeles
Board of Supervisors, City and County of San Francisco
Close the Gap California
Fund Her
Latina Democratic Club
National Women's Political Caucus of California
San Fernando Valley Young Democrats
San Francisco Women's Political Committee
Vote Mama Foundation
One Individual

Oppose: None received

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