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SB-1243 Campaign contributions: agency officers. (2023-2024)

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Senate Bill No. 1243

CHAPTER 1017

An act to amend Section 84308 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 30, 2024. Filed with Secretary of State September 30, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, Dodd. Campaign contributions: agency officers.

The Political Reform Act of 1974 prohibits certain contributions of more than \$250 to an officer of an agency by any party, participant, or party or participant's agent in a proceeding while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 12 months following the date a final decision is rendered in the proceeding, as specified. The act requires disclosure on the record of the proceeding, as specified, of certain contributions of more than \$250 within the preceding 12 months to an officer from a party or participant, or party's agent. The act disqualifies an officer from participating in a decision in a proceeding if the officer has willfully or knowingly received a contribution of more than \$250 from a party or a party's agent, or a participant or a participant's agent, as specified. The act allows an officer to cure certain violations of these provisions by returning a contribution, or the portion of the contribution of in excess of \$250, within 14 days of accepting, soliciting, or receiving the contribution, whichever comes latest.

This bill would raise the threshold for contributions regulated by these provisions to \$500, as specified. The bill would extend the period during which an officer may cure a violation to within 30 days of accepting, soliciting, or directing the contribution, whichever is latest. The bill would specify that a person is not a "participant" for the purposes of these provisions if their financial interest in a decision results solely from an increase or decrease in membership dues. The bill would exempt from these provisions contracts valued under \$50,000, contracts between 2 or more government agencies, contracts where no party receives financial compensation, and the periodic review or renewal of development agreements, as specified, from these provisions.

This bill would incorporate additional changes to Section 84308 of the Government Code proposed by SB 1181 to be operative only if this bill and SB 1181 are enacted and this bill is enacted last.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 84308 of the Government Code is amended to read:

84308. (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means 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 described in Article 1 (commencing with Section 87100) of Chapter 7. 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. A person is not a "participant" under this paragraph if their financial interest in the decision results solely from an increase or decrease in membership dues.

(3) "Agency" means an agency as defined in Section 82003 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. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means 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.

(5) (A) Except as provided in subparagraph (B), "license, permit, or other entitlement for use" means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises.

(B) "License, permit, or other entitlement for use" does not include any of the following:

(i) Competitively bid contracts that are required by law, agency policy, or agency rule to be awarded pursuant to a competitive process.

(ii) Labor contracts.

(iii) Personal employment contracts.

(iv) Contracts valued under fifty thousand dollars (\$50,000).

(v) Contracts where no party receives financial compensation.

(vi) Contracts between two or more agencies.

(vii) The periodic review or renewal of development agreements unless there is a material modification or amendment proposed to the agreement. Non-material modifications or amendments may be approved by agency staff.

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

(7) "Pending" in a proceeding involving a license, permit, or other entitlement for use means either of the following:

(A) For an officer, when either of the following occurs:

(i) An item involving the license, permit, or other entitlement for use is placed on the agenda for discussion or decision at a public meeting of the body of which the officer is a member.

(ii) The officer knows a proceeding involving a license, permit, or other entitlement for use is within the jurisdiction of the officer's agency for its decision or other action, and it is reasonably foreseeable that the decision will come before the officer in the officer's decisionmaking capacity.

(B) For a party or party's agent, or a participant or participant's agent, when an application is filed with an agency, or, if the proceeding process does not require an application, when the proceeding is before the agency for its decision or other action.

(b) (1) 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 five hundred dollars (\$500) 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 that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition applies 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.

(2) With respect to elected officers, paragraph (1) applies only if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in the proceeding.

(c) (1) Before rendering any decision in a proceeding involving a license, permit, or other entitlement for use, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than five hundred dollars (\$500) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use if the officer has willfully or knowingly received a contribution in an amount of more than five hundred dollars (\$500) 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 that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

(2) With respect to elected officers, paragraph (1) applies only if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in the proceeding.

(d) (1) If an officer receives a contribution that would otherwise require disqualification under this section, and returns the contribution within 30 days from the time the officer makes any decision, or knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, whichever comes last, the officer shall be permitted to participate in the proceeding.

(2) (A) Subject to subparagraph (B), if an officer accepts, solicits, or directs a contribution of more than five hundred dollars (\$500) during the 12 months after the date the final decision is rendered in violation of subdivision (b), the officer may cure the violation by returning the contribution, or the portion of the contribution in excess of five hundred dollars (\$500), within 30 days of accepting, soliciting, or directing the contribution, whichever comes latest.

(B) An officer may cure a violation as specified in subparagraph (A) only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

(C) An officer's controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation pursuant to this paragraph.

(e) (1) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than five hundred dollars (\$500) made within the preceding 12 months before the date that any decision is rendered by the agency by the party or the party's agent.

(2) A party to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant in the proceeding shall not make a contribution of more than five hundred dollars (\$500) to any officer of that agency during the proceeding and for 12 months following the date the final decision is rendered by the agency in the proceeding.

(3) An agent to a party or participant shall not make a contribution in any amount to an officer during the time periods described in paragraph (2).

(4) 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 the disclosure and prohibition requirements specified in this section.

(f) This section shall not be construed to imply that any contribution subject to being reported under this title shall not be so reported.

(g) For purposes of this section, in determining whether a contribution has exceeded five hundred dollars (\$500), the contributions of an agent shall not be aggregated with contributions from a party or participant.

(h) (1) Except as provided in paragraph (2), the provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(2) Subdivision (g) is not severable from paragraph (3) of subdivision (e) if paragraph (3) of subdivision (e) is held invalid in a final decision of a court of competent jurisdiction. If that occurs, subdivision (g) shall become inoperative on the date of that final decision.

SEC. 1.5. Section 84308 of the Government Code is amended to read:

84308. (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means 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 described in Article 1 (commencing with Section 87100) of Chapter 7. 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. A person is not a "participant" under this paragraph if their financial interest in the decision results solely from an increase or decrease in membership dues.

(3) "Agency" means an agency as defined in Section 82003 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. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means 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, other than a city attorney or county counsel providing legal advice to the agency who does not have the authority to make a final decision in the proceeding.

(5) (A) Except as provided in subparagraph (B), "license, permit, or other entitlement for use" means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises.

(B) "License, permit, or other entitlement for use" does not include any of the following:

(i) Competitively bid contracts that are required by law, agency policy, or agency rule to be awarded pursuant to a competitive process.

(ii) Labor contracts.

(iii) Personal employment contracts.

(iv) Contracts valued under fifty thousand dollars (\$50,000).

(v) Contracts where no party receives financial compensation.

(vi) Contracts between two or more agencies.

(vii) The periodic review or renewal of development agreements unless there is a material modification or amendment proposed to the agreement. Non-material modifications or amendments may be approved by agency staff.

(viii) The periodic review or renewal of competitively bid contracts unless there are material modifications or amendments proposed to the agreement that are valued at more than 10 percent of the value of the contract or fifty thousand dollars (\$50,000), whichever is less. Non-material modifications or amendments may be approved by agency staff.

(ix) Modification of or amendments to contracts that are exempt under this subparagraph, other than competitively bid contracts.

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

(7) "Pending" in a proceeding involving a license, permit, or other entitlement for use means either of the following:

(A) For an officer, when either of the following occurs:

(i) An item involving the license, permit, or other entitlement for use is placed on the agenda for discussion or decision at a public meeting of the body of which the officer is a member.

(ii) The officer knows a proceeding involving a license, permit, or other entitlement for use is within the jurisdiction of the officer's agency for its decision or other action, and it is reasonably foreseeable that the decision will come before the officer in the officer's decisionmaking capacity.

(B) For a party or party's agent, or a participant or participant's agent, when an application is filed with an agency, or, if the proceeding process does not require an application, when the proceeding is before the agency for its decision or other action.

(b) (1) 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 five hundred dollars (\$500) 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 that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition applies 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.

(2) With respect to elected officers, paragraph (1) applies only if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in the proceeding.

(c) (1) Before rendering any decision in a proceeding involving a license, permit, or other entitlement for use, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than five hundred dollars (\$500) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use if the officer has willfully or knowingly received a contribution in an amount of more than five hundred dollars (\$500) 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 that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

(2) With respect to elected officers, paragraph (1) applies only if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in the proceeding.

(d) (1) If an officer receives a contribution that would otherwise require disqualification under this section, and returns the contribution within 30 days from the time the officer makes any decision, or knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, whichever comes last, the officer shall be permitted to participate in the proceeding.

(2) (A) Subject to subparagraph (B), if an officer accepts, solicits, or directs a contribution of more than five hundred dollars (\$500) during the 12 months after the date the final decision is rendered in violation of subdivision (b), the officer may cure the violation by returning the contribution, or the portion of the contribution in excess of five hundred dollars (\$500), within 30 days of accepting, soliciting, or directing the contribution, whichever comes latest.

(B) An officer may cure a violation as specified in subparagraph (A) only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

(C) An officer's controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation pursuant to this paragraph.

(e) (1) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than five hundred dollars (\$500) made within the preceding 12 months before the date that any decision is rendered by the agency by the party or the party's agent.

(2) A party to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant in the proceeding shall not make a contribution of more than five hundred dollars (\$500) to any officer of that agency during the proceeding and for 12 months following the date the final decision is rendered by the agency in the proceeding.

(3) An agent to a party or participant shall not make a contribution in any amount to an officer during the time periods described in paragraph (2).

(4) 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 the disclosure and prohibition requirements specified in this section.

(f) This section shall not be construed to imply that any contribution subject to being reported under this title shall not be so reported.

(g) For the purposes of this section, in determining whether a contribution has exceeded five hundred dollars (\$500), the contributions of an agent shall not be aggregated with contributions from a party or participant.

(h) (1) 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 an agency for the purpose of influencing the proceeding on behalf of a party or participant.

(2) 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."

(3) "Agent" includes a lobbyist registered to lobby the agency and who otherwise meets the requirements of paragraph (1).

(4) "Communicate with the agency for the purpose of influencing the proceeding" does not include either of the following:

(A) Preparing drawings or submissions of an architectural, engineering, or similar nature for a client to submit in a proceeding before the agency if both of the following conditions are met:

(i) The work is performed pursuant to the person's profession.

(ii) 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 person.

(B) Providing technical data or analysis to an agency if the person does not otherwise engage in direct communication for the purpose of influencing the proceeding.

(i) (1) Except as provided in paragraph (2), the provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(2) Subdivision (g) is not severable from paragraph (3) of subdivision (e) if paragraph (3) of subdivision (e) is held invalid in a final decision of a court of competent jurisdiction. If that occurs, subdivision (g) shall become inoperative on the date of that final decision.

SEC. 2. The Legislature finds and declares that banning agents of parties and participants from contributing to officers in specified situations, as provided in Section 1 of this act, is necessary and narrowly tailored to address the state interest of preventing corruption and the appearance of corruption.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 84308 of the Government Code proposed by both this bill and Senate Bill 1181. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 84308 of the Government Code, and (3) this bill is enacted after Senate Bill 1181, in which case Section 1 of this bill shall not become operative.

SEC. 4. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.