

8b | Commission
Discussion

REGULAR MEMBERS

CHAIR

Donald P. Wagner

County Member

VICE CHAIR

Wendy Bucknum

City Member

IMMEDIATE PAST CHAIR

Douglass Davert

Special District Member

James Fislser

Special District Member

Derek J. McGregor

Public Member

Bruce Whitaker

City Member

VACANT

County Member

ALTERNATES

Kathryn Freshley

Special District Member

Carol Moore

City Member

Lou Penrose

Public Member

VACANT

County Member

STAFF

Carolyn Emery

Executive Officer

Scott Smith

General Counsel

MEETING DATE: November 13, 2024

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
General Counsel

SUBJECT: Update to the Levine Act effective January 1, 2025

BACKGROUND

The Levine Act, California’s “pay to play” campaign contribution law, has long restricted officers of public agencies from accepting, soliciting, or directing contributions exceeding \$250 from parties or participants in proceedings involving licenses, permits, or other entitlements. This prohibition applies both while the proceeding is pending and for 12 months after a decision by the agency.

On September 30, 2023, Governor Newsom signed Senate Bill 1243 (“SB 1243”), which introduces amendments to the Levine Act that will take effect on January 1, 2025.

DISCUSSION

Among other things, SB 1243 will raise the threshold for contributions regulated under the Levine Act from \$250 to \$500, adjust the timelines for officers to “cure” contributions in excess of the allowed threshold, and clarify key terms to reflect other changes in campaign finance regulation.

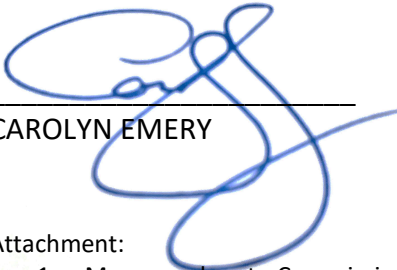
Despite SB 1243 taking effect on January 1, 2025, the current provisions of the Levine Act, including the \$250 contribution limit, will remain in place through the remainder of the 2024 election cycle.

The attached memorandum further explains this bill and its impacts on LAFCO Commissioners and officials.

RECOMMENDED ACTION

This is a receive and file report and requires no action by the Commission.

Respectfully submitted,



CAROLYN EMERY



SCOTT C. SMITH

Attachment:

1. Memorandum to Commission re State Legislation - Senate Bill 1243



Scott Smith
(949) 263-6561
Scott.smith@bbklaw.com

Memorandum

To: Commission Chair, Commissioners and Executive Officer
Orange County Local Agency Formation Commission

From: General Counsel

Date: October 28, 2024

Re: State Legislation – SB 1243

INTRODUCTION

This memorandum provides a summary of a recent bill, Senate Bill 1243 (“SB 1243”), and its effect on LAFCO Commissioners and officials. SB 1243 changes state campaign contribution laws and updates the State’s “pay to play” campaign contribution law known as the “Levine Act.”¹ as explained in detail below.

ANALYSIS

I. SB 1243

The Levine Act currently prohibits agency officers from accepting, soliciting or directing a contribution of more than \$250 from a party or participant (or their agents) (1) while a proceeding involving a license, permit, or other entitlement for use, including most contracts, is pending before the agency and (2) for 12 months after a decision. The law also contains disclosure, recusal, and other requirements for officers who receive such contributions, and similar requirements applicable to parties, participants, and their agents.

Senate Bill 1243 (“SB 1243”) makes the following changes to the Act effective January 1, 2025:

1. Raises the threshold for covered contributions to officers from \$250 to \$500;

¹ The full text of this bill can be found at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1243.

2. Extends from 14 days to 30 days the period during which an officer can return and “cure” a contribution in excess of the threshold that the officer accepted, solicited, or received during the 12 months following a final decision on a license, permit or entitlement;
3. Establishes that the term “participant” excludes individuals whose only financial interest results from a change in membership dues; and
4. Codifies that the term “pending,” as it relates to the officer, is when:
 - a. The item involving the license, permit, or other entitlement for use is placed on the agenda; or
 - b. The officer knows such license, permit, or other entitlement for use is within the jurisdiction of the officer’s agency, and it is reasonably foreseeable that the decision will come before the officer for a decision.
5. Excludes the following contracts from the definition of “licenses, permits, or other entitlements for use” for the purposes of the Act:
 - a. Contracts under \$50,000;
 - b. Contracts between two or more government agencies;
 - c. Contracts where no party receives financial compensation; and
 - d. Periodic review or renewal of development agreements or competitively bid contracts with non-material modifications.

Additionally, SB 1243 exempts a city attorney or county counsel from the definition of “officer” covered by the Act if the attorney’s role in the decision is solely to provide legal advice and the attorney has no authority to make a final decision in the proceeding.

The current provisions of the Levine Act, including the \$250 contribution amount, remain in effect through 2024, and certain prohibitions or requirements arising from existing law may continue for up to 12 months after the law is updated as of January 1, 2025. As it did with the major update to the Levine Act in 2023, the Fair Political Practices Commission (“FPPC”) will likely need to provide guidance on certain timing issues for 2025 contributions that may relate to 2024 proceedings.

CONCLUSION

The above analysis is intended as a general overview regarding these new legislative changes. Please do not hesitate to contact our office with any questions.

SCOTT SMITH
MICHAEL ERVIN