



OLIVAREZ MADRUGA LAW ORGANIZATION LLP

THE LEVINE ACT EXPANSION AND SENATE BILL 1439

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February 16, 2023 | CAALAC



SESSION OBJECTIVES

- 1. Provide an Overview of The Levine Act**
- 2. Introduce Senate Bill 1439: Rules on Campaign Contribution Disclosure Requirements**
- 3. Explore Potential Scenarios and Impacts**

EXISTING LAW: THE LEVINE ACT

- Prior to January 1, 2023:
The Levine Act (“Act”) prohibited “officers” of **nonelected bodies**, such as planning commissions, from accepting, soliciting, or directing a contribution of more than **\$250** from any party while a proceeding is *pending* before the agency and for *three months* following the date a final decision is rendered in the proceeding.
- Officers of elected legislative bodies, such as city councils, special districts, and county boards of supervisors were *excluded* from these prohibitions unless the officer served on a specific board or commission.

NEW LAW: SB 1439

- SB 1439 extends the reach of the Act to cover local agencies whose members are *directly elected by the voters*, such as **city councils**, **school district board members**, and **county boards of supervisors**.
 - SB 1439 also reorganizes the subdivisions of Government Code section 84308 (“Section 84308”)
 - SB 1493 took effect on January 1, 2023
1. Who is Affected?
 2. What is Prohibited and When?
 - Disclose and Recuse **or** Return and Participate.
 3. Curing Violations After a Final Decision
 4. What is Required of Entities Doing Business with Elected Bodies?
 5. Retroactive Effect?
 6. FPPC Update on Proposed Regulatory Actions

NEW LAW: SB 1439

1. Who is Affected?

- Officers of local government agencies who are directly elected by voters
- Statutory Exemptions: officers of the following agencies are exempt:
 - Courts or any agency in the judicial branch of government,
 - Legislature,
 - Board of Equalization, or
 - Constitutional officers. (Section 84308(a)(3).)
- Parties directly involved in the proceeding and other participants who actively support or oppose a particular decision in a proceeding
- *FPPC Pending Recommendation*: “**Officers of an agency**” to include, at a minimum, all officials elected or otherwise appointed to an elected position, and all candidates for elected positions that are also serving in a decision making capacity.
- *FPPC Pending Recommendation*: “**Constitutional Officer**” defined as “Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, and Treasurer.”

NEW LAW: SB 1439

2. What is Prohibited and When?

- **Regulated Activity:** “proceeding[s] involving a license, permit, or other entitlement for use.”
 - *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.*
- **Prohibition Period Expanded from 3 to 12 months** following the date a *final decision* is rendered in the proceeding if the officer knows or has reasons to know that the participant has a financial interest.
- **FPPC Pending Recommendation:** differentiate terms “**pending**” and “**pending before agency**”
 - Distinguish Section 84308(b) “[w]hile a proceeding...is pending” and for 12 months after the final decision is rendered, from Section 84308(c) which requires an officer to disclose contributions exceeding \$250 on the record “[p]rior to rendering any decision in a proceeding involving...[an] entitlement for use pending *before an agency*...”
 - Section 84308(b) appears to include *any* proceeding before the agency.

NEW LAW: SB 1439

2. What is Prohibited and When?

Disclose and Recuse or Return and Participate:

- **Disclose on the Record of the Proceeding the contribution over \$250:** If the contribution was received within the preceding 12 months from a party or participant in the proceeding; and
- **Recuse After Disclosing:** Officer cannot *make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding* pending before the agency if the officer knows or has reason to know that the participant has a financial interest in the decision; OR
- **Return and Participate:** If the contribution is returned ***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, then the officer may participate in the proceeding.

NEW LAW: SB 1439

3. Curing Violations After a Final Decision

- A contribution of more than \$250 made *during the 12 months after* the date a final decision is rendered in a proceeding, may be cured by returning the contribution or the portion exceeding \$250 ***within 14 days*** of accepting, soliciting, or directing the contribution, whichever comes latest.
- An officer may cure a violation *only if* the officer did not *knowingly* and *willfully* accept, solicit, or direct the prohibited contribution, and the officer or the officer's controlled committee maintains records of curing the violation.

NEW LAW: SB 1439

4. Entities Doing Business with Elected Bodies: Disclosure and Prohibition Requirements

- Must 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.
- A party, or the party's agent, or a *participant, or its agent*, also cannot make 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.
- **Closed corporation:** the majority shareholder is subject to these disclosure and prohibition requirements.



NEW LAW: SB 1439

5. No Retroactive Effect:

- FPPC met and determined that SB 1439 will apply **prospectively**, i.e., only to campaign contributions made after January 1, 2023. Commission adopted *Kendrick* Opinion, No O-22-022 issued December 2022. Proposed Regulation 18438 would codify that Opinion.



6. FPPC Update:

- Issued the Kendrick Opinion on the application of amended Section 84308;
- Preparing a package of regulatory amendments (Discussions held today, February 16, 2023, at 10am with potential adoption April 2023); and
- Providing guidance in the form of a fact sheet, as well as through formal advice letters and informal assistance via phone and email.

Potential Scenarios and Their Impact

1. Recusal with less than a Majority?

- *FPPC Proposed Regulation*: Legally Required Participation per FPPC Regulation 18705

2. Definition of “agents” for business entities or non-profit organizations applying for entitlement use? Does every employee of the entity or organization qualify as an agent?

- *FPPC Proposed Regulation*: amends Political Reform Act Section 18438.3 (a) to make clear that agents includes only persons who represent the party or participant, through methods such as appearing before or otherwise communicating with the government agency.

3. Aggregate Contributions: (Industry term: “Bundlers” or “Raisers”). Entity’s contributions shall be aggregated with contributions of an individual who directs or controls the entity’s contributions, as well as contributions by any other entity that individual directs or controls.

Potential Scenarios and Their Impact

4. Are parent and subsidiary entities included as a “party,” “participant,” or “agent”?

- FPPC Proposed Regulations: Yes, also include individuals who direct or control the entity’s contributions, as well as contributions by any other entity that individual directs or controls.

5. Does an official have a duty to proactively determine or investigate whether a participant has a financial interest in a decision, such as reviewing other public records or questioning the individual?

- No. Section 84308 and Regulation 18438.7 require an official to recuse when the official knows or has reason to know of a participant’s financial interest in a proceeding, but neither the statute nor regulation establish a proactive duty to investigate a potential financial interest.

6. Political Action Committees

Resources

Political Reform Act

- Regulations, fact sheets, commission meeting materials, or general information: <https://www.fppc.ca.gov>
- 1-866-ASK-FPPC (1-866-275-3772)

OMLO: OMLOLAW.COM

- Elana Rivkin-Haas: erhaas@omlolaw.com
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- <https://omlolaw.com/blog/campaign-donation-restrictions-expand-to-local-california-elected-officials/>

QUESTIONS?