



SB 1439 Changes to Campaign Contribution Requirements

July 11, 2023
County Executive Office

- Background on SB 1439 and the Levine Act
- Summary of FPPC regulation changes
- Impacts to local government agencies
- Direction from Board as appropriate



- Law that became effective January 1, 2023
 - Amended Government Code Section 84308
 - Also known as the Levine Act
- Makes significant changes to campaign contribution and recusal requirements for local governing boards



- Prohibited an officer of an agency from accepting, soliciting, or directing contributions of more than \$250 from any party, participant or agent thereof while a proceeding involving a license, permit or other entitlement for use is pending before the agency and for **three** months following the date a final decision is rendered.
- An official was also prohibited from taking part in such a decision if they received a contribution exceeding \$250 within the preceding 12 months.
- Local government agencies whose members are directly elected by voters (e.g. boards of supervisors and city councils) ***were exempt.***



1. The period in which contributions are prohibited after a final decision is rendered was changed from three months to 12 months.
2. Local government agencies whose members are directly elected by voters (e.g. boards of supervisors and city councils) ***are no longer exempt.***



- FPPC determined in late 2022:
 - Law would be **prospective**, and
 - Officials would not be prohibited from taking part in a decision if they received a contribution exceeding \$250 within the 2022 calendar year.



- Proposed to help implement, interpret and address changes related to SB 1439
- Educational materials and Fact Sheet guidance is being developed
- Attachment B of agenda item provides complete approved Regulations



FPPC Regulations Approved June 15, 2023

CAL. CODE REGULATION SECTION	SUMMARY OF CHANGE
18438 Application	Specifies GC Section 84308 provisions do not apply prior to January 1, 2023
18438.1 Officers and Agencies	1) reorganized the regulation for clarity and effectiveness; (2) removed provisions and references related to Section 84308's prior exemption for local elected officers; (3) amended the definition of "officer of an agency" to better reflect Section 84308 and the Legislature's intent in enacting SB 1439; and (4) define the term "constitutional officer," referenced in Section 84308. Of note, the "officer of an agency" was broadened to include even when someone was a candidate within the 12 months before the decision and the amendment makes clear the section does not include department heads (unless they qualify as a candidate for elected office).



FPPC Regulations Approved June 15, 2023

CAL. CODE REGULATION SECTION	SUMMARY OF CHANGE
18438.2 Proceedings	(1) better define and clarify the phrase “proceeding involving a license, permit or other entitlement for use” and related terms such as “labor contract” and “personal employment contract;” and (2) further define the term “pending.” At the June 15 meeting, the FPPC approved this amendment with staff’s Option 3 that defines a proceeding is “pending” for an officer differently than for a party/participant.
18438.3 Agents	(1) amended the definition of “agent” to clarify the term’s scope; (2) reorganize the regulation; and (3) move a provision pertaining to aggregation into Regulation 18438.5.
18438.4 Participants	(1) clarified the term “lobbies in person;” and (2) clarified the term “otherwise acts to influence.”



FPPC Regulations Approved June 15, 2023

CAL. CODE REGULATION SECTION	SUMMARY OF CHANGE
18438.5 Aggregated Contributions	(1) revised and reorganized provisions pertaining to the aggregation of contributions by parties, participants, and agents, including related entities; and (2) incorporated the aggregation provision removed from Regulation 18438.3.
18438.6 Solicitation, Direction, and Receipt of Contributions	(1) revised the definition of “making” and “receiving” a contribution, including specifying the types of controlled committees in which an officer may receive a contribution; (2) condensed certain provisions to remove unnecessary language; and (3) revised the definition of “directing” a contribution.



CAL. CODE REGULATION SECTION	SUMMARY OF CHANGE
18438.7 Prohibitions and Disqualifications	<p>Repealed and adopted to provide the standards under which an officer is deemed to know or have reason to know about a participant’s financial interest in a proceeding. Establishes when an officer has “willfully” or “knowingly” received a contribution. At the June 15 meeting, the FPPC approved the adoption with the inclusion of staff’s Options 1 and 2 that includes language to address: 1) “the idea that although a contribution by a party or participant may have been properly reported in the officer’s campaign statements, an officer cannot reasonably be expected to commit each contribution to memory”; and 2) “the idea that although Section 84308 requires parties and their agents to disclose their contributions exceeding \$250, officers should not solely rely on that requirement for purposes of taking part in or recusing themselves from a proceeding”.</p>



FPPC Regulations Approved June 15, 2023

CAL. CODE REGULATION SECTION	SUMMARY OF CHANGE
18438.8 Disclosure	Amended to address disclosure requirements in circumstances where the officer is not aware of a contribution prior to the beginning of a public meeting. “...where the officer learns of the contribution during the meeting, the officer shall make the disclosure on the public record prior to continuing to take part in the proceeding.”
18705 Legally Required Participation	Permitting an otherwise disqualified officer to take part in a governmental decision where their participation is legally required – to officers otherwise disqualified under Section 84308.



- Which proceedings are impacted?

Government Code Section 84308(a)(5) states:

“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 (other than competitively bid, labor, or personal employment contracts), and all franchises”. This has been further clarified by Regulation 18483.2 referenced above.



- What does this mean for County proceedings?
 - Applicants, appellants, contractors, agents or any financially interested participant who actively supports or opposes the County's decision on the agenda item who have made campaign contributions totaling more than \$250 to a Board member since January 1, 2023, **are required to disclose that fact for the official record of the subject proceeding.**
 - Members of the Board of Supervisors **are disqualified and not able to participate** in any agenda item involving contracts (other than competitively bid, labor, or personal employment contracts), franchises, discretionary land use permits and other entitlements if the Board member received more than \$250 in campaign contributions from the applicant or contractor, an agent of the applicant or contractor, or any financially interested participant who actively supports or opposes the County's decision on the agenda item since January 1, 2023.



- Who is responsible for compliance and enforcement?
 - A party or participant and officers of the agency need to be aware of campaign contributions and ensure compliance
 - FPPC is the regulatory agency for administration and enforcement
 - Local agencies are awaiting Fact Sheet guidance and further clarification from FPPC on agency compliance obligations



What are other jurisdictions doing?

- To date not many jurisdictions have taken action
- Awaiting FPPC approved regulations and Fact Sheet guidance for further clarification
- Disclosure language for public agendas
- Orange County developed policy and procedures to obtain disclosure forms for affected activities prior to putting them on an agenda (Attachment C)



Agenda Disclosure Language – **Implemented** April 2023

Pursuant to Government Code section 84308, members of the Board of Supervisors are disqualified and not able to participate in any agenda item involving contracts (other than competitively bid, labor, or personal employment contracts), franchises, discretionary land use permits and other entitlements if the Board member received more than \$250 in campaign contributions from the applicant or contractor, an agent of the applicant or contractor, or any financially interested participant who actively supports or opposes the County's decision on the agenda item since January 1, 2023. Applicants, appellants, contractors, agents or any financially interested participant who actively supports or opposes the County's decision on the agenda item who have made campaign contributions totaling more than \$250 to a Board member since January 1, 2023, are required to disclose that fact for the official record of the subject proceeding. Disclosures must include the amount and date of the campaign contribution and identify the recipient Board member and may be made either in writing to the Clerk of the Board of Supervisors prior to the subject hearing or by verbal disclosure at the time of the hearing.



- Direct staff to explore and develop a policy and procedures to assist the Supervisors and other elected County officers and parties, participants and agents with compliance with GC Section 84308 compliance.
 - May include disclosure forms and processes to assess agenda items, such as Orange County sample (Attachment C).
 - Requires work with departments to determine fiscal and staff time impacts
- Direct staff to explore other ways, including those being considered by other jurisdictions, to facilitate compliance preferably once Fact Sheet guidance and educational materials are developed by the FPPC.



- a) Receive and file a presentation regarding SB1439 Campaign Contributions;
- b) Provide other direction as appropriate; and
- c) Determine that the presentation is an administrative activity that does not involve commitment to any specific project, and therefore is not a project as defined by State California Environmental Quality Act Guidelines Section 15378 (b)(5).

