

Campaign Contributions Can Create Conflicts of Interest for Local Elected Officials Under New Law

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ATTORNEYS

Natalie C. Kalbakian

Craig A. Steele

Governor Newsom recently signed **SB 1439**, which defines a new conflict of interest involving contributors of more than \$250 to a local elected official, and establishes new abstention and disclosure requirements. The Fair Political Practices Commission ("FPPC") has recently determined that SB 1439 only applies prospectively after the law's effective date.

As of January 1, 2023, the law introduces the following changes:

► **What does SB 1439 mean for local elected officials' obligations to disclose campaign contributions and recuse themselves?**

A campaign contribution of more than \$250 to a local elected official can now create a conflict of interest. Local elected officials who have willfully and knowingly accepted, solicited, or directed a contribution of more than \$250 from a party, participant, or their agent, within 12 months before a proceeding involving that contributor's contract, license, permit, or use entitlement must disclose the contribution on the record and recuse themselves before the proceeding unless the violation was properly cured.

► **Who is covered under the new law?**

Local elected officials are now covered under the changes to Government Code section 84308 of the Political Reform Act, which previously only applied to appointed officials.

► **How will SB 1439 change local elected officials' campaign fundraising?**

Local elected officials must not accept, solicit, or direct a contribution of more than \$250 from any party, participant, or their agent, if they know or have reason to know that the contributor has a financial interest in a decision while the proceeding is pending and for 12 months after the final decision is rendered. Local elected officials should consider self-limiting the contributions they accept from contributors who typically have business before the agency to \$250 or less.

► **What type of contributor triggers these restrictions?**

The law covers parties, participants, or their agents in a proceeding. Most notably, "participants" include non-parties who actively support or oppose a particular decision and who have a financial interest in the decision. As an example, a close neighbor to a property that is the subject of a land use decision may be a "participant" even if the neighbor's property is not the subject of the decision.

► **How can local elected officials cure a violation of these new requirements?**

Local elected officials who receive a prohibited donation may subsequently participate in a proceeding if they properly cure the violation. A failure to properly cure a violation within the timeframes outlined below will result in disqualification.

If the prohibited contribution was received 12 months prior to a final decision in a proceeding, the local elected official has up to 30 days from the time he or she knew or should have known about the contribution and the proceeding involving a license, permit or other use entitlement to return the contribution. This necessarily excludes contributions accepted *during* a proceeding as a local elected official would have seen the item on an agenda by that time.

If the prohibited contribution was unwillingly or unknowingly received during the 12 months after the final decision, the local elected official may cure the violation by returning the excess amount within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest. SB 1439 now means that local elected officials must pay careful attention to their contributors of more than \$250 and their potential involvement in proceedings.

► **Must local elected officials review their 2022 contributions in light of these requirements?**

No. On **December 22**, the FPPC unanimously agreed that contributions made in 2022 will not count for purposes of the new requirements. In other words, local elected officials should monitor their contributions after the effective date of January 1, 2023.

► **Key Takeaways**

SB 1439 now creates disqualifying conflicts of interest for local elected officials and extends the period during which officials must decline contributions from 3 months, as appointed officials were previously required, to 12 months.

If you have any questions about SB 1439, any possible constitutional challenges, or its implications for local agencies, please contact **Craig Steele, Natalie Kalbakian** or your agency's RWG attorney.