



MEMORANDUM

TOWN OF PORTOLA VALLEY

TO: Candidates for Town Council

CC: Jeremy Dennis, Town Manager
Melissa Thurman, Town Clerk

FROM: Cara Silver, Town Attorney

DATE: October 20, 2022

RE: SB 1439: Recent Legislation relating to Campaign Contributions

I wanted to inform you of [SB 1439](#), which was signed by the Governor on Sept. 29, 2022. The bill makes significant changes to Government Code 84308, also known as the “Pay to Play Contribution Restriction” codified in Government Code Section 84308. A copy of the bill is attached.

For your convenience, below is a summary of the bill prepared by the Fair Political Practices (FPPC) Committee of the League of California Cities.

Gov. Code 84308 contains the following restrictions, as amended by SB 1439:

1. A party, or his or her agent, seeking a license, permit, or other entitlement for use is prohibited from contributing more than \$250 to an officer of the agency while the proceeding is pending and for 12 months after the date of the final decision in the proceeding. The party must also disclose on the record of the proceeding any contributions of \$250 to an officer in the previous 12 months.
2. An officer of an agency is prohibited from accepting, soliciting, or directing a contribution of more than \$250 from a party or participant to a proceeding, or his or her agent, while the proceeding is pending and for 12 months after the date of the final decision in the proceeding.
3. An officer of an agency must disclose on the record of the proceeding and recuse themselves from a decision on a license, permit, or other entitlement for use if the officer has willfully or knowingly received a contribution of more than \$250 in the preceding 12 months from either:
 - a) A party or his or her agent within the preceding 12 months, or

b) A participant or participant's agent if the official knows or has reason to know that the participant has a financial interest as defined in the Political Reform Act.

- A "participant" is defined as anyone who has a financial interest in the decision as defined in the Political Reform Act, and who lobbies officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency. Note this definition would apply to a neighbor of a project whose property is materially impacted under FPPC Regulation 18702.2 and who speaks at the hearing or contacts the city to oppose the project.

4. Opportunity to cure: an official has a limited opportunity to cure:

- Contributions made prior the decision: The officer may participate in the decision if the officer returns the contribution or portion in excess of \$250 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.

- Contributions made within 12 months after the decision: The officer may cure the violation by returning the contribution, or the portion in excess of \$250, within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest, but only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

The FPPC Committee has also expressed concern about the uncertainty regarding the retroactive effect of the bill. Although the bill does not go into effect until January 1, 2023, the recusal obligation has no grace period for contributions made in 2022. As such, each candidate may want to consult with an elections attorney regarding any campaign contribution potentially covered under this bill.



SB-1439 Campaign contributions: agency officers. (2021-2022)

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Senate Bill No. 1439

CHAPTER 848

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

[Approved by Governor September 29, 2022. Filed with Secretary of State
September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1439, Glazer. Campaign contributions: agency officers.

The Political Reform Act of 1974 prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, participant, or a party or participant's agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 3 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, as defined. The act also prohibits a party, participant, or participant's agent from making a contribution of more than \$250 to an officer of the agency during the proceeding and 3 months following the date a final decision is rendered. The act defines "agency" for these purposes to mean any state or local government agency, except certain entities, including local government agencies whose members are directly elected by the voters.

This bill would remove the exception for local government agencies, thereby subjecting them to the prohibition described above. The bill would extend the prohibition on contributions from 3 to 12 months following the date a final decision is rendered in the proceeding. The bill would permit an officer who does not willfully and knowingly accept, solicit, or direct a prohibited contribution to cure the violation by returning it. The bill would require the party to a proceeding to disclose whether the party or the party's agent has made a contribution of more than \$250 in the 12 months before the proceeding.

A violation of the act is punishable as a misdemeanor. By expanding the scope of restrictions on contributions, this bill would expand the scope of an existing crime, and therefore would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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: yes Local Program: yes

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.

(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) "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.

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

(b) 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 two hundred fifty dollars (\$250) 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 shall apply 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.

(c) Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) 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 pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) 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.

(d) (1) If an officer receives a contribution which would otherwise require disqualification under this section, and returns the contribution 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, 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 two hundred fifty dollars (\$250) during the 12 months after the date a final decision is rendered in the proceeding in violation of subdivision (b), the officer may cure the violation by returning the contribution, or the portion of

the contribution in excess of two hundred fifty dollars (\$250), within 14 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 two hundred fifty dollars (\$250) made within the preceding 12 months by the party or the party's agent.

(2) A party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant, or agent to a participant, in the proceeding shall not make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.

(3) 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.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. 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.