

Levine Act and 2023 Amendments

Senate Bill No. 1439 (2022)

Presented by: Robert E. Anslow, Partner

August 14, 2024



aa/r/r

Atkinson, Andelson
Loya, Ruud & Romo

A Professional Law Corporation

Cerritos • Fresno • Irvine • Pleasanton • Riverside • Sacramento • San Diego

Discussion Outline

- 1 Overview of the Levine Act
- 2 Overview of SB 1439 (2022) & Levine Act Amendments
- 3 Levine Act Applicability
- 4 Curing Disqualifications
- 5 FPPC Regulatory Changes
- 6 Q&A

Overview of the Levine Act

- Government Code Section 84308 – “**pay to play**” campaign restrictions within the Political Reform Act (“PRA”)
 - While a **proceeding is pending, and for 12 months following a final decision**, an officer shall not accept, solicit, or direct an aggregated campaign contribution of **more than \$250** from a party, a participant, or their agents to the proceeding.
 - Prior to rendering any decision in a proceeding, an officer who willfully or knowingly received an aggregated campaign contribution **of over \$250 in the prior 12 months** from a party, a participant, or their agents to the proceeding **must disclose and recuse**.

Overview of SB 1439 (2022) & Levine Act Amendments

**Effective January 1st, 2023,
Senate Bill 1439 (2022) amended Government
Code Section 84308**

**Post-proceeding
contribution
restrictions
extended from 3 to
12 months after
the final decision**

**Levine Act
broadened to also
apply to local
governmental
agencies, e.g.,
Mesa Water
District**

**The changes made
by SB 1439 do not
apply to
contributions made
or received, or
proceedings
participated in,
prior to Jan 1, 2023**

Applicability: Officers & Agencies



- **Officer:** “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.”
- **Agency:** any **state or local government agency**, excluding the legislature, the judiciary or constitutional officers. This includes Mesa Water District.

Applicability: Proceedings



- Proceedings include any proceeding to grant, deny, revoke, restrict, or modify a license, permit, or other entitlement for use, e.g., professional service contracts and development approvals taken at the Board level.
- Levine Act does **not** apply to general policy decisions, i.e., ordinances or rules affecting the general public as well as purely ministerial decisions.
- Proceedings do **not** include **competitively bid contracts, labor agreements, or personal employment contracts.**

Applicability: Party & Participant



- **Party:** any person who files an application for, or is the subject of, a proceeding.
- **Participant:** any person who is not a party but actively supports or opposes a particular decision in a proceeding and has **a financial interest** in the decision.
 - Officer must have **actual knowledge or a reason to know** of the participant’s financial interest.
 - Examples: business owner whose business will experience customer loss/gain as a result of the proceeding.

Curing Disqualifications

- An officer may “cure” a disqualification to the proceeding by returning a party/participant’s contribution **within 30 days** from the time the officer knows or should have known about the contribution if:
 - Contribution was received from a **party prior** to officer knowing or having reason to know that the proceeding involving the party had commenced; or
 - Contribution was received from a **participant prior** to the officer knowing or had reason to know that the participant had a financial interest in the proceeding.



Curing Disqualifications (Cont.)

- If a violating contribution was received **after the decision of a proceeding** has been rendered, an officer may cure that violation by returning the contribution, or the portion exceeding \$250, **within 14 days** as long as:
 - The officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution; and
 - Records must be maintained regarding the cure.



FPPC Regulatory Changes

Knowledge of a Participant's Financial Interest



- FPPC establishes 3 rebuttable presumptions concerning when an officer knows or has reason to know of a participant's financial interest in a proceeding:
 - Participant has interest in property within 500 ft of the real property at issue in the proceeding;
 - Participant has an economic interest in a business entity that may see a significant increase or decrease in customers as a result of the proceeding; **OR**
 - Participant has a business relationship with the applicant that may result in additional services provided to the applicant. (2 Cal Code Regs. Section 18438.7)

Relevant Considerations

- Aggregate campaign contribution(s) from a party more than \$250?
- 12 months before, while pending, or 12 months after the proceeding?
- Contributions made by a party, participant, or their agent(s) to the proceeding?
- Disqualification or violation curable?
- FPPC Regulatory Nuances

Question & Answer

Thank You

For questions or comments, please contact:

{ Robert E. Anslow
(949) 453-4260
Rob.anslow@aalrr.com }
}

aalrr

Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation