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# Brief Update on Levine Act

January 25, 2024

# The Levine Act (Gov. Code § 84308)



- **Previous Rule:**

- Political Reform Act – A campaign contribution is not a source of income and therefore does not give rise to a conflict
- Levine Act (Part of PRA) – If the board is *appointed*, not *elected*, then there is a conflict of interest in those who made a campaign contribution of more than \$250
- Applies to proceedings for licenses, permits, entitlements and most contracts
  - ❖ Contract exceptions: competitively bid, labor and personal employment

- **New Rule (SB 1439):**

- As of 1/1/23, the Levine Act applies to **both** elected and appointed bodies

# The Levine Act - SB 1439



- While a proceeding is pending, and for 12 months following the final decision, an “officer” (elected or appointed) **must not accept, solicit, or direct a contribution of more than \$250** from a party, party’s agent, or participant or participant’s agent (if the officer knows the participant has a financial interest)
  - Applies to contributions to the officer and to contributions to others directed by the officer
  - For contributions following the final decision, the official can cure the violation if contribution is returned within 14 days (and certain conditions are met)

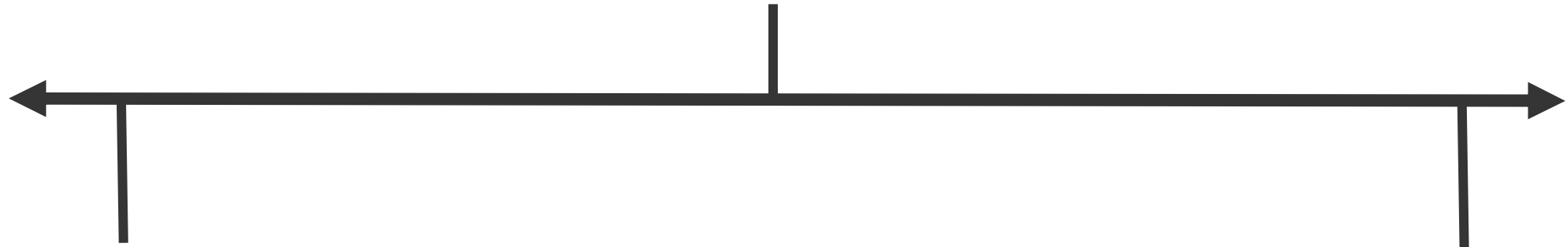
# The Levine Act - SB 1439



- Officer must **disclose** on the record any contributions of more than \$250 received within the past 12 months from any party or participant in the proceeding, or their agents
- Officer must **not participate** in any proceeding if the officer has willfully or knowingly received a contribution of more than \$250 from a party, participant, or agent (if the officer knows the participant has a financial interest) within the past 12 months
  - Does not apply if the contribution is returned within 30 days

# For Example:

Date of the decision at issue



12 months **before**: if an officer received a contribution from a party or participant, officer must (1) disclose on record and (2) recuse from decision for next 12 months.

At time of decision and for 12 months **after**: officer is prohibited from receiving a contribution greater than \$250 from a party or participant.

# The Levine Act – SB 1439



- “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.
- “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**
- “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**.

(Gov. Code § 84308)

# The Levine Act – SB 1439



- A person is the “agent” of a party to, or a participant in, a pending proceeding involving a license, permit or other entitlement for use **only if**:
  - the person represents that party or participant **for compensation** and
  - **appears before or otherwise communicates** with the governmental agency for the purpose of influencing the pending proceeding.
- If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are “agents.”

(2 Cal. Code Regs. § 18438.3)

# The Levine Act - SB 1439



- Party to a proceeding must disclose a contribution of more than \$250 made within the past 12 months by the party or party's agent
- Party and participant (and their agents) must not make a contribution of more than \$250 to any officer of the agency while the proceeding is pending and for 12 months following the proceeding
- Do **not** have a proactive duty to investigate potential financial interests (“know or have reason to know”)





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## Questions?

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