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CLIENT ALERT

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New California Legislation Severely Restricts the Campaign Contributions of Developers to Local Elected Officials

By Steven Churchwell

A Campaign Contribution of More Than $250 Could Trigger Disqualification from Voting on the Donor's Project for 12 Months

Current Law

In 1982, the California Legislature added Section 84308 to the Political Reform Act. The "Levine Act" provided that a campaign contribution of **more than $250** to a state or local official in the 12 months preceding a vote on a "license, permit or other entitlement for use" or contract (if not competitively bid) triggered disqualification, if the donor was a party or participant[1] (or agent thereof) in the decision. A "blackout period" on contributions of more than $250 applied for 3 months following a decision.

However, the law exempted local agencies governed by **elected** officials. Thus, it covered planning commissions—but not city councils—for example.

Decisions covered by the law include conditional use permits, zoning, tentative maps and building permits. *Not* included are general plans, building standards or other rules of general application. Ministerial decisions also are not covered.

If an official **returns a contribution** (or the amount above $250) **within 30 days** from the time the officer learns about the contribution and the decision involving a license, permit, or other entitlement for use, or no bid contract, the official may vote on the decision.

Senate Bill 1439

Effective January 1, 2023, SB 1439 extends these prohibitions to ***elected*** **local officials** on city councils, county boards of supervisors and special districts. It also extends the 3-month blackout period on contributions of more than $250 after the decision to **12 months**.

[1] A "party" is the person who files an application or is the subject of a decision involving a "license, permit or other entitlement for use." A "participant" is someone who: (1) actively supports or opposes a decision; and (2) has a financial interest in it.

Practical Implications

SB 1439 is yet another gut-punch to any developer who tries to build housing in California. NIMBYs and unions who try to stop or slow down such developments are **not** restricted by the law since they are not parties, and they only meet the first part of the participant test (lobbying), but not the second part (financial interest). (See *Sablan* Advice Letter, FPPC File No. A- 21-020.)

This legislation represents another misguided crusade by Common Cause (the principal sponsor of the bill) that will benefit wealthy candidates—who can self-fund their campaigns—and impair the chances of those of modest means who have to raise the funds to be elected to public office.

The Fair Political Practices Commission has not indicated whether the law, which becomes effective on January 1, 2023, will be applied *retroactively*. Until we know for sure, we recommend that you include contributions made in 2022 in your calculations. **We can email a form you can use to track your contributions.**

Will There Be a Legal Challenge?

In 1980, the California Supreme Court held that a developer's campaign contributions did not disqualify members of the city council from voting to approve a project. Writing for the Court, Justice Clark stated: "To disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms." (*Woodland Hills Residents Assn. v. City Council* (1980) 26 Cal.3d 938.) However, three justices indicated that the government might be able to narrowly tailor such restrictions.

The Levine Act author stated that the bill was designed to prevent **large** "pay-to-play" contributions. **$250 is not "large" in 2022**. In fact, the "default" contribution limit in state law for local officials is **$4,900 per election**, and is indexed for inflation.

The combination of a $250 contribution limit that is ridiculously low, combined with the adverse impact on the First Amendment rights of elected officials and their contributors, almost guarantees that a court challenge seeking to invalidate SB 1439 will be filed.

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