



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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NOTICE

Fair Political Practices Commission Interested Persons Meeting April 21, 2023, 10:00 a.m. 1102 Q Street, Suite 3800 Hearing Room Sacramento, CA 95811

Fair Political Practices Commission staff will hold an Interested Persons meeting on April 21, 2023, at 10:00 a.m. to solicit public input on regulatory proposals related to Section 84308 (the Levine Act). The proposals pertain to regulatory amendments necessary to implement, interpret, and make specific Section 84308 in light of its provisions being significantly amended by SB 1439, which took effect on January 1, 2023.

Section 84308 places limitations on certain public officials' ability to take part in licensing, permitting, and other use entitlement proceedings when a party or participant in the proceeding has contributed more than \$250 to the official; the statute also prohibits officials from receiving contributions exceeding \$250 during such a proceeding and for a defined period after a final decision in the proceeding. SB 1439 broadens the scope of Section 84308 to apply to local elected officials when serving in a position directly elected by the voters and extends the period in which a post-proceeding contribution of more than \$250 is prohibited from three months after the final decision to 12 months after the final decision.

The Commission is interested in addressing multiple issues related to Section 84308 and giving effect to the Legislature's intended SB 1439 amendments. Regulatory proposals will be considered for adoption, amendment, or repeal and adoption on or after May 18, 2023, the Commission's scheduled May meeting. Below are the regulatory proposals that the Commission may pursue, for which the Commission is soliciting public comments. The Commission is also soliciting comments regarding any other questions or concerns in the implementation of Section 84308 they may be addressed in the regulatory proposal.

Proposed Regulations for Adoption

Regulation 18438 – Staff proposes adopting Regulation 18438 to codify the Commission's *In re Kendrick* Opinion, No. O-22-002, and specify that Section 84308's provisions, as amended by SB 1439, do not apply to contributions received or proceedings participated in prior to SB 1439's effective date, January 1, 2023.

Proposed Regulations for Amendment

Regulation 18438.1 – Officers and Agencies Under Section 84308 – Staff proposes amending Regulation 18438.1 to: (1) reorganize the regulation for clarity and effectiveness; (2) remove provisions and references related to Section 84308's prior exemption for local elected officers; (3) amend the definition of "officer" to better reflect Section 84308 and the Legislature's

intent in enacting SB 1439; and (4) define the term “constitutional officer,” referenced in Section 84308.

Regulation 18438.2 – Proceedings Under Section 84308 – Staff proposes amending Regulation 18438.2 to: (1) better define and clarify the phrase “proceeding involving a license, permit or other entitlement for use” and related terms such as “labor contract” and “personal employment contract;” and (2) further define the term “pending.”

Regulation 18438.3 – Agents Under Section 84308 – Staff proposes amending Regulation 18438.3 to: (1) amend the definition of “agent” to clarify the term’s scope; (2) reorganize the regulation; and (3) move a provision pertaining to aggregation into Regulation 18438.5.

Regulation 18438.4 – Participants Under Section 84308 – Staff proposes amending Regulation 18438.4 to: (1) clarify the term “lobbies in person;” and (2) clarify the term “otherwise acts to influence.”

Regulation 18438.5 – Aggregated Contributions Under Section 84308 – Staff proposes amending Regulation 18438.5 to: (1) revise and reorganize provisions pertaining to the aggregation of contributions by parties, participants, and agents, including related entities; and (2) incorporate the aggregation provision removed from Regulation 18438.3.

Regulation 18438.6 – Solicitation, Direction, and Receipt of Contributions Under Section 84308 – Staff proposes amending Regulation 18438.6 to: (1) revise the definition of “making” and “receiving” a contribution, including specifying the types of controlled committees in which an officer may receive a contribution; (2) condense certain provisions to remove unnecessary language; and (3) revise the definition of “directing” a contribution.

Regulation 18438.8 – Disclosure Under Section 84308 – Staff proposes amending Regulation 18438.8 to address disclosure requirements in circumstances where the officer is not aware of a contribution prior to the beginning of a public meeting.

Regulation 18705 – Legally Required Participation – Staff proposes amending Regulation 18705 to apply its provisions—permitting an otherwise disqualified officer to take part in a governmental decision where their participation is legally required—to officers otherwise disqualified under Section 84308.

Proposed Regulations for Repeal and Adoption

Regulation 18438.7 – Prohibitions and Disqualification Under Section 84308 – Staff proposes repealing and adopting Regulation 18438.7, given the extent of proposed revisions to the current regulatory language. Staff proposes adopting Regulation 18438.7 to: (1) define when an officer has knowledge of a participant’s financial interest in a proceeding; (2) define when an officer has knowingly or willingly received a contribution; (3) specify the circumstances in which an officer may return a contribution; and (4) provide that officers may, under limited circumstances, take part in proceedings prior to returning a contribution.

ADDITIONAL INFORMATION:

Proposed language for the above regulations is attached for review and can also be found at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

You may participate in this meeting in person at the Commission's offices. You may also listen to and participate in this meeting by teleconference by calling: (877) 411-9748; access code 723284.

The Commission staff invites written comments addressing these topics. Address comments regarding the topic of this notice to Senior Commission Counsel Kevin Cornwall by email: kcornwall@fppc.ca.gov or to the address above. For questions about the meeting, you may contact Amanda Apostol at (916) 322-5660.