



2023 Changes to Section 84308

February 2023

Senate Bill 1439

In 2022, the California Legislature passed [SB 1439](#), a bill that amended Section 84308 of the Political Reform Act (“the Act”). The changes took effect on January 1, 2023. As detailed below, the amendments significantly broadened the scope of the statute—most significantly by applying the statute’s restrictions to agencies whose members are directly elected by voters. In response to the changes brought on by SB 1439, the FPPC: (1) issued the [Kendrick Opinion](#) on the application of amended Section 84308; (2) is preparing a package of regulatory amendments; and (3) is providing guidance in the form of this fact sheet¹, as well as through formal advice letters and informal assistance via phone and email.

Section 84308 Generally

Section 84308 prohibits certain officials from taking part in an entitlement for use proceeding if the official has received a contribution exceeding \$250 from a party or participant in the proceeding within the preceding 12 months. An official is also prohibited from accepting, soliciting, or directing a contribution exceeding \$250 from a party or participant in the proceeding for a certain period of time after a final decision is rendered in such a proceeding.

A “party” is any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. A “participant” is 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** has a financial interest in the decision.

A party to a proceeding before an agency involving a license, permit, or other entitlement for use must disclose on the record any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months to an official of the agency.

¹ This fact sheet is informational only and contains only highlights of selected provisions of the law. It does not carry the weight of the law. For further information, consult the Political Reform Act and its corresponding regulations, advice letters, and opinions.

In certain instances, an official may avoid violating this section by returning contributions in excess of \$250. (See subdivision (d).)

Changes in 2023

As of January 1, 2023, Section 84308 now operates differently in two key ways:

- 1. Section 84308 now applies to agencies whose members are directly elected by voters including local elected officials such as city councilmembers and county supervisors serving on their respective boards; and**
- 2. Officials are prohibited from accepting, soliciting, or directing a contribution exceeding \$250 from a party or participant for 12 months after the final decision of a proceeding.**

Common Questions Regarding Section 84308

Q. What types of proceedings are covered by Section 84308?

A. Section 84308 pertains to “proceeding[s] involving a license, permit, or other entitlement for use.” The phrase “license, permit, or other entitlement for use,” in turn, “means all business, trade, and land use licenses and permits and all other entitlements for use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.”

Q. Does an official have a duty to proactively determine whether a participant has a financial interest in a decision?

A. No. Section 84308 and Regulation 18438.7 require an official to recuse when the official knows or has reason to know of a participant’s financial interest in a proceeding, but neither the statute nor regulation establish a proactive duty to investigate a potential financial interest, such as reviewing other public records or questioning the individual.

Q. Do SB 1439’s amendments to Section 84308 apply to contributions received or proceedings participated in throughout 2022, before SB 1439 took effect?

A. The Commission has determined a local elected official is not prohibited from taking part in entitlement for use proceedings based on contributions received in 2022, nor is an official prohibited from accepting, soliciting, or directing contributions exceeding \$250 from parties or participants in proceedings finalized in 2022. (See *Kendrick* Opinion, No. O-22-002.)

Q. When will the Commission amend regulations relating to Section 84308?

A. Pre-notice discussion of regulatory amendments is scheduled to occur at the Commission's February 16, 2023 meeting, with presentation for adoption scheduled to occur at the Commission's April 20, 2023 meeting. The Commission welcomes and encourages public comments regarding potential regulatory amendments. To find out how to participate in a FPPC meeting, go to <https://www.fppc.ca.gov/about-fppc/contact-us/public-comment.html>.