



# Political Law Update

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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## California Expands Scope of Its State Pay-to-Play Law

On September 29, 2022, California Gov. Gavin Newsom signed into law S.B. 1439 (the act), which amends the state pay-to-play law to cover local positions to which candidates are elected directly and to extend the ban on contributions of more than \$250 after a final award decision from three months to 12 months. The act takes effect January 1, 2023.

### Current State of the Law

Under the current pay-to-play law, a company seeking a non-competitively bid contract, license, permit or other entitlement for use with a California state or local agency, along with the company's covered donors (*i.e.*, certain of its affiliates and its agents and employees dealing with the agency in question), may not contribute more than \$250 to an officer of the agency (1) while the proceeding involving the contract or entitlement is pending before the agency; and (2) for three months after a final award decision is made. In addition, contributions of more than \$250 made by the company and its covered donors to an agency officer within the 12 months before a proceeding trigger the officer's recusal on any vote on a contract or entitlement involving the company and require disclosure by both the officer and the company. The law exempts certain types of agencies, including local agencies whose members are directly elected by voters (*e.g.*, city councils and county boards of supervisors). Thus, local elected officials and candidates currently are covered only when they serve as a voting member of an appointed board or commission, but not for matters before the elected body on which they serve or are seeking to serve.

### Changes and Amendments

The act repeals the exemption for local agencies whose members are directly elected by voters. Thus, local elected officials and candidates will be covered for any local body on which they serve or for which they are seeking election. This will include city councils and county boards of supervisors, their committees, and bodies where the entire city council or county board serves *ex officio*. The act also extends the post-award phase of the blackout period on making contributions of more than \$250 from three to 12 months after a final award decision is made.

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In addition, the act appears to expand the disclosure required of a company in an agency proceeding to cover all federal, state and local contributions of more than \$250 that the company and its covered donors made in the prior 12 months — not just those made to agency officers during that period. However, it is not clear that this change was intentional, and we will monitor

for any regulations implementing the act or guidance from the California Fair Political Practices Commission.

Please also note that a number of California localities (the cities of Los Angeles and San Francisco, to name a few) have their own pay-to-play laws, with additional restrictions and disclosure requirements.

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