



STATE OF CALIFORNIA  
**FAIR POLITICAL PRACTICES COMMISSION**  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

**To:**           **Law & Policy Committee:** Chair Miadich and Commissioner Cardenas

**From:**        Dave Bainbridge, General Counsel  
                  Karen Harrison, Senior Commission Counsel

**Subject:**     Behested Payment Issues: Reporting Payments Made for a Charitable, Legislative  
                  or Governmental Purpose at the Local Level

**Date:**        September 3, 2020

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### **Background & Summary of Issue**

The Commission recently requested a review and discussion of behested payment reporting issues. Behested payment transactions may be subject to reporting by the behesting elected official or Public Utilities Commission member, but the payments operate outside the Act's strict gift and contribution disclosures and limitations. Behested payments that confer a personal benefit may involve gift prohibitions, reporting and limitations or conflict of interest prohibitions for an elected official. The potential political influence, or personal benefit, of a behested payment is publicly known only to the extent the behested payments are reported. However, behested payment reports may capture payments unrelated to the official's actions and require donor information from the third-party recipient organization. The Commission's review request followed recent proposed legislation, Assembly Bill 3078 (Garcia), to revise behested payment reporting, comments from the regulated community, as well as media accounts raising concerns about behested payments, including as a potential source of personal benefit or financial interest. Staff met with local ethics agencies on June 15, 2020 to gather input on behested payment reporting and regulation issues at the local level. Patrick Ford, San Francisco Ethics Agency will also present on the topic, with a presentation he provided at the 2019 COGEL conference.

#### Summary Discussion:

Local Ethics Organization Roundtable: Representatives from San Diego Ethics; Oakland Ethics; Orange County Ethics; LA City Ethics; San Francisco Ethics and FPPC staff.

- **Attempts at Stricter Local Rules:** Local Ethics agencies such as City of Los Angeles and San Francisco have proposed tightening the reporting rules. LA Ethics proposed reporting at the \$1,000 level, but this was not taken up by the City Council. San Francisco has adopted a three-tiered reporting system (Patrick Ford will present details on this system) to disclose at a \$1,000, \$10,000 and \$100,000 level and a filing obligation by nonprofit recipients of behested payments.

- **Information must come from Recipient:** Several agencies commented that if the nonprofits do not supply the official with the donor information for reporting, the reports do not occur. Nonprofits may have difficulty determining which payments are attributable to the official's behest.
- Local Ethics Agencies noted **significant gaps in filing records** for some officials known to have nonprofit activity/involvement. Staff members are tasked with filing the reports, and reliant on nonprofit/recipient data.
- **Need for Transparency:** Several agencies noted a strong sentiment from the public to have transparency on influence in the behested payment realm, and that behested payments are a "third strand" in payments to influence officials or official action along with gifts and contributions. Local agencies experienced that behested payments can make an "end-run" around officeholder contribution limits as well.
- **Officials Use of Nonprofits:** Noted that local elected officials are creating foundations/nonprofits that allow money to be donated to serve the community without having direct control over the entity, but often a spouse will sit on the entity's board, or a campaign consultant.
- **Form/Filing Issues:** Local officials file with their agency, and the agency is tasked with forwarding the report to the Ethics Agency, late reports are more difficult to respond to, and enforce, since the filing is with the official's agency. The Ethics Agency has a copy, not the original filing signature. The Agency holds the original.
- **Suggestion that the reporting focus on "potential influence" aspect of payments:**
  - Is the official affiliated with the nonprofit, for example: as a founder, or does a family member, campaign worker such as a campaign consultant, or office staff member sit on the board or serve as an employee?
  - Is there a decision pending before the official related to the recipient of the payment?
  - How is the nonprofit spending the behested payments; is there a personal benefit (gift or financial interest) to the official in how the payment is spent, or does the payment have a political purpose in furthering the official's campaign and avoids the campaign/officeholder contribution limits?
  - Are multiple official involved in the behest?