

## Behested Payments: Critics Take Aim

02.02.18 | Linda J. Rosenthal, JD



*Behest:* (12th century England) 1. An authoritative order, command 2. An urgent prompting

One imagines Sir Guy of Gisborne galloping through the Nottinghamshire countryside announcing the Sheriff's latest behest that lord and serf alike hand over their valuables forthwith; a behested payment, so to speak.

Alas, this is not a relic of the distant past.

Behested payments are alive, well, and perfectly legal in 21st century California. But some of the peasants in the Golden State are grumbling. There are small changes afoot – where else? – in San Francisco.

### *Behested Payments: What Are They?*

Back in 1997, a “number of legislators were seeking advice” on how – or if – to report certain types of contributions. What if an “official asks a person or business to make a donation to the official’s favorite charity or to contribute to an agency project; for example, a skate park?” That year, the legislature responded by amending California Government Code section 82015, the state’s political campaign disclosure law.

According to guidance from the California Fair Political Practices Commission (FPPC), a “payment is considered ‘behested’ and subject to reporting if:

- it is made at the request, suggestion, or solicitation of, or made in cooperation, consultation, coordination or concert with the public official;
- it is made for a legislative, governmental or charitable purpose; and
- it does not qualify as a gift (made for personal purposes), or a contribution (made for election-related activity) to the elected official.”

The Institute for Local Government had issued a helpful publication, *Understanding the “Behested Payments” Issue* (2012), that explains in plain English everything that a conscientious public servant should know about asking for help with community causes. “Ask and Ye Shall Report” is the key takeaway.

### *Behested Payments Move Center Stage*

“The amounts were a drop in the bucket 20 years ago when the requirements were instituted, but they’ve become big political business in recent years.”

In 1997, payments “behested by state lawmakers” totaled just \$243,533. By 2005, that figure jumped to almost \$3 million. By 2007, the amount spiraled to and “generally stayed in the \$8 million to \$9 million range” for a number of years. In a 2014 analysis by a San Francisco public TV and radio station, there was an estimate of some \$120 million raised “for charity and other groups by legislators and top state officials since the behested payment law took effect.”

That’s a lot of skate parks.

Gathering reliable numbers is cumbersome because the behested payment report forms for local elected officials are filed with hundreds of different offices around the state.

Apparently, no comprehensive study has been done of the total amounts involved. But, from news stories over the past year or so, it looks like the practice is growing in popularity, with some “eye-popping sums” reported.

For example, in Los Angeles, Democratic Mayor Eric Garcetti, a “longtime critic of big money in local politics” – has been setting records for behested payments. He has raised almost \$32 million “in large donations to his favored causes from individuals, businesses, and foundations, some of which have won sizable contracts and crucial approvals from the city in recent years.” Angelenos have recently read headlines like ‘A tricky area of philanthropy’: LA mayor solicits millions for his favored causes. Garcetti’s success has been almost twice as much as the California pol generally thought of as the king of the behested payments, Democratic Governor Jerry Brown.

Just a bit down the road in San Diego, citizens read headlines like Charitable giving at [San Diego] mayor’s behest tops \$2 million. Republican Mayor Kevin Faulconer is no slouch: He “continues to solicit donations for his favorite charities at a pace that far exceeds other local elected officials, and many of the contributions support a nonprofit formed to benefit his office ....’One San Diego,’ the nonprofit that Mayor Faulconer created after his 2014 election, has received more than \$800,000” some of which was for “furniture, polling, receptions and other functions for the Mayor’s Office.”

“These days in statewide and (...local...) politics ‘behested payments’ have taken on a larger meaning, as they increasingly are part of the money and influence game played by office holders and their supporters.” It is a bipartisan practice at all levels of state and local government, in the legislative as well as the executive branches.

### *Reining In Excesses*

The media glare has thrown some light on this practice that previously had been conducted mostly under-the-radar. From the standpoint of government watchdogs, behested payments are a “thorny fundraising practice”; a form of influence buying.

In January 2017, the San Francisco Board of Supervisors took action, voting 11-0 to approve a new ordinance on behested payments that goes beyond the requirements of existing state law. Effective January 1, 2018, “members of boards and members of boards and commissions who are required to file a Statement of Economic Interest (Form 700) [must] disclose if they directly or indirectly request or solicit charitable contributions of \$1,000 from parties or participants (or their agents) while certain matters are pending before that commissioner’s board.”

This disclosure duty applies to monetary as well as non-monetary contributions to a “government agency, educational institution, and both 501c and Section 527 tax-exempt organizations.”

### *Conclusion*

This step by San Francisco officials may be a harbinger of other action around the state.

In any event, it may not be the end of the story, even in that locale. With the new ordinance set to take effect at the beginning of the new year, the San Francisco Ethics Commission proposed, late in 2017, a more dramatic change; that is, to “restrict public officials from asking for charitable or civic donations from a person or group that has business before that official.”

That proposal was unsuccessful. But having failed to get the Board of Supervisors to approve such a severe limit on their own fundraising, Ethics Commission members have floated the possibility of putting the matter on the ballot sometime this year.

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