



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward
From: Phillip Ung, Director, Legislative and External Affairs
Subject: [UPDATED August 14, 2018] Legislative Update, August 2018
Date: August 14, 2018

Staff is currently tracking eight active bills, seven of which amend the Political Reform Act. At the July meeting, the Commission adopted a position on one bill. The Legislature returns from summer recess on August 6. The legislative session ends on August 31.

Staff is providing an updated legislative report to reflect bill amendments, changes in bill status, and location changes that have occurred between the Commission's open meeting notice and the Commission meeting.

Legislation currently being tracked by Commission staff and other related documents can be found on the [Commission's Pending Legislation](#) page.

Bills with Active Positions (#1-4)

1. [AB 2155](#) (Mullin): Campaign disclosure

FPPC Position: *Support*

Sponsor: California Clean Money Campaign

Status: Senate Floor – Third Reading File

Fiscal Estimate: No costs to the Commission

Last Amended: June 13, 2018

Last Action: Referred by Senate Appropriations Committee to the Senate Floor.

Summary:

The Act requires advertisements, as defined, to disclose, among other things, the advertisement's funding source, including independent expenditures, and the names of the top contributors to the committee paying for the advertisement. The Act further requires that an advertisement supporting or opposing a candidate that is paid for by an independent expenditure include a statement that it was not authorized by a candidate or a committee controlled by a candidate. The Act further permits the Commission to adopt, amend, or rescind rules and regulations to carry out the purposes of the title.

This bill would exempt two additional types of communications from the Act's definition of advertisement. This bill would limit the Commission's regulatory authority for determining what types of communications are not advertisements. The bill prohibits the Commission from adopting regulations to change or insert quantity thresholds, as specified. The bill makes various

formatting amendments required for television, video, print, and electronic media advertisements paid for by a committee not controlled by a political party or is not a candidate controlled committee established for an elective office of the controlling candidate.

2. **[AB 2689](#) (Gray): Gift and contribution prohibition; Governor’s appointments**

FPPC Position: *Support*

Status: Senate Third Reading

Last Amended: April 17, 2018

Fiscal Estimate: Minor and absorbable

Last Action: Referred by Senate Appropriations Committee to the Senate Floor

Summary:

The Political Reform Act establishes limits on gifts that a person or group can give to a candidate or state elective officer and limits how much a candidate or state elective officer can accept in a calendar year. The Act also establishes limits on contributions that a person or group can contribute to a candidate for state elective office and limits how much a candidate for state elective office can accept per election.

This bill would prohibit a person appointed by the Governor to an office subject to Senate or Assembly confirmation from making to a Senator or Assembly Member or a controlled committee of the Senator or Assembly Member, a gift or contribution during the period between the appointment or reappointment by the Governor and confirmation by the Senate. The bill would also apply this prohibition to candidates for the Senate or Assembly, as specified.

Staff Comments:

The Law and Policy Committee, consisting of Commissioner Hatch, convened a conference call on Friday, July 13. Commissioner Hatch voted to recommend a “support” position to the Commission.

3. **[AB 2880](#) (Harper): Political Reform Act; local enforcement**

FPPC Position: *Support*

Sponsor: California Common Cause

Status: Assembly Floor – Concurrence File

Last Amended: June 12, 2018

Fiscal Estimate: Costs to the FPPC in the tens of thousands for each individual jurisdiction, reimbursed by the jurisdictions. Minor and absorbable costs to the FPPC to make the required report.

Last Action: Approved by Senate on Consent File; referred back to Assembly for Concurrence in Senate Amendments.

Summary:

Existing law authorizes the Fair Political Practices Commission, upon mutual agreement between the Commission and the Board of Supervisors of the County of San Bernardino, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance reform ordinance of the County of San Bernardino, as specified. Existing

law also authorizes the Fair Political Practices Commission to enter such agreements with the City Council of the City of Stockton and the City Council of the City of Sacramento, respectively.

This bill would repeal those provisions and would instead generally authorize the governing body of a local government agency to contract with the Commission for the administration, implementation, and enforcement of a local campaign finance or government ethics law. The authorization is limited to jurisdictions with a population of less than 3,000,000. This bill would also clarify that any agreement with one of the cities enumerated above that was in effect on December 31, 2018, is deemed to comply with this provision. The authorization will sunset January 1, 2026. The Commission would be required to produce a report to the Legislature regarding the performance of any agreements on or before January 1, 2025.

4. [SB 1239](#) (Hertzberg): Campaign disclosure: online filing system

FPPC Position: *Support*

Sponsor: Secretary of State Alex Padilla

Status: Assembly Floor – Third Reading File

Fiscal Estimate: No costs to the Commission, potential minor cost savings.

Last Amended: August 13, 2018

Last Action: Approved by Assembly Appropriations Committee; referred to Assembly Floor; amended to address chaptering out conflict with AB 2155

Summary:

The Political Reform Act of 1974 generally requires elected officials, candidates for elective office, and committees formed primarily to support or oppose a candidate for public office or a ballot measure, along with other entities, to file periodic campaign statements and certain reports concerning campaign finances and related matters. The act generally provides for the filing of campaign statements and reports by various means, including personal delivery, guaranteed overnight delivery, facsimile transmission, and online transmission. The act requires the Secretary of State, in consultation with the Fair Political Practices Commission, to develop online and electronic filing processes for persons and entities that are required to file statements and reports with the Secretary of State's office. The act requires certain persons and entities to file online or electronically with the Secretary of State if their political contributions, expenditures, or loans reach specified monetary thresholds. The Act requires each committee that is required to file a statement of organization to pay the Secretary of State a fee of \$50 by January 15 of each year until the committee is terminated. The Act subjects a committee that fails to pay the fee on time to a penalty equal to three times the amount of the fee.

This bill would generally recast certain provisions governing the processing of campaign reports and statements to provide for the filing, verification, delivery, amendment, retention, and inspection of those documents online or electronically, as prescribed. The bill would repeal the above-mentioned monetary thresholds, thereby making the online and electronic filing requirements applicable to all specified filers. The bill would also repeal various obsolete or extraneous provisions of the act, and would make conforming and other technical, nonsubstantive changes. The bill would change the deadline for payment of the annual fee to April 30 of each year. The bill also makes other technical, non-substantive changes.

Staff Comments:

SB 1239 was amended to address chaptering out issues that would arise if both SB 1239 and AB 2155 were enacted.

Active Political Reform Bills (#5-7)

5. AB 84 (Mullin): Political party committee disclosures

FPPC Position: *No Position*

Status: Senate Appropriations Committee

Fiscal Estimate: Minor and absorbable

Urgency Clause: Yes

Last Amended: August 6, 2018

Last Action: Approved in Senate Elections Committee; referred to Senate Appropriations Committee.

Summary:

Existing law requires the reporting of campaign contributions and expenditures and imposing other reporting and recordkeeping requirements on campaign committees. The act requires elected officers, candidates, and committees to file various reports, including semiannual reports, pre-election statements, and supplemental pre-election statements.

This bill would additionally require political party committees that receive or contribute \$50,000 or more during the current or immediately preceding two-year election cycle to file monthly statements in any year which there is a regularly scheduled statewide primary or general election. The bill would waive this requirement for months in which specified reports under existing law are also filed. "Two-year election cycle" is defined within the bill.

Existing law defines "political party committee" as the state central committee or county central committee of an organization that meets the requirements for recognition as a political party, as specified.

This bill would add to this definition committees created by a legislative caucus of a political party of each house of the Legislature. The bill would provide for the leadership of a legislative caucus committee, as specified. The bill would also provide that a legislative caucus committee is not a controlled committee for purposes of the Act, and would regulate the use of bank accounts and funds received by a legislative caucus committee, as specified. The bill provides that a campaign contribution to a legislative caucus committee is not a campaign contribution to the person who directs the committee or of any other candidate.

The bill would prohibit contributions from legislative caucus committee funds to the Speaker of the Assembly, Assembly Minority Leader, President pro Tempore of the Senate, Senate Minority Leader or the caucus leader for purposes of supporting the election or reelection to state office

Existing law prohibits lobbyists from making a contribution to an elected state officer or candidate for elected state office if the lobbyist is registered to lobby the governmental agency of the officer or for which the candidate is seeking election.

This bill would prohibit a lobbyist from making a contribution to a legislative caucus committee if the lobbyist is registered to lobby the Legislature.

This bill contains an urgency clause. The bill also delays the operative date by 14-days after the effective date.

Staff Comments:

AB 84 was entirely amended on July 5 with new language.

Historically, legislative caucus committees have been required to identify the caucus as controlling the committee. (Regulation 18430(c).) We have also advised that if a candidate controls the legislative caucus committee, the contributions to the caucus are contributions to the candidate, which would be subject to the candidate's contribution limit and potentially violate the one-bank account rule. (See *Murray* Advice Letter, No. A-97-142, *Bergeson* Advice Letter, No. I-92-093, and *Purcell* Advice Letter, No. A-89-049.) A legislative caucus committee not controlled by a candidate, but supporting or opposing a state candidate, would be subject to the \$7,300 contribution limit of Section 85303(b).

The proposed changes regarding legislative caucus committees will affect the Act's overall contribution limit scheme. The recharacterization of a legislative caucus committee as a type of political party committee "directed" by an elected official or candidate, and not "controlled" by that official or candidate would allow the new legislative caucuses to accept up to \$36,500 per source, per calendar year for the purpose of supporting state candidates. There would be no limits to how much a state candidates could receive from a legislative caucus committee.

Under current law, political party committees are required to file up to six comprehensive campaign finance reports in an election year. The proposed law would require political party committees to file 12 comprehensive campaign finance reports if the \$50,000 contribution or expenditure threshold is triggered.

The bill was further amended on August 6 to do the following:

- Adds new legislative findings and declarations, and expresses the Legislature's intent in enacting this bill.
- Change AB 84's reporting period for a political party committee that has made more than \$50,000 of contributions and expenditures from the "previous calendar year" to the "current or immediately preceding two-year election cycle." Defines "two-year election cycle."
- Prohibit a legislative caucus committee from accepting a contribution from a lobbyist, and a lobbyist from making a contribution to such a committee, if the lobbyist is registered to lobby the Legislature.
- Prohibit legislative caucus funds from being used to make a contribution to the Speaker of the Assembly, Assembly Minority Leader, President pro Tempore of the Senate,

Senate Minority Leader, or the caucus leader of any other recognized political party represented in the Legislature for purposes of supporting his or her election or reelection to state office.

- Addresses the previous confusion that the word “Each” in proposed changes to Section 85205(b) might arguably permit each party to establish multiple legislative caucus committees within each house of the Legislature by deleting “Each” and replacing it with “The.”
- Amends previously proposed language, allowing “legislative caucus funds” to be used to make expenditures associated with the election of “members of the Legislature,” to allow expenditures associated with the election of members to the Legislature.”

The Commission may wish to discuss the following topics:

- Whether AB 84 furthers the purposes of the Political Reform Act?
- The benefit vs. the burden of the proposed requirement for filing of monthly statements.
- The urgency clause and the 14-day delay and how it affects the November election.
- Changes to the contribution limit scheme.
- Controlling a committee vs. directing a committee.

6. [AB 664](#) (Steinorth): Campaign fund expenditures; fair market value

FPPC Position: *No Position*

Status: Enrollment

Fiscal Estimate: Minor and absorbable

Last Amended: June 12, 2018

Last Action: Assembly concurred in Senate Amendments; To Engrossing and Enrolled.

Summary:

Existing law prohibits the spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation from campaign funds controlled by the elected officer or candidate.

Under the *Harden* (A-90-498) and *Tierney* (A-04-094) Advice Letters, the Commission staff has advised that the compensation from campaign funds must be fair market value or a gift may result, so long as the duties performed by a non-spouse relative are directly related to a political, legislative, or governmental purpose.

This bill would prohibit compensation above fair market value to a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate or elective office from a controlled committee of the elected officer or candidate for elective office. The bill would additionally prohibit compensation above fair market value to any business owned or controlled by any above named relatives. The bill further states that nothing in the bill authorizes a controlled committee to pay campaign funds in excess of fair market value in exchange for goods, services, facilities, or anything of value, to any person or vendor.

7. **AB 2188 (Mullin): Campaign disclosure**

FPPC Position: *No Position*

Sponsor: California Clean Money Campaign

Status: Senate Appropriations Committee – Suspense File

Fiscal Estimate: \$192,800 first year, \$183,000 ongoing

Last Amended: May 9, 2018

Last Action: Heard by the Senate Appropriations Committee and referred to Committee’s Suspense File.

Summary:

Among other things, the Act requires an electronic media advertisement, other than an Internet Web site, paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, to include the text “Who funded this ad?” and a hyperlink to an Internet Web site containing specified disclosures. However, the act requires that an advertisement made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, only include specified disclosures in a contrasting color and in no less than 8 point font on the committee’s profile, landing page, or similar location, and not on each individual post, comment, or other similar communication.

This bill would require the disclosures on the committee’s profile, landing page, or similar location to be on the cover or header photo of the committee’s profile, landing page, or similar location and in no less than 10 point font. The bill would require the disclosures to be fully visible on the cover or header photo when the profile, landing page, or similar location is viewed from any electronic device that is commonly used to view this form of electronic media.

This bill would require an online platform, as defined, to display a hyperlink with the text “Who funded this ad?” on an advertisement paid for by a committee. The bill would require an online platform to maintain and make available a complete record of any request to purchase an advertisement on the online platform made by a committee that purchased \$500 or more in advertisements on the online platform during the preceding 12 months. The bill would require an online platform to display a prominent button, tab, or hyperlink near the top of a profile, landing page, or similar location of the committee that links to a page clearly showing the records of any request made by the committee to purchase an advertisement on the online platform. The bill would make a person who intentionally violates these provisions for the purpose of avoiding disclosure liable in a civil or administrative action brought by the Commission or any person for a fine up to three times the cost of the advertisement, including placement costs.

This bill would require an electronic media advertisement, other than a mass electronic mailing, that is paid for by a political party or a candidate controlled committee established for an elective office of the controlling candidate, and that does not support or oppose a ballot measure and is not paid for by an independent expenditure, to include a specified disclosure regarding who paid for the advertisement.

Miscellaneous Bills (#8)

8. [AB 2958](#) (Quirk): State Bodies; meetings; teleconference

Status: Senate Floor - Third Reading File

Last Amended: August 6, 2018

Last Action: Approved by the Senate Appropriations Committee; amended; referred to Senate Floor.

Summary:

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body, as defined, be open and public, and all persons be permitted to attend any meeting of a state body, except as provided. Existing law does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. Existing law, among other things, requires a state body that elects to conduct a meeting or proceeding by teleconference to post agendas at all teleconference locations, to identify each teleconference location in the notice and agenda, and to make each teleconference location accessible to the public. Existing law requires the agenda to provide an opportunity for members of the public to address the state body directly at each teleconference location, as specified.

This bill, for a state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember body, would authorize an additional way of holding a meeting by teleconference, as prescribed, provided it also complies with all other applicable requirements of the Bagley-Keene Open Meeting Act. In this context, the bill would require a member of a state body participating by teleconference to be listed in the meeting minutes and that notice, as specified, identifying that member be provided to the public at least 24 hours before the meeting. The bill would require a state body to designate a primary physical meeting location where members of the public may attend the meeting and participate. The bill would require a quorum of the body's members to be present at the primary physical meeting location and that decisions during the teleconference meeting be made by rollcall vote. The bill would require the state body, if a member participates remotely, to provide the public a way to hear the meeting or to observe it and to provide public notice, as specified, of how this would be done. Upon discovering that a means of remote access has failed during a meeting, the bill would require the body to end or adjourn the meeting, as specified, and would prescribe certain notice requirements and procedures in this connection.