



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Cardenas, Hatch, and Wilson

From: Lindsey Nakano, Legislative Counsel

Subject: Legislative Update – February 2021

Date: February 8, 2021

Report Contents

- General update
- Committee membership update
- Current status and summaries of Commission-related legislation
 - New bills: AB 319 and SB 305
- Updates to the Commission’s legislative proposals (attached document)

General Update

Staff submitted draft language for all of the proposals approved by the Commission to the Office of Legislative Counsel and continues to approach potential authors and interested parties.

Committee Membership Update

[Asm. Blanca Rubio](#) (Baldwin Park) has filled the vacant seat on the Assembly Committee on Elections formerly held by Secretary of State Shirley Weber.

Commission-Related Bills

AB 20 – Campaign contributions and public financing of elections.

Introduced by Assembly Members Lee and Kalra
Coauthors: Assembly Members McCarty and Quirk; Senator Allen
Status: Referred to the Assembly Committee on Elections (1/11/21)

Summary:

AB 20, titled the “Clean Money Act of 2021,” would prohibit a candidate for elective office from receiving a contribution from a business entity, and would prohibit a business entity from making a contribution to a candidate for elective office. The bill would additionally state the intent of the Legislature to enact legislation to create a public financing system for elections in the state.

AB 40 – Slate mailer disclosures.

Introduced by Assembly Member Lorena Gonzalez

Status: Referred to the Assembly Committee on Elections (1/11/21)

Summary:

AB 40 would require slate mailers to include additional disclosures, including the number of members who make up the slate mailer organization or committee and the total amount paid by each candidate and ballot measure to appear on the slate mailer. The bill would additionally delete a requirement relating to the maximum font size of an asterisk required when a candidate or ballot measure has paid to appear on the slate mailer.

AB 227 – Contribution prohibitions.

Introduced by Assembly Member Davies

Status: Referred to the Assembly Committee on Elections (1/28/21)

Summary:

AB 227 would prohibit a Governor's appointee, a person residing in the appointee's household, or another person at the request or demand of the appointee or a person residing in their household, during the term of the appointment and for one year after the term expires, from making a monetary contribution to the Governor's campaign, or to a committee organized to benefit the Governor's campaign. The bill would additionally require a prospective Governor's appointee, if they or a member of their household made a contribution to the Governor's campaign or committee within one year prior to the appointment, to, upon notice of the intended appointment, immediately disclose the contribution, and would prohibit the appointment unless the Governor or the committee refunds the contribution.

AB 236 – Campaign contributions: limited liability companies.

Introduced by Assembly Member Berman

Status: Referred to the Assembly Committee on Elections (1/28/21)

Summary:

AB 236 would require a committee to include within its campaign statement the name of each individual who owns or controls, or controls the contributions or expenditures of, a limited liability company or foreign limited liability company from which the committee received a campaign contribution. The bill would additionally make a limited liability company a multipurpose organization for these purposes, subject to specified registration and campaign reporting requirements, including the disclosure of information relating to the organization's donors.

AB 319 – Campaign contributions: legal defense fund limits and foreign contribution prohibitions.

Introduced by Assembly Member Valladares

Status: Introduced (1/26/21); pending referral

Summary:

AB 319 would extend the contribution limits imposed pursuant to the Act to contributions to the legal defense funds of candidates for elective office or elected officers, which are currently exempt from those limits.

The bill would also prohibit a foreign government or principal from making contributions, expenditures, or independent expenditures in connection with the election of a candidate to state or local office, and would prohibit a person or a committee from soliciting or accepting those contributions. Note: existing law currently prohibits these contributions and expenditures if they are made in connection with regard to state or local ballot measures.

SB 78 – Slate mailer disclosures.

Introduced by Senator Nielsen

Status: Referred to the Senate Committee on Elections and Constitutional Amendments (1/28/21)

Summary:

SB 78 would require slate mailers to include additional disclosures, including the number of members who make up the slate mailer organization or committee and the total amount paid by each candidate and ballot measure to appear on the slate mailer. The bill would additionally delete a requirement relating to the maximum font size of an asterisk required when a candidate or ballot measure has paid to appear on the slate mailer.

SB 79 – Political Reform Act (spot bill).

Introduced by Senator Nielsen

Status: Referred to the Senate Committee on Rules (1/28/21)

Summary:

SB 79 would make nonsubstantive changes to a provision of the Political Reform Act.

SB 305 – Effective date of electronic filing requirements.

Introduced by Senator Jones

Status: Introduced (2/3/21); pending referral

Summary:

SB 305 would change the effective date of certain provisions requiring electronic filing of specified statements and reports under the Act from the date that the Secretary of State certifies the CAL-ACCESS replacement system to the effective date of the bill, which, as an urgency bill, would take effect immediately. The bill would apply to the statements of organization filed by recipient committees and slate mailer organizations, and the statements, reports, and other documents of committees and other persons not currently required to file electronically. The bill would also require the registration statements of lobbying firms, lobbyist employers, and lobbying coalitions to be filed only electronically, instead of both electronically and in paper form.

FPPC 2021 LEGISLATIVE PRIORITIES

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PROPOSALS RELATING TO ENFORCEMENT OF THE POLITICAL REFORM ACT

FPPC Special Investigator Authority

- Summary:
 - This bill would give FPPC Special Investigators additional authority to, among other things, access state and law enforcement databases and carry official identification, by amending Section 830.11 of the Penal Code.
 - This is the same level of authority currently granted to, among others, investigators with the Public Utilities Commission, State Board of Equalization, and Department of Insurance.

- Background:
 - FPPC Special Investigators do not have access to criminal databases and other state databases. This limits their ability to, for example, check the background of individuals under investigation and locate witnesses and respondents.
 - Additionally, FPPC Special Investigators currently only have a FPPC state identification card, which is similar to the common identification cards carried by other state workers. People often do not recognize these identification cards as carrying any authority.

- Note: Under this proposal, FPPC Special Investigators would not become peace officers. The Commission on Police Officer Standards and Training (POST) reviewed the proposal and found that a feasibility study is not needed prior to pursuing the legislation.

Tax Record Inspection Authority

- Summary:
 - This bill would require the Franchise Tax Board to permit a designee of the FPPC to inspect the tax records of a public official under investigation for a potential violation of the Political Reform Act.
 - Inspection would be permitted if the information contained in the tax record is material to a specific matter under investigation, as determined by the FPPC's Executive Director.
 - The FPPC would be required to notify a public official by mail that a request to inspect their tax records has been made.
 - The FPPC would be required to reimburse FTB for its costs to provide these tax records to the FPPC.

- Background:
 - Currently, the Commission does not have authority to access the tax records of respondents and is unable to fully investigate cases involving the amount and sources of income. The Commission must rely on records provided by officials, which may differ from those reported to tax agencies. Access to these records would allow FPPC investigators to find unreported sources of income and verify sources and amounts of income relevant to these investigations.
 - The Commission estimates that it would make approximately six requests for tax records per year pursuant to the authority that would be granted by this proposal.

- Example:
 - A public official is under investigation by the Commission for omitting a source of income on their statement of economic interests. Pursuant to the authority that would be granted by this bill, the Commission would be able to inspect the public official's tax records and confirm the unreported income.

Egregious Personal Use of Campaign Funds

- Summary:
 - This bill would make a person who uses campaign funds in a manner that violates the Act and results in an “egregious personal benefit” liable in an administrative or civil action brought by the commission for an amount of up to three times the amount of the unlawful expenditure.
 - The bill would define “egregious personal benefit” to mean a direct personal benefit with a value of ten thousand dollars (\$10,000) or more to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

- Background:
 - The impact of the FPPC's civil and administrative penalties falls disproportionately on smaller offenses under the Act. In many instances, civil and administrative penalties have little behavioral impact on larger infractions.

- Example 1:
 - A candidate for elected office purchases a new luxury vehicle for \$50,000 with campaign funds that the candidate uses equally on the campaign trail and for personal purposes, including for transportation to their vacation home and weekend social gatherings. The candidate places the title of vehicle in their own name.

- Because the candidate uses the vehicle for personal purposes that are not merely incidental and failed to place the title in the committee's name, the candidate is in violation of Section 89516(a).
 - Under the penalty that would be imposed by this bill, the candidate would be liable for an amount of up to \$150,000.
- Example 2:
 - As a reward for a hard-fought campaign, a successful candidate for elected office uses remaining campaign funds to go on a ten-day trip to Hawaii with his spouse and two children. The cost of the trip comes to \$11,000. During the trip, the candidate occasionally tweets from his campaign twitter account and checks his campaign email account once every day or two.
 - Although the candidate spends some time on political activities while in Hawaii, this use of campaign funds for travel and accommodations would not be considered directly related to a political, legislative, or governmental purpose, and would therefore be in violation of Section 89513(a).
 - Under the penalty that would be imposed by this bill, the candidate would be liable for an amount of up to \$33,000.

PROPOSALS RELATING TO INCREASING TRANSPARENCY

LLC Campaign Activity Disclosure

- Summary:
 - This bill would require a limited liability company (LLC) that qualifies as a committee or committee sponsor under the Act to file a statement of members with the Secretary of State.
 - The statement would be required to include a list of all persons who either:
 - Have a 10% or greater membership interest in the LLC, or
 - Made a cumulative capital contribution of \$1,000 or more to the LLC after it qualified as a committee or committee sponsor, or within the previous two calendar years before qualification.
 - The statement would be required to include certain information, such as the name of each member and the dollar amount of the cumulative capital contributions made by each member.
 - If a member of the LLC is another LLC, the bill would require disclosure of the latter LLC's members.
 - Filing would be required within 10 days of qualifying as a committee or committee sponsor, or within 24 hours if there is an election within 30 days and other specified conditions are met.
 - A LLC would be required to file an amended statement if it receives a capital contribution of \$1,000 or more after qualifying as a committee or committee sponsor.
 - The bill would require contributions from a member to be aggregated with contributions from the LLC.

- Background:
 - There are significant challenges to determining the true source of contributions and expenditures made by LLCs. A natural person is not required for formation and even when disclosure thresholds are reached, often no natural person will be disclosed to the public.
 - This proposal would increase transparency around the true source of funds used by LLCs in state elections.

- Example 1:
 - In 2016, LHR Investment Group LLC gave \$3.8 million to a local ballot measure. Although the LLC filed a Form 461 Major Donor Report, because current state law does not require major donors to list their funding sources, the public could not determine where the money actually came from.
 - Under this proposal, if the LLC qualified as a committee sponsor, it would be required to submit a statement of members within 10 days of qualifying or within

24 hours if any contributions were made within 30 days of the election. This disclosure would include, among other information, the names of the LLC's members, their cumulative capital contributions, and the date of each contribution.

- Example 2:
 - A businessperson created an LLC three years ago and fully funded it. Three years later, the LLC makes a large contribution to a ballot measure committee. Under this proposal, since the businessperson counted for 100% of the LLC assets, that person would be listed on the statement of members.

Lobbyist Audits and Reports

- Summary:
 - This bill would transfer the duty to conduct audits of lobbyist reports and statements from the Franchise Tax Board to the Fair Political Practices Commission.
 - To aid investigations and increase transparency, the bill would add to the information that must be included in lobbyist reports, including the names of those lobbied, a description of the specific lobbying interests lobbied, and the payments received for lobbying a person on a particular matter.
 - To increase transparency in lobbying activity that occurs at the end of the legislative session, the bill would require lobbyist reports to be filed monthly, instead of quarterly, in the third calendar quarter of each year.
 - The bill would also exclude placement agents from the pool of lobbyist reports and statements that must be audited.
- Background:
 - Under the Political Reform Act, FTB is required to conduct audits of reports and statements filed pursuant to the provisions that regulate campaigns, contributions and expenditures, and lobbyists.
 - The Commission is authorized to conduct discretionary audits of any reports or statements filed under the Act, and is required to conduct audits of candidates for Controller and members of the Board of Equalization, and of committees supporting those candidates.
 - FTB reports that in recent years, both the volume and complexity of their mandatory audits have increased. Due to staffing and budget limitations, FTB has been unable to timely complete lobbyist audits.
 - Transferring the duty to conduct lobbyist audits to the Commission would allow FTB to focus resources on other higher volume audits required under the Act while helping to ensure that lobbyist audits also receive priority.

Campaign Bank Account Rule Extension

- Summary:
 - This bill would extend the “one bank account rule” such that all committees would be required to deposit all contributions into, and make all expenditures from, a single designated bank account.
 - The bill would codify Regulation 18534, relating to designating all-purpose and restricted-use committee bank accounts.

- Background:
 - Currently, only candidate committees are subject to the “one bank account” rule, which generally requires that all contributions received are deposited into a designated bank account and that all expenditures are drawn from that same account.
 - Extending this requirement to all committees, such as primarily formed ballot measure committees and general purpose recipient committees, would improve the ability of the Commission, and committees themselves, to track contributions and expenditures, which would increase transparency and compliance and aid Commission investigations.

PROPOSALS FOR MODERNIZATION, EFFICIENCY, AND CONSISTENCY

Committee Annual Fee and Penalty Collection

- Summary:
 - This bill would transfer the duty to collect the penalty for failure to pay the annual committee fee and the original unpaid fee from the FPPC to the Secretary of State.
- Background:
 - Under the Act, the Secretary of State is required to charge and collect a \$50 annual fee from each committee.
 - A committee that fails to timely pay the fee is subject to a penalty of three times the amount of the fee (\$150) and the Commission is currently required to collect that penalty and the associated unpaid fee.
 - Collection of the penalty and unpaid fee requires only an administrative collection process and does not benefit from the resources of the FPPC's Enforcement division.
 - This proposal would transfer collection of the penalty and unpaid fee to SOS, the entity responsible for charging and collecting the original fee.

Statement of Economic Interest (SEI) E-filing and Gift Limit Cap

- Summary:
 - This bill would require Statements of Economic Interests (SEIs) filed by a public official and for which the Commission is the filing officer to be filed with the Commission using the Commission's electronic filing system.
 - The bill would also cap the gift limit at \$500 and eliminate the biennial cost-of-living adjustment.
- Background:
 - The Commission has successfully implemented the SEI electronic filing system and has received thousands of e-filed SEIs, though use of the e-filing system is currently voluntary.
 - Requiring SEIs to be filed using the electronic filing system would increase staff efficiency, reduce paper use, and further the Commission's general modernization efforts.
 - Under the Political Reform Act, the Commission is required to make a cost-of-living adjustment to the gift limit every odd-numbered year.
 - Pursuant to that requirement, the gift limit was adjusted to \$520 in 2021.

- Because the gift limit is now higher than the income disclosure threshold, which is \$500, this could result in a situation where, for example, earned income of \$510 would create a conflict of interest, but a gift of \$510 would not create a conflict of interest.
- Capping the gift limit at \$500 would thus create consistency within the Act.
- Example (of current law):
 - A city council member, Amy, owns a musical instrument store and also provides music lessons to members of the public. Within the last 12 months, Amy has provided music lessons to Sam and received \$510 in payment.
 - Sam now has business before the city council. Pursuant to Section 87103(c), because Amy received more than \$500 in income from Sam, Amy has a financial interest in the decision and is prohibited from making, participating in making, or influencing the decision.
 - In contrast, Pat, who is also a city council member, received a gift from Sam equal to \$510 in value within the prior 12 months. Under the current gift limit of \$520, Pat does not have a financial interest in the decision pursuant to Section 87103(e) and may continue to participate in the decision.

Behested Payment Report E-filing

- Summary:
 - This bill would require an elected state officer or member of the PUC to file directly with the FPPC, instead of with their agency, using the Commission's electronic filing system within 30 days of the behested payment.
 - The bill would require non-state elected officers to file directly with their filing officer, instead of with their agency, within 30 days of the behested payment.
 - The bill would authorize a filing officer to require electronic filing for non-state elected officers, and would provide that an electronically filed report is an original report.
- Background:
 - The Commission currently has an electronic filing system for behested payment reports that elected officers may use on a voluntary basis.
 - Requiring elected officers to use the electronic filing system would increase staff efficiency, reduce paper use, and further the Commission's general modernization efforts.
 - Authorizing local filing officers to require electronic filing would have similar effects at the local level.

Cleanup Bill: Gendered Term Removal

- Summary:
 - This bill would remove gendered terms from the Act.
- Background:
 - The Act currently includes gendered terms, such as “chairman” and gendered pronouns. Assembly Concurrent Resolution 260 (2018) resolved that legislation, regulations, and other agency materials should remove, and avoid the use of, gendered terms.