



STATE OF CALIFORNIA
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To: Chair Miadich, Commissioners Baker, Ortiz, Wilson, and Wood
From: Lindsey Nakano, Sr. Legislative Counsel
Subject: **Legislative Update – November 2023**
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I. General Update

- This report includes legislation ideas that originate from FPPC staff. These ideas are presented to the Commission for discussion and feedback, and for direction on which ideas to pursue as potential sponsored legislation.

II. Upcoming Legislative Deadlines

- Jan. 1 – 2023 statutes take effect.
- Jan. 3 – Legislature reconvenes.

III. Ideas for Potential Sponsored Legislation

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1. Lobbying Audits

a. Background:

- i. The Political Reform Act requires that 25% of lobbying firms and lobbyist employers, randomly selected, be audited every two years.
- ii. Currently, the Franchise Tax Board is responsible for these audits. Due to insufficient resources, FTB has been unable to complete most of the required audits. Out of the approximately 300 audits required to be conducted every two years, no audits were completed for years 2017-18, and 4 audits were completed for years 2019-20.

b. Summary:

- i. This proposal would transfer the duty to conduct lobbying audits from the FTB to the FPPC. The FPPC has determined that it would need 9 new positions in the Audit Division to complete this workload.
- ii. The proposal would exempt lobbying entities with less than \$1 in activity from the initial selection pool for the random draw.
- iii. The proposal may also expand what is reported on lobbyist reports.

2. Placement Agents

a. Background:

- i. A “placement agent” is generally defined as an individual who acts in connection with the sale of investments to a state public retirement system in California.
- ii. In 2010, the California Legislature passed AB 1743, which redefined “lobbyist” to include placement agents in the PRA. Placement agents are therefore subject to the same requirements and prohibitions as traditional lobbyists, including registration and reporting requirements, and other restrictions, including the prohibition on contingency fees.
- iii. While the 2010 bill created benefits, including better disclosure and regulation of placement agent activity, some of the lobbyist provisions are not well-tailored to placement agent activity, including provisions on the timing of registration and termination, and on the contents of reports.

b. Summary:

- i. This proposal would separate placement agents from lobbyists under the PRA, allowing the registration and reporting provisions to be better aligned with placement agent activity.

3. Local Ethics Training

a. Background:

- i. In 2006, Section 53235 was added to the Government Code to require that local agency officials receive ethics training that includes training on the PRA once every two years. The section provides that if an entity develops curricula to satisfy this requirement, the FPPC and AG must be consulted regarding the sufficiency and accuracy of the proposed course content.
- ii. After the addition of Section 53235, the FPPC, in consultation with the AG, voluntarily created an online ethics course available free of charge to local officials that satisfies the requirements of that section.
- iii. As a voluntary service, the FPPC has never received funding for creating or maintaining the free training program. Currently, the FPPC must respond to hundreds of inquiries each week regarding the free program using existing staff resources. The system is also outdated and in need of an upgrade.

b. Summary:

- i. This proposal would create statutory authority for the FPPC, in consultation with the AG, to create and maintain the online ethics training program. This would enable the FPPC to apply for funding for 1 new position to respond to inquiries, and to cover the costs of upgrading the system.
- ii. The local ethics training program is a beneficial service that is widely used. Absent statutory authority and funding, the FPPC would be unable to continue to offer the program.

4. Study on Best Practices for Digital Advertisement Disclaimers

a. Background:

- i. In 2019, the Fair Political Practices Commission authorized the creation of a Digital Transparency Task Force to examine issues relating to digital political advertisements. The Task Force had a diverse membership, including academics, political consultants and practitioners, and representatives from good government groups, online platforms, and other jurisdictions.
- ii. The work of the Task Force culminated in a final report that included recommendations for future action, including a recommendation that the Legislature authorize the commission of a study to examine whether there are different styles of disclaimers on digital campaign advertisements that would more effectively inform voters about who is paying for the ads.

b. Summary:

- i. This proposal would codify the above recommendation to authorize the commission of a study that would result in data about what kinds of disclaimers are most effective at informing voters and maximizing transparency.

5. Broadening the Government Salary Exemption in the Definition of “Income” to Promote Equity

a. Background:

- i. The PRA exempts from the definition of “income” salary and other benefit payments received from a state, local, or federal government agency. The exemption does not include salary from a Native American Tribal government employer. This results in disparate treatment under the conflict of interest provisions depending on the type of government salary received.

b. Summary:

- i. This proposal would amend the definition of “income” in the PRA to exempt salary and other benefits received from a Native American Tribal government employer for employment in a Native American Tribal government position, in the same way that salary and other benefits are exempt when paid by local, state, or federal government employers.
- ii. Note: An individual employed by a Native American Tribal government in a government position is not a “public official” under the PRA for purposes of the conflict of interest provisions or otherwise by virtue of their employment with the Native American Tribal government, but that individual could qualify as a “public official” and be subject to the conflict of interest provisions if they additionally hold a position at a local, state, or federal government agency.
- iii. For example, a person employed by a Native American Tribal government and who is also a city council member would have to count their Native American Tribal government salary and benefits as “income” for purposes of the conflict of interest provisions, even though another city council member employed by any other local, state, or federal government agency would not count their government salary and benefits as “income” for those same purposes.
- iv. Additionally, under Government Code Section 1090, which generally prohibits public officials from participating in government contracts that could create a personal financial benefit for that official, “government entity” is not defined to be limited to local, state, or federal government agencies, and is thus interpreted broadly to include Native American Tribal governments. This proposal would therefore harmonize the conflict of interest analysis with the Section 1090 analysis.
- v. Also note: Staff are consulting with appropriate representatives from Native American Tribes to ensure that the language is appropriately inclusive.

6. Additional Authority to Waive the Late Filing Fee

a. Background:

- i. The PRA requires filing officers to impose a late fee for late-filed reports and statements and provides specified circumstances under which the late fee may be waived.
- ii. FPPC filing officers identified that there may be additional circumstances under which waiver may be appropriate.

b. Summary:

- i. After further development, this proposal would add additional authority for filing officers to waive the late filing fee under specific, defined circumstances.

7. Minor Changes and Cleanup Proposals

- a. Described below are various minor and cleanup changes to the PRA. These proposals could be incorporated into a single vehicle or could be taken up individually.

b. Redaction of bank account information

- i. Existing law requires recipient committees to file their original Statement of Organization with SOS, and a copy of the statement with their local filing officer. These statements include the committee's bank account number and the names of individuals who have access to the committee's bank account records.
- ii. In order to protect against financial fraud, this proposal would allow a committee to redact the bank account information on the copy of the statement provided to the local filing officer and would require SOS to redact the bank account information on statements that are provided to the public.

c. Redact street names and building numbers on campaign statements

- i. Public officials have unfortunately been subject to increased threats.
- ii. This proposal would require SOS and local filing officers to redact street names and building numbers on campaign reports and statements before providing them to the public.

d. Minor change to create deadline consistency in Statements of Economic Interests:

- i. Statements of Economic Interests required when an official first assumes office cover slightly different date ranges depending on the type of economic interest. Some types of interests must be reported if they are held on the date of assuming office and other types of interests must be reported if they were received as of the day before assuming office.

- ii. More specifically, on “assuming office” statements, real property and investments are disclosed if they are held on the date of assuming office, whereas income is disclosed if it was received during the 12 months before the date of assuming office (i.e., not including the date of assuming office).
 - iii. This proposal would reconcile the dates so that economic interests are reported the same, regardless of the type of interest.
 - e. Minor clarifications to the section requiring local agencies to post paper filings online (Sec. 84616, added in 2020):
 - i. Note: The ideas below were generated from questions received by FPPC staff when providing advice to local agencies.
 - ii. Sec. 84616 requires local agencies to post filings online within 72 hours of the filing deadline. The section does not state what the requirement is if the filing is filed late.
 - 1. This proposal would require any late filing to be posted online within 72 hours of receipt.
 - iii. Sec. 84616 requires any filing required under Ch. 4 that is filed with the local agency in paper format to be posted on the agency’s website. Technically, this would require the local agency to post filings that were erroneously filed with the agency.
 - 1. This proposal would provide that a local agency does not need to post the filing if it was erroneously filed with that agency, and would require the agency to notify the filer that they filed with the wrong agency.
 - iv. Sec. 84616 states that it applies to filings in paper format, but does not specifically apply to filings by email or fax. The intent appears to have been to post filings online if they are not already filed through the electronic filing system (since filings through the electronic filing system are already available online).
 - 1. This proposal would expand the posting requirement in 84616 to require local agencies to additionally post filings received by email or fax.
 - f. Additional cleanup changes

- i. Delete the definition of a term that is not used in the PRA (Sec. 82052.5).
- ii. Make conforming amendments to Section 84504.2, which was inadvertently left out of SB 1360 (2022), relating to advertisement disclosures.
- iii. Correct a cross-reference relating to what campaign expenditures count toward the voluntary expenditure ceiling (Sec. 85400).
- iv. Amend Section 85300, relating to public financing of campaigns back to pre-2016 language. The section, as amended in 2016, was declared void and unenforceable by a Superior Court decision and affirmed by the Court of Appeals in 2019.
- v. Correct incorrect cross-references.

IV. Other Sponsored Legislation - 2-Year Bills

1. AB 868 (Wilson)

- a. This bill would create a statewide public record of digital political advertisements paid for in support of or opposition to state-level candidates and ballot measures.

2. AB 1170 (Valencia)

- a. This bill would require individuals for whom the FPPC is the filing officer to file their Statements of Economic Interests using the Commission's electronic filing system.