

Recent Changes to the Political Reform Act

Below are summaries of the legislative and regulatory changes recently made to the Political Reform Act (Act). All the legislative provisions take effect on January 1, 2023, except for AB 2158, AB 2528, SB 459, SB 746, and a small portion of SB 1360 which were written to become operative at later dates or not at all as noted in the bill summaries below.¹ All the regulatory changes were approved by the Commission in 2022. To view the full text of the bills, visit: <http://leginfo.ca.gov/>. To view the full text of the FPPC regulations, visit: <http://www.fppc.ca.gov/the-law/fppc-regulations.html>.

Legislative Changes

Recurring Contributions: Requires a candidate or committee to obtain affirmative consent from a person making a recurring contribution at the time of the initial contribution and would require solicitations for recurring contributions to be in a form that requires affirmative consent. The bill requires improperly solicited contributions to be returned within 14 days, as provided. The bill requires a candidate or committee that accepts a recurring contribution to provide a receipt for each contribution, provide information necessary to cancel the recurring contribution, and immediately cancel a recurring contribution upon request. This bill is operative on January 1, 2023 (AB 775 (Berman) – Chapter 942, Statutes of 2022.)

Paper Filings with Secretary of State (SOS): Allows a person required to file a report or statement by paper with the SOS to instead file by email with a digital signature or other digital means as prescribed by the SOS. For a person that files by paper, the bill eliminates the requirement to file a copy along with the original filing. This bill is operative on January 1, 2023. (AB 2172 (Cervantes) – Chapter 328, Statutes of 2022.)

Lobbying – Administrative Action: Expands the definition of “administrative action” to additionally include any decision or approval pursuant to Section 1399.65 of the Health and Safety Code or Section 1215.2 of the Insurance Code, which govern the review and approval of the following: (1) proposed mergers, consolidations, and acquisitions of health care service plans that are subject to the approval of the Director of the Department of Managed Health Care, as specified; and (2) purchases, exchanges, mergers, and acquisitions of domestic insurers that are subject to the approval of the Insurance Commissioner, as specified. This bill is operative on January 1, 2023. (AB

¹ AB 1798 (Bryan) will not become operative since SB 1360 of the 2021-2022 Regular Session of the Legislature was enacted and takes effect on January 1, 2023. Sec. 4. of AB 1798 provides that if both AB 1798 and SB 1360 become law, AB 1798 will not become operative, and SB 1360 will prevail.

1783 (Levine) – Chapter 456, Statutes of 2022.)

Local Educational Agency Ethics Training: Amends laws outside of the Act to add school districts, county offices of education, and charter schools to the definition of “local agency” found in Government Code 53234 for purposes of the state’s local agency ethics training requirements, and would impose the ethics training requirements on a member of the governing board of a school district, a county board of education, or the governing body of a charter school, regardless of whether the member receives any type of compensation for expenses incurred in the performance of official duties. The bill imposes these training requirements on the governing board and governing body members starting January 1, 2025. (AB 2158 (Fong) – Chapter 279, Statutes of 2022.)

Cal Access – Local Candidates and Elected Officers: Requires an elected local government officer or candidate for elective local government office who has campaign contributions of \$15,000 or more and who is not currently required to file with SOS to file with SOS through their online filing and disclosure system, in addition to filing with whomever the statement or document is currently filed with under the Act, such as the elected officer’s local filing officer. The bill requires local candidates and officers to begin filing online with SOS on January 1st following the date that SOS certifies that the necessary changes to the online filing system have been made. (AB 2528 (Bigelow) – Chapter 500, Statutes of 2022.)

Lobbying Transparency: Requires lobbyists, lobbying firms, and lobbyist employers to include information in their quarterly periodic reports that identify each bill or administrative action subject to lobbying activity, the respective position advocated for, and each bill or administrative action for which issue lobbying advertisements, as defined, was issued. The bill requires a lobbyist employer to file a new 48-hour report if it pays or incurs an enforceable promise to pay \$5,000 or more to a lobbying firm to influence legislative action if the person did not employ the lobbying firm on the day immediately preceding the 60-day period. The bill imposes new requirements relating to issuing lobbying advertisements and requires a lobbyist employer to file specified reports within 72 hours of incurring costs of \$5,000 or more for issuing lobbying advertisements within a calendar quarter. The bill becomes operative one year after SOS certifies the new online filing and disclosure system. (SB 459) (Allen) – Chapter 873, Statutes of 2022.)

Business Entity Ads and Search Results: Requires a business entity to submit a report to SOS following any calendar year in which the business entity uses its products or services to alter online search results its products and services generate in order to emphasize or de-emphasize materials containing express advocacy or to target online advertisements to individuals, groups or generally to users or members of the public without full and adequate consideration and for political purposes. The bill specifies the contents of the report and requires business entities subject to these requirements to maintain detailed accounts and records necessary to prepare the report. The bill does

not apply to a business entity's use of its products or services exclusively to carry out its commercial activities, including, but not limited to, delivering user-generated content or a paid advertisement on behalf of another person or to communications that are internal to a business entity. The bill becomes operative on January 1, 2024. (SB 746 (Skinner) – Chapter 876, Statutes of 2022.)

Excessive Contributions: Authorizes a committee that receives a contribution with actual knowledge that the contribution is over the applicable contribution limit in the Act to return the contribution or attribute the portion in excess of the limit to another election within 72 hours of receipt or before the date of the election, whichever is sooner without violating contribution limits. The bill prohibits a committee from using the excessive contribution prior to returning or attributing it and caps the amount of a contribution that may be accepted pursuant to this bill at twice the applicable limit. The bill requires a committee that receives an excessive contribution to provide certain information to the contributor. The bill also codifies an existing regulation allowing the return of contributions within 14 days if the committee does not have actual knowledge that the contribution exceeds the applicable contribution limit and expands this existing rule to allow attribution of the excess amount to another election within 14 days in the case the excess contribution was not deposited or not allowed to be deposited with actual knowledge that the contribution exceeded the applicable limit. This bill is operative January 1, 2023 (SB 794 (Glazer) – Chapter 816, Statutes of 2022.)

Advertisement Disclosures: Makes changes to the disclosure requirements for political advertisements, including changes to the required form, content, and presentation of the disclosures depending on the medium in which the advertisement appears, including: (1) formatting changes to the disclosures required on a campaign advertisement disseminated as a video; (2) changes to the disclosures required on an electronic media advertisement that is a graphic or an image; (3) permitting, for electronic media advertisements and video advertisements disseminated over the internet, the shortening of a committee's name, as specified; and (4) in the case where a local ordinance has a disclosure requirement that is substantially similar to one required by the Act, allowing the statements to be merged into a single statement. This bill is operative January 1, 2023 with the exception of Section 12 of the bill amending Section 84504.2, which will go into effect once the SOS certifies the new online filing and disclosure system. (SB 1360 (Umberg and Allen) – Chapter 887, Statutes of 2022.)

Contributions to Local Government Agency Officers – Disqualification: Existing law under the Act prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, participant, or a party or participant's agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 3 months following the date a final decision is rendered in the proceeding, if the officer knows or has reasons to know that the participant has financial interest, as defined. The Act also prohibits a party, participant, or participant's agent from making a contribution of more than \$250 to an officer of the

agency during the proceeding and 3 months following the date of the final decision. Additionally, an officer may be disqualified from participating in a decision when, prior to making the decision, a party or participant in a proceeding made a contribution of more than \$250 to an officer within the preceding 12 months if the officer knows or has reason to know that the party or participant has a financial interest in the decision. The Act exempts certain entities from these requirements, including local government agencies whose members are directly elected by the voters. This bill removes that exception for local government agencies making them subject to the \$250 contribution prohibition. The bill additionally extends the prohibition on contributions from 3 to 12 months following the date a final decision is rendered in the proceeding and allows an officer to cure a violation for an improper contribution accepted after the proceeding by returning the contribution within 14 days, if the acceptance was not knowing and willful. This bill is operative January 1, 2023 (SB 1439 (Glazer) – Chapter 848, Statutes of 2022.)

Regulatory Changes

Campaign Changes

Regulation 18400 – Treasurer, Assistant Treasurer, Responsible Officer, and Principal Officer Capacity: Adoption of Regulation 18400 prohibits an individual under 18 years of age from serving in the role of a treasurer, assistant treasurer, responsible officer, or principal officer.

Regulation 18410 – Statement of Organization: Amendments to Regulation 18410 require disclosure of the names of persons, other than the treasurer, who have authorization to obtain the committee’s bank account records from the financial institution where the account is maintained. If there are more than two persons other than the treasurer authorized to obtain the bank records, the committee need only list two. This Regulation does not take effect until January 1, 2024. For committees in existence prior to January 1, 2024, the Statement of Organization shall be amended to include the required names by July 1, 2024, or the next time the committee files an amendment, whichever is earlier.

Regulation 18421.2 – Cryptocurrency Contributions: Adoption of Regulation 18421.2 revises a former prohibition on the making and receiving of campaign contributions via cryptocurrency. Committees may solicit and receive cryptocurrency contributions in any amount not exceeding any applicable contribution limits. Any cryptocurrency contribution must be made and received through a U.S. based cryptocurrency payment processor, must meet specified requirements for contributor verification and information gathering, and must immediately be converted to dollars. Please refer to the Regulation for full requirements regarding cryptocurrency processing and reporting.

Regulation 18531.5 – Recall Elections: Amendments to Regulation 18531.5 make the following clarifications to existing law: (1) the voluntary expenditure ceiling limit for a “general election” applies to state recall replacement candidates; (2) the target officer of a recall is not required to file a candidate statement of economic interests; (3) preelection statements and late contribution reports are not required for a target officer’s other controlled committees by virtue of the recall being on the ballot; (4) preelection statements and late contribution reports are not required for a target officer’s other controlled committees by virtue of the recall being on the ballot; (5) target officer recall committees must terminate within 12 months after failure of a recall petition or the recall election; and (6) specifies required disclosures for recall and replacement candidate advertisements.

Regulation 18545 – Contribution Limit and Voluntary Expenditure Ceiling Amounts: Amendments to Regulation 18545 were made for the cost of living adjustments to campaign contribution limits and voluntary expenditure ceiling amounts for the period of January 1, 2023 through December 31, 2024. Updated limits may be viewed on the FPPC website.

Conflict of Interest Changes

Regulation 18700 – Basic Rule and Guide to Conflict of Interest Regulations: Amendments to Regulation 18700 were made to reflect the cost of living adjustments to the gift limit from \$520 to \$590 for the period of January 1, 2023 through December 31, 2024.

Regulation 18728.5 – Reporting of Commission Income and Incentive Compensation: Amendments to Regulation 18728.5 were made to correct the citations to Regulation 18700.1 subdivisions (c)(1) and (d), where the definitions of commission income and incentive compensation, respectively, are located.

Regulation 18730 – Provisions of Conflict of Interest Codes: Amendments to Regulation 18730 were made to reflect the cost of living adjustments to the gift limit from \$520 to \$590 for the period of January 1, 2023 through December 31, 2024.

Lobbying Changes

Regulation 18624 – Lobbyist Arranging Gifts: Amendments to Regulation 18624 clarifies a lobbyist does not “arrange for the making of a gift” if the lobbyist, either directly or through an agent, solely makes recommendations or provides information to the lobbyist’s employer, including information obtained from a third party for that purpose, concerning gifts to a public official.

Regulation 18625 – Placing Official Under Personal Obligation: Amendments to Regulation 18625 add to the definition of “placing official under personal obligation,” the

failure of a lobbyist or lobbying firm to make sufficient efforts to collect debts for services provided. Specifies actions constituting “sufficient efforts” and also provides for a safe harbor via initiation of legal action.

Regulation 18626 – Contingency Fees Prohibition: Adoption of Regulation 18626 defines the phrase “any payment in any way contingent” from Section 86205(f) to mean every type of payment, including payment of a fee, salary, bonus, commission or any other form of compensation, which payment is dependent to any degree on the defeat, enactment, or outcome of any proposed legislative or administrative action. A contract for lobbying services does not, in itself, violate Section 86205(f) if it expressly states the agreed upon terms of all compensation to be received in return for those lobbying services and does not make the agreed upon payment dependent to any degree, directly or indirectly, on a specific outcome of the proposed legislative or administrative action for which the lobbying services are to be rendered.

Enforcement Changes

Regulation 18315 – Complaint against a Commissioner: Adoption of Regulation 18315 requires the Chief of Enforcement to refer any complaint alleging a current member of the Commission violated the Act to the Office of the Attorney General within two business days of receiving the complaint. The referral shall be in writing and include a copy of the complaint and any materials submitted with the complaint. The Chief of Enforcement must also notify either the Chair or Vice Chair of a complaint filed against a member of the Commission, and provide a copy of the referral to the member of the Commission subject to the complaint and the person who filed the complaint.

Regulation 18360 – Complaints Filed with the Commission: Amendments to Regulation 18360 specify what information and documents must be included in an Enforcement Division referral. In regard to the referral of campaign non-filers, the referral must include: the address by which a referred person was contacted, any personal contact information for the filer if the filer has left office or is no longer employed by an agency, the required filing methods available to the filer at the agency, and other specified information. Before making the referral, the filing officer shall attempt to contact the filer by telephone at least once. The amendments also make changes to the Commission procedures for the public disclosure of complaints and administrative matters being addressed through Enforcement.

Other Changes

Regulation 18225.7 – Made at the Behest; Independent versus Coordinated Expenditures: Amendments to Regulation 18225.7 were made to remove a reference to Regulation 18215.3 which was repealed in 2021 by the Commission.

Regulation 18940.2 – Gift Limit Amount: Amendments to Regulation 18940.2 were made to reflect the cost of living adjustment of the gift limit from \$520 to \$590 for the period of January 1, 2023 through December 31, 2024.

Regulation 18960 – Direct Personal Benefit: Amendments to Regulation 18960 were made to address recent legislation affecting the Act and to clean up current regulatory language. The amendments extend the “direct personal benefit” definition in Regulation 18960(a) to include recently adopted Section 89521(b)(2) and specifically states that the regulation also applies to “any individual or individuals with authority to approve the expenditure of campaign funds held by a committee” consistent with the statutory language.