

June 1, 2018

Commissioner Maria Audero  
Commissioner Frank Cardenas  
Commissioner Brian Hatch  
Commissioner Allison Hayward  
Fair Political Practices Commission  
1102 Q St, #3000  
Sacramento, CA 95811

**RE: Proposed FPPC Regulations**

Dear Commissioners,

On behalf of Common Cause and our members, thank you for the opportunity to comment on the draft governance regulations before the Commission. There are many elements of the proposed regulations that we strongly support, particularly those improving Commission transparency and providing greater opportunities for stakeholder participation; however, there are others that concern us, as we worry they will unduly burden the day-to-day administration of the Commission. Below, we provide more detailed feedback and suggested changes to the draft regulations.

However, in light of the recent resignation of the Chair Remke, we urge the Commission to postpone the discussion and adoption of the regulations until a new chair can be seated. These regulations will primarily impact the next and all future Commission Chairs. Several of the proposed changes would mark a substantial departure from the traditional role and responsibilities of the Chair. For these reasons, we think it advisable to have the perspective of a sitting Chair before making such changes.

On the proposed regulations themselves, there are many positive provisions that we commend. For example, we support:

- the creation of a Law & Policy Standing Committee, which will provide stakeholders with more time, structure, and predictable opportunities to present and discuss proposed legislative changes to the Act with commissioners;
- additional transparency provisions, such as requiring Commissioners to use their Commission email accounts to discuss Commission business; and
- the new public process for discussing, crafting, and adopting annual Commission priorities.

However, as mentioned, we are concerned that several of the proposed regulations are too restrictive, and could hamper the smooth functioning of the Commission. Other proposed regulations provide less public transparency than the status quo, which we do not believe was the intent behind these proposals. In specific:

**(1) Standing Committee Composition:**

Proposed § 18308.1(d)(1) has the Chair nominate commissioners to the two standing committees, but prohibits the Chair from serving on either committee. We recommend eliminating this prohibition. As the only full-time commissioner, the Chair may have special insight that could usefully inform the first drafts of policies and positions that the standing committees will be crafting. It may be that in a particular year, looking at the talent and expertise that each commissioner brings, the Commission decides two other commissioners are better fits for a particular standing committee, so the Chair need not be appointed. However, that is a decision that by necessity will vary based on the Commission’s changing membership and so is best left to the Commission’s discretion, not locked in through regulation.

Moreover, because the Bagley Keene Act would prohibit the Chair from speaking to the two members of either committee about the committee’s substantive work, this change would severely and uniquely lessen the Chair’s influence in shaping Commission policy, budgetary, and personnel decisions compared with her or his fellow commissioners. We don’t think this is the right approach as a matter of policy. It is also not in keeping with the structure of the Act which envisioned the Chair taking a central role in the management of the Commission.

The proposed regulation also requires partisan balance for both the Law & Policy Committee and Budget & Personnel Committee. We appreciate why partisan balance may have merit on the Law & Policy Committee, which recommends political positions on proposed legislation. However, the Budget & Personnel Committee’s tasks are administrative in nature, not political, so party affiliation should not factor into who can best serve on that standing committee. An unnecessary partisan balance requirement may also make staffing the committee harder, thus slowing important work around budgetary and personnel issues.

Finally, we understand that one of the motivations for creating the standing committees is to involve more commissioners in the Commission’s decision-making process. To assist this goal, as an alternative we recommend that no Commissioner be eligible to serve on both standing committees. This requirement would equitably spread commissioners’ responsibilities and ensure that one Commissioner does not have the power to single-handedly control the FPPC’s agenda, finances, etc.

***Summary of Recommendations:***

(1A) Allow the Chair to be appointed to the standing committees.

(1B) Do not require partisan balance on the Budget & Personnel Committee.

(1C) To distribute commissioner responsibilities, prohibit any commissioner from serving on more than one committee.

***Proposed change:***

18308.1(d)(1) The Chair nominates the committee members from among the ~~other~~ Commissioners, who in turn, modify or approve the makeup of each committee, provided however, that ***no Commissioner serves on more than one standing committee and each committee the Law & Policy Committee's*** makeup is in partisan balance.

## **(2) Standing Committee Transparency:**

Regulation § 18308.1(a)(9) requires standing committees to “give notice pursuant to the Bagley Keene Act to hold a public hearing on any subject within the jurisdiction of the committee, where the Commission finds that it is in the public interest to do so.” As the state’s premier ethics agency, the Commission must always operate transparently, except in certain very narrow circumstances -- such as discussing litigation -- already excepted under Bagley-Keene. To that end, rather than leaving open the possibility that standing committees will not comply with Bagley-Keene, the regulations should affirmatively specify that, notwithstanding the fact that each standing committee has only two members, they shall follow all the rules and procedures required of 3+ member standing committees under the Bagley-Keene Act.

Proposed regulation § 18308.1(d)(2)(D) also allow a third commissioner to attend a standing committee meeting, if the committee chair approves. Under Bagley-Keene, non-committee members may attend a standing committee, but may only do so as observers. (Gov. Code §11122.5(c)(6).) Since Commission meetings, and we presume standing committee meetings, will always be recorded and placed online, we do not see a reason to allow in-person attendance of a majority of commissioners. To avoid any appearance of impropriety, we recommend disallowing a Commission majority from attending a standing committee.

Finally, to improve Commission transparency, we recommend adopting regulations specifying that Commission and standing committee meetings will be video recorded and archived online, following existing Commission practice. We also recommend that all Commission policies be placed online for public review, particularly those that affect the public, stakeholders, and the regulated community, as is presently done with regulations and formal opinions. For example, the Commission previously had a policy discouraging Commissioners from speaking with stakeholders regarding policy positions the Commission might consider, but never publicly posted or communicated this policy with the public.

### ***Summary of Recommendations:***

(2A) Require the standing committees to comply with the Bagley-Keene Act.

(2B) Prohibit a majority of the Commission from attending a standing committee meeting.

(2C) Require Commission and standing committee meetings to be video recorded and posted online.

(2D) Require Commission regulations, policies, and formal advice letters to be published online.

### ***Proposed Changes:***

~~18308.1(a)(9) Requiring a standing committee to give notice pursuant to the Bagley-Keene Act to hold a public hearing on any subject within the jurisdiction of the committee, where the Commission finds that it is in the public interest to do so.~~

**18308.1(d)(1) Notwithstanding the number of committee members, each standing committee shall comply with the provisions of the Bagley-Keene Act that are applicable to state board standing committees with three or more members.**

~~18308.1(d)(2)(D) Excluding the Chair and other Commissioners from appearing at a committee meeting, or communicating with any member of a committee about a subject matter within the jurisdiction of the committee. However, a committee chair may, in consultation with General Counsel, shall not allow the Chair and other Commissioners to appear at a committee meeting, whenever the committee deems it appropriate to do so, provided that the meeting is open to the public and conducted in accordance with the Bagley-Keene Act.~~

**18308.1(e) All Commission and standing committee meetings shall be video recorded. The video recording of each meeting shall be conspicuously posted on, or linked to from, the Commission's Internet Web site within 72 hours of having been recorded.**

**18308.1(f) All Commission-adopted regulations, policies, and formal advice letters shall be conspicuously posted to the Commission's Internet Web site within 72 hours of having been adopted.**

### **(3) Commission Policy and Budget Priorities:**

Regulation § 18308.1(d)(5)(A) provides that the Budget & Personnel Committee shall originate and recommend to the Commission the annual FPPC budget to the Commission. Regulation § 18308.1(d)(6)(A) similarly provides that the Law & Policy Committee shall recommend annual policy goals to the Commission. While we think annual budget and policy priorities would benefit from being workshopped in committee, we think a conversation of such broad importance should originate with the Commission as a whole, and not just two Commissioners.

We recommend that, at the start of the calendar year, the Commission place on the agenda an open discussion item for Commissioners to discuss what they believe should be the Commission's budgetary and policy priorities. The Commission would then refer those matters to the respective committees to develop specific proposals in keeping with that discussion. In this way, no commissioner's views are excluded from the initial framing of these priorities.

Finally, a minor note: Regulation § 18308.1(d)(5)(A) requires the Budget & Personnel Committee to "review[] and recommend[] the annual FPPC budget to the Commission." We are unclear how this provision would work in practice, since the agency budget process is controlled by the Governor and remains relatively fluid for an almost six-month period. We recommend the Commission consider adopting, rather than a full budget, a set of

budget priorities to guide staff in its interaction with the Governor’s Office; this may also provide staff with greater flexibility to ultimately accomplish the Commission’s objectives.

**Summary of Recommendations:**

(3A) Involve the whole Commission in discussing budget and policy priorities before referring them to the Standing Committees.

(3B) Adopt budget priorities, rather than a full budget, to guide staff.

**Proposed Changes:**

18308.1(d)(5)(A) Reviewing and recommending the annual FPPC budget **priorities** to the Commission **after receiving input from Commissioners and the public at a noticed Commission meeting.**

18308.1(d)(6)(A) Recommending annual policy goals **after receiving input from Commissioners and the public at a noticed Commission meeting.** ~~and~~ **Periodically** reporting on efforts made to meet those goals and objectives to the Commission.

**(4) Administration:**

Regulation § 18308.1(d)(5)(H) provides that the Budget & Personnel Committee shall recommend to the Commission “the selection, evaluation, and, if necessary, discipline or dismissal of the Executive Director.” While, in concept, we support having a committee involved in the hiring and firing of the Executive Director, we are concerned that this Committee, by regulation, excludes the Chair, who has the most direct engagement with the Director.

As the only full-time employee, the Chair will naturally work most-closely with the Executive Director. A good relationship between the Chair and the Executive Director would only benefit the smooth functioning and effectiveness of the Commission. We therefore believe that, as concerns hiring, the Chair must be involved in the front-end of the hiring process, which might involve recruiting, evaluating applications, and sitting on interviews. This might be accomplished through the creation of a two-member ad hoc committee, including the Chair, when the need arises.

Additionally, because the Chair has the most day-to-day experience with the Executive Director, the Chair will be most familiar with when discipline or dismissal is merited. While the Budget & Personnel Committee may be the appropriate venue to consider the potential range of disciplinary actions against an Executive Director, we believe that the discussion of whether any discipline is merited at all should begin with the Commission as a whole, where the Chair and other members may weigh in.

Regulation § 18308.1(c)(4) requires Commissioners to communicate with staff through the Executive Director or Division Chiefs. We recommend clarifying that this prohibition on speaking with lower-level staff does not include when those staff are brought into a meeting/communication by an Executive Director or Division Chief to provide technical or expert information relevant to the discussion.

**Summary of Recommendations:**

(4A) Involve the Chair in the hiring of the Executive Director. Involve the Budget & Personnel Committee in recommending the disciplining of the Executive Director only upon direction of the full Commission.

(4B) Clarify that the Executive Director or a Division Chief may bring in other staff to assist in answering a Commissioner's query.

**Proposed Changes:**

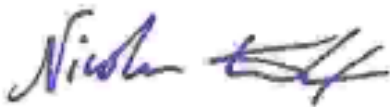
18308.1(b)(2) Selecting, evaluating, and, if necessary, disciplining or dismissing the Executive Director. ***Prior to selecting a new Executive Director, the Commission shall establish an Ad Hoc Hiring Committee, which shall include the Chair, to review applications and to provide a recommendation to the Commission.***

18308.1(d)(5)(H) Recommending to the Commission the selection, evaluation, and, if necessary, ***and, if requested by the Commission, the*** discipline or dismissal of the Executive Director.

18308.1(c)(4) Between meetings, communicate with staff through the Executive Director or a Division Chief. ***This does not preclude the Executive Director or a Division Chief from inviting other staff into the communication to provide technical or expert information.***

Thank you for your consideration of our requested changes.

Sincerely,



Nicolas Heidorn  
Policy and Legal Director  
California Common Cause