

**Fair Political Practices Commission
Memorandum**

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda
From: John W. Wallace, Assistant General Counsel
Subject: Regulatory Plan for the Remainder of 2011 and 2012
Date: May 25, 2011

I. INTRODUCTION

This memorandum provides an update to the Commission on the proposed regulatory plan for the remainder of 2011 and 2012. Historically, staff has provided a list of recommendations for the Commission's regulatory priorities each Calendar Year. Generally, these memoranda were considered in November or December of the prior calendar year. The first discussion of the regulatory plan is generally in narrative form, while at a subsequent meeting, the proposed regulations will be provided to the Commission on a tentative regulatory calendar that will reflect which items require interested persons' meetings, pre-notice hearings, and adoption hearings.

In order to establish this list of priorities, regulatory ideas are solicited from the public and from Commission staff in all of the Commission divisions. As you are aware, two Interested Persons' meetings have already been held in Sacramento (April 14 and April 21), which have resulted in a major portion of the ideas set out in this memorandum. Once the proposals are collected, legal staff meets with executive staff for their review and guidance as to what projects are placed on the final calendar. The final memorandum contains those items that the executive staff determines are the most urgent and would be manageable in light of the current fiscal and staff constraints. Historically, the rulemaking plan allows for quarterly review and revision by the Commission.¹

Due to the task force regulations started at the end of last year, this is the first opportunity staff has had to restart the regulation calendar process for 2011 and to inform the Commission of the current regulatory ideas under consideration. Staff will return with a more detailed calendar at the next available meeting, which will also encompass regulation ideas for 2012.

¹ The updates are necessary for a variety of reasons, new issues arise during the calendar year and might become new regulations projects, new legislation might also require regulatory work, problems might delay the timeline of already calendared items, and other priorities might arise that limit the staff availability to work on regulations (such as new litigation for example).

The current process employed to develop specific regulations² is similar to the process used to develop the calendar.

- Legal division staff will be assigned each regulation project.
- After initial research, an Interested Persons' meeting will be scheduled. Depending on the complexity of the regulation or packet of regulations, multiple Interested Persons' meetings may be held.
- Staff will then prepare draft language that will be presented to other legal staff and the Executive Division for comment and changes.
- Once language has been settled upon, the regulation will be noticed through the Office of Administrative Law (OAL) as required under the Administrative Procedures Act (APA) before the Commission is legally able to take action.³ Staff's notice to the public is intended to ensure the public will be aware of the issues and options the commission will consider.⁴ This allows the public to provide informed comment during the notice period and to make an informed choice whether to appear and comment on the items at the actual Commission meeting. The statutory notice procedure also requires that the notice is sent to interested persons. We satisfy this requirement via our listserv email system. We also publish the materials on our website.
- With satisfaction of these legal notice requirements, the next step is to prepare the regulation and a memorandum for Commission consideration. In order for the Commission to legally consider the item at a Commission Meeting under the Bagley Keene open meeting law, the Commission must publically agendize the item 10 days in advance of the meeting date. Currently, we are also preparing and publishing a preview agenda that is published approximately 30 days in advance of Commission meeting so that the public has an earlier idea of what the different items may be considered at the meeting. This preview notice will be updated as the agenda changes.
- In the past, we have also utilized what we refer to as prenotice hearings. These hearings were held prior to the regulation being formerly noticed, gave the public and the Commission a first opportunity to look at, and comment on the regulation prior to the actual adoption hearing. However, in most respects, the Interested Persons' meetings have

² Of course this is the process we endeavor to follow. The reality is that there are an unlimited number of circumstances in which this process does not apply -- emergency regulations, and nonsubstantive changes, just to name a couple.

³ Unlike other agencies, the Commission is not subject to the current APA which governs the regulatory action of state agencies, but rather is subject to the 1974 version of the APA. Therefore Commission regulations are subject to only a 30-day notice period. However, since publication of notice still occurs in OAL's Notice Bulletin (along with all other state regulations), we must still provide the notice and regulation to OAL well in advance of the publication date (45 to 60 days in advance of the Commission Meeting).

⁴ The actual notice is published in the notice bulletin, not the regulation. The regulatory language is made available from the Commission on its website

taken the place of the prenotice hearings and therefore absent unusual circumstances prenotice hearings will not be scheduled.

- Finally, once the Commission adopts the regulation it is then sent back to OAL for finalization. It is the Commission's practice, however, that the regulation becomes the official policy of the agency upon adoption.

II. NEW PROPOSED PROJECTS

The proposed areas of focus include refinement and improvement of campaign regulations, conflict-of-interest regulations, and enforcement and gift regulations. In addition, the Commission will need to factor in regulations needed to implement legislation early next year. As of the writing of this memorandum, there are currently 25 bills being tracked due to potential impacts on the Act. However, none of the regulatory projects that may be needed to implement these bills can be calendared until the legislation is signed by the Governor. Historically, new legislation has resulted in several regulatory amendments or adoptions each year.

A more detailed discussion of specific regulations selected for the calendar will occur at a future Commission Meeting.