STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke and Commissioners Audero, Casher, Wasserman, and Wynne

From: Phillip Ung, Legislative and External Affairs Director

Subject: Legislative Update – August 2016

Date: August 8, 2016

Staff is not recommending any positions or change of positions for August.

The Legislature is in its final month of the 2016 Session. Senate and Assembly Appropriations Committees will dispense with their dockets followed by both houses convening Floor Sessions for the last two weeks of August.

Bills with Active Positions (#1-5)

1. AB 700 (Gomez): Advertisement disclosure

FPPC Position: ***Oppose unless Amended***
Status: Senate Appropriations Committee – Suspense File
Fiscal Estimate: $350,000
Introduced: February 25, 2015
Amended: June 30, 2016
Last Action: Referred to the Senate Committee on Appropriations – Suspense File (8/1/2016)

Summary:
The Act provides comprehensive regulations for campaign finance disclosure requiring committees that support or oppose ballot measures to use the name or phrase that clearly identifies the economic or other special interest of its donors of $50,000 or more. If major donors share a common employer, then the employer is disclosed.

The bill would redefine and recast the Act's advertisement disclaimer provisions. The bill prescribes the disclosure statements, location, and format criteria required for television, radio, telephone, and internet advertisements with some exemptions; excludes apparel, sky writing, and certain electronic media. The bill would require on-advertisement disclosure of the top three contributors. Certain committees would be exempt from the top contributor disclosure, including major donors and individuals and entities making independent expenditures.
Finally, it should be noted that there is a potential risk for litigation as a result of the bill's expanding the advertisement rules to general purpose committees.

AB 700 was approved by the Assembly (60 ayes – 15 noes). Staff provided amendments to the author and sponsor in April 2016 with no substantial conversations between the parties taking

place until the end of June, at which time AB 700 was amended further. Since the last set of amendments, the sponsor has reengaged with Commission staff to discuss next steps.

Staff Update
Based on the June 30th amendments, AB 700 still has significant issues to address. The author and sponsor have shared possible amendments to the bill that staff has identified as problematic. Discussions with the sponsor are ongoing. At this time staff does not recommend amending the Commission's current position.

2. AB 2002 (Stone): Lobbying: California Coastal Commission

FPPC Position: **Oppose Unless Amended**
Status: Senate Committee on Appropriations – Suspense File
Fiscal Estimate: $215,327 first year, $201,327 ongoing
Amended: April 12, 2016
Last Action: Referred to the Senate Committee on Appropriations – Suspense File (8/1/2016)

Summary:
The following are the key provisions of the Political Reform Act that would be impacted by this bill. It is important to remember that all these provisions currently apply to the Coastal Commission and those who communicate with the commission on administrative actions.

- The Act defines a "lobbyist" as an individual who receives $2,000 or more in a calendar month, or whose principal duties as an employee are, to communicate with an agency official, elected state official, or legislative official for the purpose of influencing legislative or administrative action. This definition does not apply to any elected public official acting in her official capacity, or any state employee acting within the scope of his or her employment.
- "Administrative action" is defined as the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or a quasi-legislative proceeding, as specified.
- "Agency official" is defined as any member, officer, employee, or consultant of any state agency who as part of her official responsibilities participates in any administrative action in other than a purely clerical, secretarial, or ministerial capacity.
- The Act requires a lobbyist to register as a lobbyist and to comply with various ethics and reporting rules.
- The Act requires lobbying firms and lobbyist employers to register with the Secretary of State and to file periodic disclosure reports that contain information about the firms' and employers' lobbying interests and agencies lobbied.

This bill seeks to make several significant changes and add exceptions to the Act that would apply *only to the Coastal Commission*.

- The bill would expand the definition of "administrative action" to include the Coastal Commission's quasi-judicial proceedings, such as issuing permits. In no other adjudicative government action by a state agency are such communications considered "lobbying" for purposes of the Act.

- It would limit the definition of "agency official" to the Coastal Commissioners, excluding staff of the Commission, thereby allowing individuals to "lobby" staff without having to register as lobbyists. This would narrow who qualifies as a lobbyist under existing law.
- It would exempt from the lobbying provisions of the Act all employees of a local government agency seeking, within the scope of his or her employment, to influence quasi-judicial decisions of the Coastal Commission.
- Unrelated to the Act, the bill also would modify the time in which Coastal Commissioners must publicly disclose any ex parte communications they engage in.

The concern expressed by the author's office is that the Coastal Commission allows ex parte communications with its commissioners on adjudicatory proceeding (quasi-judicial), wherein interested persons may unduly influence the commissioners without full disclosure to the public. In this context, "ex parte communication" is defined as any oral or written communication between a commissioner and an interested person about a matter within the commission's jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, or that is not on the record at such a proceeding. Quasi-judicial proceedings to issue permits make up the vast majority of the Coastal Commission's activities.

It is important to note that while the Administrative Procedure Act (APA) generally *prohibits* ex parte communication in an adjudicatory proceeding from any party unless there is notice and an opportunity for all parties to participate in the communication, the Coastal Commission is exempt from this prohibition. However, the commissioners are required to disclose and make public any ex parte communication by providing a full report of the communication and the report is made part of the record. Once the report is provided, the communication is no longer considered ex parte.

SB 1190 (Jackson), which is also currently pending, provides a different approach to the existing problem – it would prohibit ex parte communications. Interestingly, the Assembly Committee on Natural Resources analysis on the bill states:

> The [Coastal] Commission voted 6-5 this year to support banning ex parte communications, and in their support letter they state, "Commissioners have expressed concerns that the practice lacks transparency, undermines due process, and erodes public trust in the commission. Some have stated that they would prefer not to conduct ex partes, but feel pressured to do so because the practice is so widespread. The general conclusion is that the current process leads to an 'uneven' level of information available to the public."

The pronounced problems at the Coastal Commission relate to the permissibility of ex parte communications in quasi-judicial proceedings and the adequacy of the required reports disclosing those communications – issues outside the Act. Staff continues to have significant concerns with the proposed expansion of lobbying to include quasi-judicial proceedings and the statutory carve-outs proposed in AB 2002: 1) exempting local agency employees from registering as lobbyists, and 2) exempting Coastal Commission employees from the definition of "agency official." *Even if* quasi-judicial proceedings should be covered under the Act for purposes of lobbying registration, it should *not* be done one state agency at a time and with each

agency subject to its own unique carve-outs from other provisions of the Act. Such an approach is impractical as to both implementation and enforcement.

Staff Update:
The FPPC's position letter has been delivered to Mr. Stone's office and to the appropriate legislative committees and staff. Mr. Stone's staff has indicated the author does not have plans to amend the bill.

3. AB 2250 (Ridley-Thomas): Foreign Contributions

FPPC Position: ***Support***
Status: Assembly Floor – Unfinished Business
Fiscal Estimate: Minor and absorbable
Introduced: February 18, 2015
Last Action: Urgency Clause Refused (51 Ayes. 0 Noes.). Motion to reconsider made by Assembly Member Ridley-Thomas.

Summary:
The Political Reform Act prohibits a foreign government or principal, as defined, from making a contribution or expenditure *in connection with a ballot measure* and also prohibits a person or committee from soliciting or accepting a contribution from a foreign government or principal for this purpose. (Section 85320.) This bill would expand the scope of these prohibitions by also prohibiting a foreign government or principal from making a contribution or expenditure, and a person or committee from soliciting or accepting this type of contribution, *in connection with any election in California* (not just ballot measures). While this activity is currently prohibited under federal law, this bill expands the Commission's authority to enforce incidents of foreign contributions or expenditures into California campaigns should the Federal Election Commission (FEC) not act. This bill has an urgency clause so it can be in place in advance of the 2016 general election.

Staff Update
The author has informed staff that this bill will not likely proceed further this session due to irreconcilable policy concerns between the majority and minority party in the Assembly.

4. AB 2558 (Steinorth): San Bernardino County Enforcement

FPPC Position: ***Support***
Status: Senate Floor – Consent File
Fiscal Estimate: Unknown administrative, implementation, and enforcement costs to Commission, to be reimbursed by the County of San Bernardino.
Introduced: February 19, 2016
Last Action: Ordered to Consent Calendar (8/2/2016)

Summary:
Current law, until January 1, 2018, authorizes the Commission, upon mutual agreement between the Commission and the Board of Supervisors of the County of San Bernardino, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a

local campaign finance reform ordinance of the County of San Bernardino. (Section 83123.5.) This bill would repeal the January 1, 2018, sunset date, thereby extending the operation of these provisions indefinitely.

5. SB 1349 (Hertzberg): Cal-Access

FPPC Position: ***Support***
Status: Assembly Appropriations Committee, Suspense File
Fiscal Estímate: $131,384 first year, $124,384 ongoing
Amended: June 21, 2016
Last Action: Referred to Assembly Appropriations Committee Suspense File (6/29/2016)

Summary:
The bill requires the Secretary of State, in consultation with the Commission, to develop and launch a new, data-driven disclosure system for campaign finance and lobbying by February 1, 2019. Additionally, the bill requires the Secretary to produce a report by December 31, 2017 on the capability to accept campaign statements from local jurisdictions. The bill expressly exempts the system's development from the information technology procurement requirements prescribed by law. The bill also specifies certain features and operations for the new system.

Staff Update:
The Governor signed the 2016-2017 State Budget that included a $1.8 million appropriation from the Political Disclosure, Accountability, Transparency, and Accessibility (PDATA) Fund to support the Secretary's ongoing development of a Cal-Access Replacement System. The appropriation will allow the Secretary to complete the next two phases of the development process without requesting further funding from the Legislature.

Other Political Reform Act or Related Bills (#9-12)

6. AB 2318 (Low): FPPC Enforcement of use of public resources

FPPC Position: None Currently
Status: Senate Committee on Appropriations – Suspense File
Fiscal Estimate: $126,152 first year, and $119,152 ongoing
Amended: May 18, 2016
Last Action: Referred to the Senate Committee on Appropriations – Suspense File (8/1/2016)

Summary:
Current law prohibits the use of public funds for campaign activities. Current law also prohibits a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use public resources received from a local agency for campaign activity, as defined, and not authorized by law.

Current law places additional requirements on a "reporting nonprofit organization" that engages in campaign activity. "Reporting nonprofit organization" is defined as a nonprofit organization for which public resources from one or more local agencies account for more than 20% of the

nonprofit organization's annual gross revenue. These reporting nonprofits are subject to the following:

- The reporting nonprofit must deposit into a separate bank account all specific sources of funds it receives and to pay for all campaign activity from that separate bank account.
- If the reporting nonprofit engages in campaign activity in a quarter of $50,000 for statewide elections, or $2,500 for local elections, it must disclose to the Franchise Tax Board and post on its Internet Website specific information about the activity.
- The reporting nonprofit may be audited by the Franchise Tax Board.

This bill would require the Commission to conduct the audit and review of the forms required to be filed by reporting nonprofits, including jurisdiction to bring a civil action against these nonprofits if necessary.

According to the author, this bill improves upon the existing accountability and transparency provisions by providing enforcement authority to the FPPC. The author believes that the FPPC is the appropriate oversight body to promote and foster the public's trust.

At the request of Commission staff, the bill was amended to place the relevant provisions in the Political Reform Act. The author also has amended the bill to conform it into existing provisions of the Act, including registration, filing, and auditing, to be consistent with the reporting requirements for multipurpose organizations.

Staff Update:
The author and the FPPC staff have agreed on amendments that would retain the Attorney General and county district attorneys as enforcement agencies of the broader prohibition against the misuse of public resources by nonprofits.

7. AB 2523 (Mullin): Contribution Limits: Local Elections

FPPC Position: Neutral
Status: Senate Appropriations Committee – Suspense File
Fiscal Estimate: $1,073,972 first year, $1,017,972 ongoing
Amended: August 1, 2016
Last Action: Referred to Senate Committee on Appropriations – Suspense File (8/1/2016)

Summary:
The Political Reform Act contains contribution limits and other restrictions related to contribution limits for state office and statewide offices. The Act specifies nothing in the law prevents the Legislature or local agency from adopting additional requirements, and nothing in the Act nullifies contribution limitations or prohibitions in local jurisdictions. All ordinances or other provisions adopted by local governments must be filed with the Commission.

The bill would amend the Act to establish a state-mandated contribution limit on local and special jurisdictions. The state-mandated contribution limit is equal to the limits of state legislative candidates and would be adjusted for cost-of-living. Jurisdictions that adopt their own limit or have already established a limit would not be subject to the state limit established by AB 2523.

8. SB 45 (Mendoza): Mass Mailing Prohibition

FPPC Position: None currently
Status: Assembly Rules Committee
Fiscal Estímate: None requested
Amended: June 27, 2016
Last Action: Amended and re-referred to the Assembly Rules Committee.

Summary

The Political Reform Act prohibits mass mailings from being sent at public expense. The Act defines "mass mailing" as over 200 substantially similar pieces of mail, not including form letters or other mail, which are sent in response to an unsolicited request, letter, or other inquiry. Existing FPPC regulations add further criteria for mass mailings and specify certain exceptions to the Act's prohibition against mass mailings.

This bill would prohibit a mass mailing from being sent within the 90 days preceding an election by or on behalf of a candidate whose name will appear on the ballot for a city, a county or special district elective office.

Staff Update:

Staff believes this bill will not be moving this year. Staff will continue to monitor if the bill is referred by the Assembly Rules Committee.

9. SB 1011 (Mendoza): Public Officers: Contracts: Financial Interests

FPPC Position: None currently
Status: Assembly Appropriations Committee – Suspense File
Fiscal Estimate: Minor and absorbable
Amended: August 3, 2016
Last Action: Referred to Assembly Appropriations Committee – Suspense File (8/3/2016).

Summary:

This bill would, on and after January 1, 2018, include within the definition of remote interest that of a public officer in the financial interest of the public officer's child, parent, sibling, or the spouse of the child, parent, or sibling, in a contract made by that public officer, where the interest is actually known to the public officer, and the officer knowingly or willfully fails to disclose those interests. The FPPC is charged with enforcing and advising on Government Code Section 1090.

SB 1011 is a revived version of SB 330 (Mendoza, 2015) with a narrowed definition of the public officer's family member.

Staff Update:

SB 1011 received technical amendments at the request of the Attorney General to address cross-referencing issues.

10. SB 1107 (Allen): Public Financing of Campaigns

Status: Assembly Appropriations Committee – Suspense File
FPPC Position: None currently
Fiscal Estimate: $166,531 for first year, $159,531 for ongoing
Amended: June 30, 2016
Last Action: Amended. Re-referred to the Assembly Appropriations Committee – Suspense File. (8/3/2016)

Summary:
The Act prohibits a public officer from spending or receiving public funds for the purpose of seeking elective office (Section 85300). The Act's prohibition on public financing of campaigns now applies to all jurisdictions except charter cities.

This bill would allow a public officer to spend or receive funds for the purpose of seeking elective office if: 1) funds were authorized in a dedicated account; 2) funds were available to all candidates regardless of incumbency or political party; and 3) the government entity had established criteria for receiving funds by statute, resolution, or charter. The bill proposes new restrictions on surplus funds for committees controlled by officeholders who have been permanently banned from seeking public office under Elections Code Section 20, because they have been convicted of a felony involving bribery, extortion or perjury.

Recent amendments to SB 1107 removed the Legislature's referral to the 2018 election ballot. The bill would now directly amend the Political Reform Act if it receives a 2/3 vote of the Legislature and the Governor's signature. Staff has flagged this bill as a proposal that may face litigation if approved.

11. ACA 9 (Gomez): Post-governmental Employment: Legislative Vacancies

Status: Assembly Elections Committee
FPPC Position: None currently
Fiscal Estimate: Not yet requested
Amended: April 21, 2016
Last Action: Set for hearing. Hearing cancelled at the request of the author. (6/15/2016)

Summary:
This constitutional amendment would revise the post-governmental employment restrictions of the Legislature to begin when the legislator resigns to one year after the date the legislator's term was scheduled to expire.

The bill does not amend the Political Reform Act directly, but may require conforming changes to the Act if approved by the voters.

Bills Not Expected to Move Further This Legislative Session (#13-14)

12. AB 1582 (Travis Allen): Conflicts of interests: post-secondary educational institutions
FPPC Position: Oppose
Status: Assembly Elections and Redistricting Committee
Fiscal Estimate: Not yet requested
Introduced: January 5, 2016
Amended: February 18, 2016
Last Action: Set for hearing on April 13, 2016

13. AB 2070 (Harper): Local Enforcement for Orange County
FPPC Position: None currently
Status: Assembly Elections and Redistricting Committee
Fiscal Estimate: Not yet requested
Introduced: February 17, 2016
Last Action: Committee hearing cancelled by the author.

14. SB 976 (Vidak): Post-governmental Employment
Status: Senate Appropriations Committee
FPPC Position: None currently
Fiscal Estimate: $53,254 for first year, $46,254 for ongoing
Amended: March 17, 2016
Last Action: Approved by Senate Appropriations and re-referred to the Senate Rules Committee.

Dead Bills (#15-23)

15. AB 1200 (Gordon): Lobbying: procurement contracts
FPPC Position: Oppose
Status: Vetoed
Fiscal Estimate: $872,000 (two years), $760,000 (ongoing)
Introduced: February 27, 2015
Amended: February 10, 2016
Last Action: Vetoed by the Governor

16. AB 2044 (Harper): Committee Thresholds (Spot Bill) (Dead)

17. AB 2284 (Patterson): Use of surplus funds
FPPC Position: None currently
Status: Assembly Elections Committee
Fiscal Estimate: Not yet requested
Amended: April 6, 2016
Last Action: Failed in Committee (Ayes 2. Noes 3. Abs 2).

18. AB 2628 (Levine): Employment Restrictions: Revolving Door
Status: Assembly Appropriations Committee
FPPC Position: None currently

Fiscal Estimate: $282,351 for first year, $268,351 for ongoing
Amended: April 19, 2016
Last Action: Held on Assembly Appropriations Committee Suspense File

19. AB 2823 (Gatto): Statement of Economic Interests
Status: Senate Judiciary Committee
FPPC Position: None currently
Fiscal Estimate: Not applicable
Amended: June 21, 2016
Last Action: Failed in Senate Public Employee and Retirement Committee, referred to Senate Judiciary.

20. AB 2840 (Lopez): Prohibition on Non-profit Travel
Status: Assembly Elections Committee
FPPC Position: None currently
Fiscal Estimate: Not yet requested
Introduced: February 19, 2016
Last Action: Failed passage (Ayes 0, Noes 5, Abs 2).

21. SB 921 (Anderson): Campaign Statements (Spot Bill) (Dead)

22. SB 1251 (Moorlach): State Financial Obligations: Ballot Pamphlet
Status: Senate Public Employment and Retirement Committee and Senate Governmental Organizations Committee
FPPC Position: None currently
Fiscal Estimate: Not yet requested
Amended: March 31, 2016
Last Action: Failed passage (Ayes 2, Noes 3, Abs 0)

23. SB 1467 (Bates): Restrictions on Advertisements by Candidate Controlled Ballot Measure Committees
Status: Senate Appropriations Committee
FPPC Position: None currently
Fiscal Estimate: $266,038 for first year, $252,038 for ongoing
Introduced: February 19, 2016
Amended: April 13, 2016
Last Action: Held on Senate Appropriations Suspense File