



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 9, 2018

**To: Fellow Commissioners**

**Fr: Commissioner Allison Hayward, Commissioner Brian Hatch**

**Re: Adoption of Proposed Regulations 18308, 18308.1, 18308.2 and 18308.3  
Regarding Commission Governance**

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Attached are draft regulations implementing the Ad Hoc Committee's FPPC Governance reforms, which promulgate our recommendations. These regulations provide regular integration of part-time Commissioners into Commission work, ensure that matters that require Commission approval are brought before the Commission as anticipated by the Political Reform Act and open meeting laws, and improve the Commission's accountability and transparency.

The key change from the Ad Hoc Committee's initial proposal presented last month is to the proposed Standing Committees. These proposed regulations establish two Standing Committees, the Law & Policy Committee and the Budget & Personnel Committee, each made up of two Commissioners, one from each political party. The Chair does not serve on any Standing Committee but appoints the members subject to Commission approval. The Ad Hoc Committee, after research and staff consultation, concluded that two committees would be better able to function between Commission meetings without running afoul of open meeting requirements. Should a Commissioner leave the Commission and vacate that seat, the remaining committee member would serve as the "committee" until a new Commissioner fills the seat. Although the draft regulation anticipates that the full Commission will act on recommendations of these committees, it also clarifies that the full Commission retains the power to take up matters on its own. The Standing Committees assist the Commission in its duties, they do not supplant the Commission.

Another issue on which the Ad Hoc Committee received helpful advice concerned how the Budget & Personnel Committee would work with the Executive Director on the budget. Budget change proposals (or BCPs) are confidential and exempt from public records laws, and our initial proposal seemed to expose BCPs in an open meeting. We have reworked the relevant sections to prevent impermissible releases of confidential information. We also anticipate that should the Commission as a whole need to consider such information, it could meet in executive session. It seems evident to the Ad Hoc Committee that the Governor's privilege trumps any purported open meeting requirement.

The proposed regulations restrict communications among more than two Commissioners on the agenda to involve only the description or placement of an item on the agenda - not the merits of the item. We are concerned that the Legal Division believes that even such limited communication is a violation of the Bagley Keene open meeting law. Yet we have found no authority for this position, have anecdotal evidence that other Commissions do not feel so bound, and believe the statute allows such limited communications between the Chair and more than one other Commissioner. But other three-Commissioner communications could violate open meeting laws. Accordingly, this draft calls on the Commission to articulate procedures that would allow a Standing Committee to meet with a third Commissioner, such as the Chair, consistent with Bagley Keene.

This draft also addresses several other points. These proposed regulations state that the Law & Policy Committee sets policy and works with the Legal Division to determine if advice requests are properly addressed as formal or informal advice by the Division, or rather should be considered by the Commission in an Opinion. This draft also clarifies that proposed Section 18308.2 (c) applies to employee communications only within an employee's official duties, addressing constitutional concerns. Responding to some confusion over the scope of "executive staff," this draft spells out that "executive staff" includes division chiefs, the Legislative Director, and the Communications Director.

We would like to thank the Legal Division, former Commissioners, and other interested parties for their constructive criticism and assistance with this project. We look forward to a productive hearing on the Ad Hoc Committee's proposed regulations.