



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 25, 2018

To: Fellow Commissioners

Fr: The Ad Hoc Committee on the FPPC's Governance Principles  
Commissioner Allison Hayward  
Commissioner Brian Hatch

Re: FPPC Governance Regulations, Regulations 18308, 18308.1, 18308.2 and 18308.3

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The regulations attached here were approved at the April 2018 Commission meeting and forwarded to the Office of Administrative Law. There are before you today for a final vote.

These regulations differ from the principles first recommended by the Ad Hoc Committee in significant ways. Most obviously, they take the form of regulations, rather than internal governance policies. Both the Legal Division and the FPPC Chair have persuasively argued that such rules belong in the Code of Regulations rather than existing as some form of "underground regulation" not formally promulgated by the Commission.

Additionally, the rules establish two standing committees rather than four (as originally proposed). Again, the Legal Division made a convincing case that having four Commissioners serving on four separate two-person standing committees would likely present issues with the Bagley Keene open meeting requirements. Accordingly, these regulations establish two standing committees, of a bipartisan set of two commissioners, neither of whom is the Chair, and clarifies that one Commissioner can serve on only one standing committee at a time.

As anyone involved in state or local government can attest, standing committees are a common device for governments (and private organizations) to use for preliminary work in between regular meetings of the full entity. They are used by large statewide Commissions and small special districts alike. Our Commission's makeup presents some challenges, with Commissioners living in far-flung parts of the state and only one full-time Commissioner (the Chair) regularly in the office. But with the assistance of the Legal Division, we have developed a workable framework.

To that end, several procedural details of these Committees have also been added. These committees will, unless prevented by confidentiality requirements, provide two-day's notice of meetings and a call-in number so the public can listen to proceedings. See 18308.1(d)(2)(E). Moreover, while ordinarily such meetings would not be open to the Chair or other non-member Commissioners, these rules specifically permit the committee's Chair

(in consultation with the General Counsel) to open proceedings to the Chair and other Commissioners, provided the notice and public meeting requirements of Bagley Keene are observed. See 18308.1(d)(2)(D).

Finally, these rules provide a more limited delineation of the role of the Chair than did previous iterations. The Legal Division expressed doubts that the Chair could operate as originally envisioned without violating Bagley Keene. The problematic language they identified was moved to the regulation dealing with the authority of the Executive Director -- who as a member of the staff rather than a Commissioner, would not provoke many of the Bagley Keene concerns. At the April meeting, after an engaging discussion of this issue, a motion (with the support of the Commissioners on the Ad Hoc Committee) was made to restore many of those responsibilities to the Chair. That motion failed. See Agenda of Commission meeting April 19, 2018 p. 62.

We believe that these governance regulations will better integrate the part time Commissioners into the management of the Commission, improve oversight and transparency, and thus better serve the people of California. We thank the diligent and patient work of our FPPC staff, especially the Executive Director and the members of the Legal Division.