

Budget and Policy Post

May 7, 2018

The 2018-19 Budget

Review of Fair Political Practices Commission Budget and Workload

At the April 5, 2018 hearing

<<http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/SUB4/04052018Sub4GenGov.pdf>> of the Senate Budget and Fiscal Review Subcommittee Number 4, the committee directed our office to review the Fair Political Practices Commission's (FPPC's) budget and workload to determine if the commission receives sufficient resources. This online analysis is the product of our review.

FPPC Administers and Enforces the Political Reform Act. The Political Reform Act of 1974 <<http://www.fppc.ca.gov/the-law/the-political-reform-act.html>> (the act)—an initiative adopted by the voters—established the state's campaign finance and disclosure laws. The act applies to state and local candidates, ballot measures, and officials. The FPPC (1) enforces the requirements of the act and (2) provides administrative guidance to the public by issuing advice and opinions regarding FPPC's interpretation of the act.

Makeup of FPPC. The commission <<http://www.fppc.ca.gov/about-fppc/organization-and-responsibilities.html>> consists of five members appointed to staggered four-year terms. The chair of the commission and another member from a different political party are appointed by the Governor. The remaining members are appointed by the State Controller, Secretary of State, and Attorney General. No more than three commissioners may be from the same political party. The chair is the only member of the commission who is considered a full-time member and who receives a salary. The commission may delegate authority

to the chair to act in the name of the commission between meetings. Together with the executive director, the chair oversees the day-to-day business of the agency.

Budget

In 2017-18, FPPC's authorized budget is \$12.4 million (\$11.7 million from the General Fund and \$741,000 from reimbursements) and includes 82.5 ongoing positions. Authorized positions at FPPC are distributed across the agency's four divisions as follows: the enforcement division <<http://www.fppc.ca.gov/about-fppc/organization-and-responsibilities/commissioners-and-executive-staff/enforcement-division.html>> has 31.5 ongoing positions, the administration and technology division <<http://www.fppc.ca.gov/about-fppc/organization-and-responsibilities/commissioners-and-executive-staff/administration-division.html>> has 23 ongoing positions, the legal division <<http://www.fppc.ca.gov/about-fppc/organization-and-responsibilities/commissioners-and-executive-staff/legal-division.html>> has 19 ongoing positions, and the external affairs and education division <<http://www.fppc.ca.gov/about-fppc/organization-and-responsibilities/commissioners-and-executive-staff/technical-assistance-division-tad.html>> has 9 ongoing positions.

Funding For Vacant Positions Used to Pay One-Time Costs. Departments often have vacant positions. A position might be vacant while a department actively is recruiting to fill a position or because the department keeps it vacant in order to redirect funds associated with the vacant position to pay for other costs in the budget. In the case of FPPC, the department has relied on significant vacancies in recent years to pay for one-time costs, including cashing out employees' very large leave balances upon their separation from state service and moving to new offices. The administration reports that—on average—17 percent of FPPC's authorized positions have been vacant over the past three years. The 2018-19 budget assumes that 68.8 of FPPC's authorized positions are filled.

Some Vacant Positions Not Funded. Chapter 169 of 2012 (AB 2146 <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2146> , Cook) authorized FPPC—through an agreement with the county—to assume primary responsibility for the administration and enforcement of the County of San Bernardino's campaign finance ordinances. In 2013-14, the Legislature and Governor approved (1) up to six positions to perform work related to an agreement between FPPC and the county to

implement Chapter 169 and (2) ongoing reimbursement authority collected from the county to support the positions—estimated to be \$718,000 in 2013-14. FPPC indicates that the current agreement with the county (established in 2014-15) specifies that the county pay FPPC a lump sum payment of \$55,000 at the beginning of each calendar year to pay for a base amount of FPPC staff time and FPPC bills the county at a specified hourly rate for additional time. To date, reimbursements from the county have not exceeded \$55,000 in any given year.

Governor’s 2018-19 Proposal

Provide Funding to Fill Four Existing Positions. The administration submitted two budgetary requests for FPPC. These requests contend that two recent changes in law—Chapter 827

<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB45> of 2017 (SB 45, Mendoza) and Chapter 546

<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB249> of 2017 (AB 249, Mullin)—will increase FPPC workload. In order to perform the increased workload associated with these laws, the administration proposes increasing FPPC’s General Fund expenditure authority by \$567,000 in 2018-19 (\$540,000 in 2019-20 and ongoing) to fund four existing positions that currently are not funded for reasons discussed above. (Under the administration’s proposal, the work associated with these positions would not be related to the FPPC’s contract with the County of San Bernardino.)

Workload

The workload at the FPPC varies across the four divisions. In this section, we discuss some of the major components of each division’s workload.

Enforcement

Broad Mission Creates Open-Ended Workload. The enforcement division’s mission <<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/EnforcementDiv/Information/Enforcement-Division-Manual.pdf>> is to “fairly, effectively, and efficiently enforce the provisions of the Political Reform Act.” As such, the division is tasked with investigating possible violations of the act. The division is made aware of possible violations by complaints and referrals made by the public, other government agencies, and the media. A person or entity accused of violating the act is referred to as a “respondent.” In a

typical year, the division receives more than 1,500 complaints and referrals of possible violations. In addition, the division opens investigations on its own initiative. (In 2016, the division opened 1,315 cases and imposed nearly \$900,000 in fines.) The universe of potential violations that the division could investigate is large because of the number of requirements established under the act, the large number of people and entities that are subject to the act, and the fact that FPPC has a five-year statute of limitations to take administrative action under the act.

Efficiencies Gained by Streamline Review Process of Less Severe Cases. The FPPC can charge someone who is found to have violated the act up to \$5,000 for each violation. Under the “streamline process

<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2015/May/Streamline%20memo%20-%205-11-15.pdf>,” a respondent acknowledges that he or she violated the act and pays a predetermined penalty associated with that violation. The penalties established for the process are intended to be lower than what respondents otherwise would pay. The process was created in 1999 and is intended to expedite the prosecution of individuals and committees who have violated the act but whose violation has a low degree of public harm. The types of violations prosecuted using the streamline process include things like a candidate failing to file a semiannual statement. The FPPC reports that 77 percent of the cases presented to the commission are settled through the streamline process. The remaining cases presented to the commission either (1) have been reviewed through the “mainline” process for violations that are considered to be associated with a greater degree of public harm or (2) are “default” cases where the respondent does not participate in the settlement or administrative hearing process.

No Prioritization by Type of Violation. The commission does not have an express policy regarding how staff should prioritize investigating violations of the act. FPPC staff informed us that, as a practical matter, cases that are approaching the statute of limitations necessarily take the highest priority. The enforcement division will hold a meeting

[http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/ProposedRegs/IP%20Meetings/IP-Meeting-Notice%20May%202018%20\(ENF\).pdf](http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/ProposedRegs/IP%20Meetings/IP-Meeting-Notice%20May%202018%20(ENF).pdf) on May 9, 2018 to solicit input from the regulated community regarding the priorities and procedures of the division.

Administration and Technology

Administers Statements of Economic Interest (SEI) Program. In addition to providing administrative support (including accounting, human resources, and other administrative services), the division has primary responsibility for administering the SEI program—commonly referred to as Form 700 <<http://www.fppc.ca.gov/Form700.html>> . In addition, the division serves as the direct filing officer for 25,000 public officials and processes Form 700s for approximately 6,000 officials (judges, legislators, constitutional officers, county supervisors, and city council members) before posting the forms on the FPPC website.

Legal

General Counsel to Commission. The legal division advises members of the commission and staff on its interpretation and analysis of laws, court decisions, and rules and regulations affecting the commission. Under the act, the commission is authorized to be represented by its own counsel in court—rather than by the Attorney General.

Advice and Education. Every year, the commission responds to thousands of requests from candidates and public officials about their obligations under the act. The legal division has the primary responsibility of providing advice to these officials. This advice can be formal <<http://www.fppc.ca.gov/advice/formal-advice.html>> in the form of an advice letter or informal <<http://www.fppc.ca.gov/advice/get-advice.html>> in the form of responses to e-mails or other communications. In 2016, the division responded to 12,495 e-mails and issued 252 advice letters.

External Affairs

Advice, Trainings, and Workshops. In addition to developing forms and manuals <<http://www.fppc.ca.gov/forms.html>> used for campaign and financial disclosure and other FPPC publications, the division provides information to the public and government agencies regarding the act by responding to phone calls and conducting presentations and workshops upon request. In 2016, the division responded to 9,622 phone calls (the average call lasted less than six minutes and the average wait time was less than one minute) and conducted 50 presentations either in person or online.

LAO Assessment

Annual Reports Provide Insufficient Information for Oversight. The only public document that summarizes the work of the FPPC is the commission’s annual report <<http://www.fppc.ca.gov/about-fppc/annual-report.html>> . This report includes summaries of major enforcement decisions, legislation, and regulations from the past year. The workload metrics provided in this report identify the number of phone calls received, e-mails received, presentations made, tweets issued, and advice letters issued. While the information that is contained in the report is helpful for the public to understand the role of FPPC in state government, it does little for the Legislature or public to evaluate the FPPC’s performance. There are no data presented in the report that indicate that FPPC accomplishes its work in a timely manner or that it meets public demand for advice and information. The FPPC was able to provide us some additional data, but—as we discuss later—key workload metrics for the largest division currently do not exist. The act directs the Legislature to appropriate as many resources “as may be necessary to carry out the provisions” of the act. With the current information available, objectively determining whether current appropriation levels are reasonable for FPPC to administer and enforce the act is difficult. With existing available data, we cannot assess whether FPPC’s current staffing levels are sufficient.

Few Benchmarks Against Which to Measure Performance. Benchmarks are used to understand whether departments accomplish work in a timely manner and identify any backlogs. Benchmarks can range from statute directing departments to accomplish certain tasks within a specified time period to more informal guidelines established through internal departmental policies. Benchmarks that exist for FPPC pertain to responding to requests for advice from the public.

- ***Formal Advice.*** Section 83114

<https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=83114&lawCode=GOV> of the Government Code requires FPPC to issue advice letters regarding provisions of the act within 21 days of receiving a request for advice (assuming the request includes sufficient information and is within FPPC’s jurisdiction). Of the 124 advice letters of this type issued in 2017, FPPC roughly estimates—but cannot confirm due to lack of data—that (1) about ten took longer than 21 days to issue because of workload constraints and (2) about ten took longer than 21 days to issue because the

letter contained complex or novel issues that took FPPC staff more time to reach a consensus. Internal guidelines direct staff to respond to advice letters concerning Section 1090

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1090.&lawCode=GOV of the Government Code—a law outside of the act—within 30 to 90 days. The FPPC informs us that they meet these informal benchmarks related to formal advice letters.

- **Informal Advice.** Internal guidelines direct staff to respond to e-mail advice requests within 24 hours. The FPPC indicates that it responds to (1) 90 percent of e-mails within 24 hours and (2) the remaining 10 percent of e-mails within three business days. The FPPC indicates that a response can take longer than 24 hours if it requires further research or needs an attorney to respond.

No Benchmarks or Available Data to Measure Case Pendency. There are no benchmarks established for the amount of time it should take the enforcement division to open, investigate, decide, and close a case. That being said, blanket benchmarks might not be appropriate for the enforcement division to use for case pendency because each case has a unique set of facts and cases can vary significantly in complexity. However, case pendency is something that should be measured and reported to enhance oversight. The FPPC thinks that case pendency is something that can be reported using its new case management system; however, FPPC currently has no available case pendency data. At the April 19 commission meeting, the commission directed the FPPC chief of enforcement to report to the commission statistics on case pendency. FPPC staff thinks it will be able to aggregate these data by late May or early June 2018.

Budget Assumes Reimbursement Authority That Never Materializes. In addition to the money received from the County of San Bernardino, FPPC receives varying levels of reimbursements in any given year from Form 700 electronic filing system approvals, California Public Employees' Retirement System candidate campaign audits, and travel reimbursements from local governments for FPPC staff to conduct workshops. FPPC also soon will be reimbursed by the City of Sacramento for a new contract with that city. The budget in 2018-19 assumes that FPPC will receive \$741,000 in reimbursement from its agreement with the County of San Bernardino. It makes this assumption even though *total* reimbursements received by FPPC in any given year since 2013-14 have never exceeded \$290,000—39 percent of the total reimbursement authority assumed in the budget.

Large Leave Balances Create Fiscal Stress. As we discussed in our 2013 report *After Furloughs: State Workers' Leave Balances*

<<http://www.lao.ca.gov/reports/2013/stadm/leave-balances/state-workers-leave-031413.pdf>> , large leave balances reduce overall budgetary transparency and can impose fiscal and operational stress on small departments. It is difficult, however, for the Legislature to determine the extent to which large leave balance liabilities create stress on any particular department. The recent vacancies at FPPC to pay for leave cash outs is not unusual for small departments and is consistent with past experience at FPPC. (In our 2013 report, we indicated that FPPC had to keep its executive director positions unoccupied for nearly eight months because the former executive director separated from the commission with leave balances approaching 70 percent of his salary.) Unless FPPC can control employee leave balances, it likely will continue to have to rely on vacant positions when senior staff separate.

LAO Recommendations

Adopt Reporting Language. There does not appear to be an imminent need for the Legislature to provide resources in addition to the requested amount (the 2018-19 request seems reasonable). However, we think an annual reporting requirement would allow the Legislature to determine if future adjustments are necessary to the FPPC budget in order for the FPPC to effectively and efficiently administer and enforce the act and meet the public information needs. With recent technological upgrades, the FPPC has the ability to track and report meaningful workload metrics. We recommend that the Legislature adopt ongoing provisional language in the budget act requiring FPPC to report specific workload metrics. The report should be submitted to the fiscal committees of both houses so that it can be considered by the Legislature in the context of the Governor's budget proposal. Next year, the Legislature can work with FPPC to develop appropriate performance measures and benchmarks against which the reported data can be evaluated. Specifically, we recommend that the Legislature adopt the following language to be added to Item 8620-001-0001 of the budget act:

Provisions:

1. Not later than January 10 of each year, the Fair Political Practices Commission shall report workload metrics to the fiscal committees of the Legislature, the Legislative Analyst's Office, and the Department of Finance.

When possible, the report shall provide data for the past five fiscal years and distinguish workload by division. The report shall include, but not be limited to, the following:

(a) Data collected regarding enforcement of the Political Reform Act of 1974. These data shall include, but not be limited to, the number of complaints received, the number of referrals received, the number of cases opened, the number of cases with resolutions approved by the Commission (distinguished by streamline, mainline, and default cases approved by the Commission), total fines imposed by the commission, the number of warning letters issued, the number of administrative terminations, the number of cases closed with violations found, the number of advisory letters issued, the number of no action closure letters issued, and the average case pendency by category of violations under the act.

(b) Data collected from the advice phone system. These data shall include, but not be limited to, the average amount of time people wait on the phone before their call is answered and the average length of accepted calls.

(c) Data regarding informal advice issued by email. These data shall include, but not be limited to, the number of emails received, the number of advice emails responded to within 24 hours from receipt, and the number of advice emails responded to after more than 24 hours from receipt.

(d) Data regarding responsiveness to public demand for information. These data shall include, but not be limited to, the number of workshops or presentations requested by the public or a public agency and the number of workshops or presentations performed.

(e) Data regarding advice letters issued pursuant to Section 83114 of the Government Code. These data shall include, but not be limited to, the number of advice letters issued and the number of instances where it took the Commission longer than 21 days to issue an advice letter.

(f) Data regarding advice letters issued pursuant to Section 1090 of the Government Code. These data shall include, but not be limited to, the number of advice letters issued, the number of instances where it took the Commission longer than 30 days to issue an advice letter, and the number of instances where it took the Commission longer than 90 days to issue an advice letter.

