



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Members of the Commission

Fr: The Law and Policy Committee

Date: November 5, 2018

The Law and Policy Committee met November 1 via conference call. The Committee reviewed the Legislative Suggestions for Sponsorship or Support memorandum presented by Legislative and External Affairs Director, Phillip Ung. The Law and Policy Committee reviewed 34 suggestions that were submitted by staff to amend the Political Reform Act.

Commissioner Hatch recommended staff research, develop and prepare four legislative outlines to be placed on the November meeting agenda for full Commission review and discussion. At the November meeting, the Commission may prioritize the legislation for potential sponsorship or support. By December 2018 Commission Meeting, the Law and Policy Committee will present legislative bills for approval by the Commission with proposed legislative language.

1. Omnibus Non-Substantive Clean Up
2. Omnibus Substantive Clean Up and minor changes.
3. Codification of Specified Regulations
4. Staff suggestion on Legislation



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Law & Policy Committee Meeting on Legislative Development
(Conducted by telephone at 2:00PM on November 1, 2018)

Members Present: Commissioner Hatch, Chair of the Committee

Staff Present: Loressa Hon, Dave Bainbridge, Trish Mayer, Phillip Ung, and Sasha Linker

Legislative suggestions considered by the committee. The committee's comments are listed under each suggestion.

Campaign

1. Annual Registration Fee Penalty Clarification

Problem: There are issues with the interpretation of the penalty provision related to failure to pay the \$50 registration fee. Is the \$150 penalty an exclusive penalty or subject to additional fines within the Act.

Proposed Solution: Get clarity from the Legislature on their intent on the penalty provision.

PRA Section Proposed to be Amended: 84101.5

2. Repeal Annual Filing Fee and Penalty

Problem: The state currently levies a \$50 annual registration fee on political committees and a \$150 penalty for failing to pay the fee. Which can be argued to be dubious constitutionality, and a burden on political activity.

Proposed Solution: Eliminate the annual registration fee on political committees and the penalty.

PRA Section Proposed to be Repealed: Section 84101.5

3. Legal Expenses Related to Sexual Harassment

Problem: In Mendoza advice (withdrawn), the FPPC allowed the legislator to pay expenses arising from sexual harassment allegation out of campaign account (89512(a)) and set up a legal defense fund (85304).

Proposed Solution: The Commission should disallow such expenses, so that the individual pays from his or her own resources.

PRA Section Proposed to be Amended: Sections 89512(a); 85304

4. DISCLOSE Act Clean Up

Problem: Chaptered in 2017, AB 249 DISCLOSE Act, made comprehensive changes to the Act's disclosure structure. After the passage of AB 249, staff has discovered issues within the new disclosure regime.

Proposed Solution: Staff has offered several suggestions to address issues throughout AB 249.

- a) Fix 30/60 second timing reference in 84504.5(b).
- b) Correct earmarking filing obligations “under this title” in 85704.
- c) Technical changes to mass mailing provision 84305.
- d) Address conflict in 84504.3 and 84504.5.
- e) Require street address and city requirement in 84504.2
- f) Clarify large print advertising disclaimer format in 84504.2
- g) Clarify 84310(b) consistent with 84310(a).
- h) Clarify 84511(d) to ensure “continuous showing” until AB 249 disclaimer is displayed.
- i) Require contributor employer and occupation in 84501.
- j) Repeal 85501 to reduce possible confusion as AB 249 presumes IE’s from candidates.
- k) Clarify 5 percent height disclaimer rule in 84504.2(b) and 84504.5(c)(2).
- l) Add subdivision making it clear sponsored “look back” period is 12 months prior to advertisement.
- m) Amend 84504.3 to include text message/SMS as communications needing disclaimer.
- n) Permit disclaimers to be in all capitalization.

PRA Section Proposed to be Amended: 84305, 84310, 84501, 84504.2, 84504.3, 84504.5, 84511, 85501, 85704,

L&P Committee comments/recommendation: Commissioner Hatch found these suggestions too vague or short-hand. Commissioner Hatch recommended the Commission authorize staff to communicate detailed clean-up suggestions to Assembly Member Mullin, author of AB 249 (2017).

5. Long Committee Names

Problem: Some committees have extremely long names. Long committee names can negatively effect required disclosure.

Proposed Solution: Prioritize major funder disclosure over committee name disclosure and eliminate extraneous information in names.

PRA Section Proposed to be Amended: Various amendments to 84501 through 84511

L&P Committee comments/recommendations: Commissioner Hatch commented that Section 84102(a) regarding multiple sponsors could be amended to limit the committee names to a minimum character limit. Staff indicated they would look into how to limit committee names while still sensitive to the potential constitutional rights concerns.

6. Campaign Bank Account Number Public Record Exception

Problem: Currently only candidate-controlled committees are required to establish separate campaign bank accounts. Bank account numbers are publicly available leading to possible fraud and theft.

Proposed Solution: Prohibit bank account number from being publicly released as part of a CPRA or other public information requests. The bank account number should only be used for investigative or auditing purposes.

PRA Section Proposed to be Amended: Potential new section added

L&P Committee comments/recommendation: Commissioner Hatch commented that the law could be amended to disclose only the last four digits of a bank account number.

7. Bank Account Rule for All Committees

Problem: Under the Act, a candidate or officeholder must establish one controlled committee with one bank account for each election. All contributions must be deposited in and all expenditures must be made from the campaign bank account. Political party committees are also required to establish a bank account. All other committees are not required to establish a separate bank account making audits difficult and complex.

Proposed Solution: Require all committees to establish a separate bank account for all contributions and all expenditures. This will assist in audits and enforcement investigations.

PRA Section Proposed to be Added: New section added to apply generally to all committees

8. Require Candidate Ad Disclosure

Problem: Disclosure requirements are not the same for every committee. Many complaints and AdWatch referrals for ads are signs and flyers by the candidate with no violation. Enforcement must review each one and contact the candidate. See Candidate Ad Chart – “Billboards, signs (including yard signs), faxes, business cards, door hangers, flyers, and posters “Paid for by committee name” and committee ID number are recommended but not legally required.” Staff suggests it is not an efficient use of resources.

Proposed Solution: Require committee disclosure on all communications.

PRA Section Proposed to be Amended: Various sections.

L&P Committee comments/recommendation: Commissioner Hatch suggested requiring disclosure of committee name, ID number, and a barcode on all communications. Staff inquired further on the barcode concept. Commissioner Hatch believed it is innovation that could be coming soon.

9. Adjust Campaign Record Retention Policy

Problem: Section 81009 requires certain campaign statements to be retained indefinitely. Whereas Section 84615 requires the same statements to be maintained for 10 years. The two sections do not work well together. Some filing officers have requested changes to the indefinite retention policy.

Proposed Solution: Amend the Act to require the retention period be 10 years from the date the filer leaves office.

PRA Section Proposed to be Amended: Section 81009

10. Make Personal Use of Campaign Funds a Crime

Problem: Section 89520 prevents Chapter 11 remedies for violations of Chapter 9.5.

Proposed Solution: Allow for misdemeanor charge for payments of \$10,000 or more that were improperly used for personal purposes.

PRA Section Proposed to be Amended: Section 89520

L&P Committee comments/recommendation: Commissioner Hatch asked staff about what activities are not subject to criminal penalties under the Act. Staff pointed to Chapter 9.5 as being exempt from other penalties and criminal perjury charges could be filed on numerous violations under the Act. Commissioner Hatch pointed to state mandate issues that may arise with new crimes.

11. Money Laundering Preventing Attestation

Problem: Money laundering is considered one of the most serious violations of the Act. The law does little to inform potential contributors, potential intermediaries, and less sophisticated individuals about laundering.

Proposed Solution: Require simple check box on all contribution solicitations (e.g. webpages, mailings, hand-outs, door hangers, contributor cards/forms, fundraising invites.). This may not prevent all money laundering, but it may help to educate individuals at all levels so such schemes would not develop or enforcement agencies may be alerted early in the schemes.

PRA Section Proposed to be Added: Potential new section added.

12. Require Principal Officer Signature on Statement of Organization

Problem: Filing officers have encountered “strawman” Principal Officers identified on Statements of Organization in order to conceal the true identity of the Principal Officer. Other situations include individuals identified as Principal Officer without knowledge or consent.

Proposed Solution: Require a real, verifiable human being sign as the principal officer to avoid strawman issues.

PRA Section Proposed to be Amended: 81004(b)

13. Require Treasurer Attestation on Knowledge of Liability Form

Problem: Many volunteer treasurers are unaware of the responsibilities of a treasurer and their subsequent liability under the Act for violations related to the committee.

Proposed Solution: Create a form/addendum to a form and require a treasurer to sign that they understand the responsibilities of a treasurer and the liability involved with the position.

PRA Section Proposed to be Added: New section of the Act or amend Section 84100.

14. Occupation and Employer on Checks

Problem: Contributors are required to disclose occupation and employer. The Act can make such disclosures easier.

Proposed Solution: Require the contributor’s information to be on each check before it is deposited including employer and occupation. For contributions given online,

PRA Section Proposed to be Added: A new section may be required.

L&P Committee comments/recommendation: Commissioner Hatch asked who would be responsible for placing information on checks. Staff indicated that the donor would be required to include the information in the memo line or on the back of the check. Staff suggested this may be adopted through regulation. Commissioner Hatch recommended it be looked at by Legal Division as a regulation.

15. Joint Fundraising Committee

Problem: The FPPC’s guidance on joint fundraising operations/committees is not in statute or regulations. The guidance is in advice letters, specifically California Republican Leadership Fund (A-11-102) and Benton (A-98-116).

Proposed Solution: It may best serve the regulated community to have the joint fundraising procedures codified in the Act and interpreted by regulation.

PRA Section Proposed to be Added: Potential new section added.

L&P Committee comments/recommendation: Commissioner Hatch asked staff to provide further background on joint fundraising committees. Staff did so verbally on the call and indicated that the suggestion could be adopted via regulation. Commissioner Hatch recommended Legal Division look at the suggestion for potential regulation.

16. Candidate Controlled Ballot Measure Committee

Problem: Candidate controlled ballot measure committees are only defined within commission regulations and is not within the Act itself.

Proposed Solution: Codify what is required of candidate controlled ballot measure committees and what are permissible uses of funds.

PRA Section Proposed to be Added: Potential new section added.

17. Make Cost of Living Adjustment for Contribution Limits Every Four Years

Problem: Changing contribution limits every two year causes mid-cycle contribution limit changes for state candidates who run for office every four years.

Proposed Solution: Prior Political Reform Act reports/studies recommend modifying the cost of living adjustment so contribution limits will be updated every four years.

PRA Section Proposed to be Amended: 83124

L&P Committee comments/recommendation: Commissioner Hatch asked how this suggestion could affect the gubernatorial cycle and half of the State Senators. Staff responded that the idea comes of prior Political Reform Act reports published by review commissions/committees and the cost of living adjustment could occur on separate schedules to statewide candidates and legislative candidates.

18. Raise Minimum Disclosure Threshold to \$200

Problem: Under Section 84211(c), a committee is required to disclose all contributions from persons who have given \$100 or more. The amount was set in 1978 and has not been raised.

Proposed Solution: Make a cost of living adjustment but keep the amount lower or the same amount than the federal disclosure threshold (\$200). Allow locals to stay at a lower amount if they choose.

PRA Section Proposed to be Amended: Section 84211

L&P Committee comments/recommendation: Commissioner Hatch suggested the law be amended to have the threshold be “more than” \$100 compared to \$100 or more and to adjust per Consumer Price Index in \$10 increments. Commissioner Hatch suggested a cost of living adjustment across the entire Political Reform Act.

Enforcement

19. Eliminate Duplicative Fines

Problem: Secretary of State late fines accrue at \$10 a day, plus what the FPPC fines a filer. Secretary of State late fines should be supplanted by the Commission's so that the FPPC can craft appropriate penalties, especially in the streamline program.

Proposed Solution: Once an enforcement matter comes to the Commission, the Commission is the sole arbiter of fines, and can more fairly and appropriately resolve enforcement matters.

PRA Section Proposed to be Amended: Section 91013

L&P Committee comments/recommendation: Commissioner Hatch raised concerns that by eliminating duplicative fines, we could create a possibility of violators escaping the Secretary of State's late penalty. Commissioner Hatch suggests the FPPC fine be not less than double the Secretary of State fine. Commissioner Hatch recommended Commission staff work with the Secretary of State's office to find a legislative solution.

20. Modifying the Maximum Civil and Administrative Penalty

Problem: The impact of our civil penalties fall disproportionately on the smaller offenses. The civil penalties have little behavioral impact on larger infractions.

Proposed Solution: Propose legislation that make the maximum civil penalty \$5,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received.

PRA Section Proposed to be Amended: Section 91005.5

21. Out of State Nonprofit Records

Problem: Currently the FPPC and Franchise Tax Board has limited access to out of state records for nonprofits and multipurpose organizations.

Proposed Solution: Additional access to nonprofit/MPO records from out of state can assist in proving activity under 84222.

PRA Section Proposed to be Amended: Section 84222

L&P Committee comments/recommendation: Commissioner Hatch inquired about how this could be accomplished practically and legally. Staff provided background and possible solution. Commissioner Hatch suggested Legal and Enforcement Divisions work on potential language to see how this suggestion could be accomplished.

22. Tax Records for SEI Investigations

Problem: The FPPC cannot access tax records of respondents in order to fully investigate SEI conflict cases.

Proposed Solution: Permit the FPPC to have access to relevant tax records.

PRA Section Proposed to be Added: New section may need to be added.

L&P Committee comments/recommendation: Commission Hatch expressed concerns that having access to tax records of elected officials is too invasive and suggested the FPPC work with the Franchise Tax Board to confirm if certain transactions match the tax file. Commission Hatch suggests the idea be developed further by Enforcement Division.

23. Adjust Penalties throughout Act for Cost of Living

Problem: Many penalty levels are frozen in time and have become weakened through inflation.

Proposed Solution: Adjust penalties within the Act for cost of living to ensure penalties do not remain weakened by time.

PRA Section Proposed to be Amended: Various enforcement/penalty sections

L&P Committee comments/recommendation: Commissioner Hatch suggests the cost of living adjustment occur in \$100 increments and this should be considered as part of a Act-wide adjustment.

24. Peace Officer Status for Limited Number of Investigators

Problem: Commission investigators are at times tasks with collecting evidence in dangerous or in volatile situations. Support from other peace officers are not always available.

Proposed Solution: Permit a limited number of investigators to be designated peace officers like other investigators throughout the state.

PRA Section Proposed to be Added: New section of the Act

L&P Committee comments/recommendation: Commissioner Hatch suggested staff seek a recommendation from the Commission on Peace Officer Standards and Training prior to seeking legislation.

25. Removal from Office for Failure to File Form 700

Problem: The FPPC does not have the authority to remove an elected official or officer from office. There are some public officials who refuse or do not comply with the basic requirement to submit a Form 700.

Proposed Solution: Authorize the FPPC to remove an official from office when the public official intentionally refuses to file required Form 700.

PRA Section Proposed to be Added: New section of the Act

L&P Committee comments/recommendation: Commissioner Hatch suggest the official be suspended from office automatically from date of notice until all delinquent SEI's are filed.

Conflict of Interest

26. Require E-Filing with FPPC

Problem: The FPPC has successfully launched online filing for Form 700s. However, there is no specific requirement that candidates and elected officials listed in 87200 file electronically with the Commission.

Proposed Solution: Update 87200 et. seq. to require electronic filing with the Commission to make filing more efficient, transparent, and eliminate paper filings.

PRA Section Proposed to be Amended: Section 87200 et. seq.

27. SEI Filing Clean Up

Problem: The use of electronic filing for Form 700s has highlighted outdated provisions within the Act that should be updated.

Proposed Solution: Under 87500, remove subdivision (h) as FPPC has never had a request for a copy filed with FPPC. Clarify the meaning of subdivision (k) means. Make Senate and Assembly filing officials under subdivision (m) by removing the part that allows each house to give this authority to the FPPC. This so both Senate and Assembly would have the responsibility to update the e-filing system with staffers as they come and go. The entire section refers to paper filings – suggest adding a new subdivision at the end that creates a standard modification to all subdivisions for e-filing.

PRA Section Proposed to be Amended: Section 87500

L&P Committee comments/recommendation: Commissioner Hatch suggests making e-filing required upon the Commission finding that the SEI e-filing platform is secure and error free.

28. Require Street Address for Income

Problem: Section 87207 does not require a street address when reporting income (including a gift) but Section 87313 requires a street address for the intermediary and the source of a gift.

Proposed Solution: Update statute to bring law current with advice letters. Require a street address in Section 87207

PRA Section Proposed to be Amended: Section 87207

L&P Committee comments/recommendation: Commissioner Hatch suggests placing this suggestion within a bill with minor and clarifying changes to the Act.

29. Align Elected State Officials Assuming Office Statements with Other Officials

Problem: Elected state officials file assuming office statements under 87202(b) which is not aligned with the filing schedule of other elected officials throughout the state.

Proposed Solution: Remove this section and instead have elected state officials file assuming office statements like all other elected officials. We would, however, be missing disclosure of investments and property from March through November and income from November through March.

PRA Section Proposed to be Repealed: Section 87202(b)

L&P Committee comments/recommendation: Commissioner Hatch asked what problem this change would solve. Staff provided information about the current process for newly elected state officials filing “assuming office” forms.

Lobbying

30. Remove Placement Agents from Lobbying Requirements

Problem: Under Section 82039, placement agents are considered lobbyists and are required to register with the Secretary of State and attend an ethics course through the Legislature. The addition of placement agents as lobbyists was in reaction to corruption at CalPERS since been resolved with additional regulations and restrictions at the retirement fund agencies.

Proposed Solution: Repeal the PRA provisions related to Placement Agents. The retirement systems have much stronger internal disclosure requirements and sanctions for violations.

PRA Section Proposed to be Repealed: Section 82039

L&P Committee comments/recommendation: Commissioner Hatch asked if the retirement systems had regulations and disclosure in place. Additionally, Commissioner Hatch asked why having placement agents in the Act was a problem. Staff provided information. Commissioner Hatch suggested placement agents remain in the Act and the Act be expanded to cover state procurement contracts.

Miscellaneous

31. Behested Payments Filing Process – E-Filing

Problem: Section 82004.5 requires that a Form 803 filer submit the form to their office which then forwards it to the FPPC. Currently, if officials were to use the FPPC e-filing system they could bypass their own agency which is a problem because their agency must retain a copy of the submitted form.

Proposed Solution: Amend Section 82004.5 to allow filers to submit the form to us electronically while also noting their obligation to provide a signed copy to their own agency.

PRA Section Proposed to be Amended: Section 82004.5

L&P Committee comments/recommendation: Commissioner Hatch asked if the e-filing system could be modified to output a completed form for local officials to sign. Staff responded that further discussions need to occur with IT staff to determine current capabilities.

32. Eliminate Fees for Electronic Copies under the Act

Problem: Local filing officers charge copying and cost of processing fees for requests of electronic copies of Form 700's.

Proposed Solution: Repeal the copying and retrieval fee authority in 81008 as it relates to requests for electronic copies.

PRA Section Proposed to be Amended: Section 81008

L&P Committee comments/recommendation: Commissioner Hatch asked if there are any filing officer staff costs for retrieving and delivering electronic copies. Staff confirmed that likely were some costs. Commissioner Hatch expressed his concerns over state mandate reimbursements.

33. Omnibus Non-Substantive Clean Up

Problem: There are many technical and clarifying changes that can be made all at once within the Act.

Proposed Solution: List of amendments and repeals that can occur without substantively amending policy. Commission staff has been maintaining an ongoing list. Many were also discovered through the Political Reform Act Revision Project.

- a) Repeal Sections
 - a. 81016,
 - b. 82009,

- c. 83123,
- d. 83123.5(f),
- e. 84200.6,
- f. 84202.7(b),
- g. 84212
- h. 84217,
- i. 84252(b),
- j. 84602(a)(1)(A) & (B) [date references],
- k. 84602(a)(10) & (11),
- l. 84605(a)(1) & (2) [date references]
- m. 85306(b)-(c),
- n. 85321,
- o. 87405,
- p. 87500.2(c) & (h) [jurisdiction reference].

- b) Technical and clarifying non-substantive amendments to Sections
 - a. 84615 (dollar thresholds),
 - b. 87207(a)(1).
 - c. 82025(c)(4)(A) & (B) to not apply to communications paid for by public agencies
 - d. 84200.5(c) to clarify reference to “in connection with the statewide primary or general election...”
 - e. 84223 to clarify T-10 forms need only be filed through Election Day.

PRA Section Proposed to be Amended: Listed in Attachment I.

L&P Committee comments/recommendation: Commissioner Hatch recommends two separate bills be developed out of this one item: 1) omnibus non-substantive clean up; 2) minor and clarifying amendments that may not be deemed non-substantive. The suggested changes for Section 87207 are repetitive of Suggestion #28. Commissioner Hatch requested minor changes to Section 87500.2 including the deletion of jurisdictional reference in (c)(1) and a modified provision to replace (h).

34. Codification of Specified Regulations

Problem: The Revision Project identified several FPPC regulations that were deemed by staff to be clarifying and non-substantive.

Proposed Solution: The proposed regulations to be codified and the respective sections of the Act can be found in Attachment II.

PRA Section Proposed to be Amended: Listed in Attachment II.

L&P Committee comments/recommendation: Commissioner Hatch requested Legal Division take a closer look at Regulation 18237 because it is proposed to be codified. Commissioner Hatch asked clarifying questions regarding Regulation 18404 and 18427.1 as suggested to be codified.

Law & Policy Committee recommendations regarding bill sponsorship: Commissioner Hatch recommended the Commission sponsor four bills.

- A. A non-substantive, omnibus cleanup bill.
- B. A bill containing minor and clarifying amendments that may not be considered non-substantive.
- C. A bill codifying specified parts of Commission regulations into the Act.
- D. A bill containing substantive amendments selected from the list provided in this memo.