



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Miadich, Commissioners Cardenas, Hatch, and Hayward  
**From:** Phillip Ung, Director, Legislative and External Affairs  
**Subject:** Enforcement Legislation Recommendations  
**Date:** December 9, 2019

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### **Background**

Enforcement of the Political Reform Act is essential to provide accountability and transparency in California elections and state and local governance. In recent years, the Commission has created the Enforcement Task Force, adopted regulations and procedures related to the Streamline Stipulations Program, and held a special Commission meeting to hear from the Enforcement Division on the current workload, priorities, and legislative recommendations.

Staff is recommending numerous changes to the Commission's enforcement authority based on internal proposals and recommendations made at the Commission November Enforcement meeting.

### **Fiscal Impact**

Permitting FPPC investigators to be classified as "limited" peace officers may incur one-time costs for the Commission on Peace Officer Standards and Training to conduct a feasibility study required under the Penal Code 13540. Additional research needs to be conducted to determine if wages and benefits would change as a result of the new classification.

Authorizing the FPPC to audit lobbyists would result in the need for three additional auditors and a designated attorney position for all legal questions and subpoenas necessary.

Limited liability company disclosures may result in additional workload pressures for the FPPC or the Secretary of State depending on who is the filing officer for the new disclosures.

A whistleblower protection program may have unknown costs to implement and administer.

All other enforcement related recommendations may result in no additional fiscal pressures or may be absorbable under current budget allocations.

### **Staff Recommendation**

1. Recommend the Commission direct staff to submit proposals to Legislative Counsel;
2. Adopt a sponsorship position; and
3. Authorize Commission staff to retain an author or authors for bill introduction.



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*New Legislation Proposals for 2020*

Number	Legislative Goal	Statute	Type of Proposal	Underlying Internal Reason	Analysis of Proposal/Options
E-1	Make personal use of campaign funds a misdemeanor if payments are intentional and aggregate more than \$10,000	89520	Substantive	Section 89520 prevents Chapter 11 (criminal) remedies for violations of Chapter 9.5, which includes personal use of campaign funds.	Authority to bring charges is with a district attorney or the Attorney General.
E-2	Modifying the maximum administrative and civil penalties to focus on larger infractions	91005.5	Substantive	The impact of FPPC's civil and administrative penalties fall disproportionately on the smaller offenses under the Act. In many instances civil and administrative penalties may have little behavioral impact on larger infractions.	Increase the maximum civil penalty to the greater of \$5,000 or three times the amount the person failed to report properly (or unlawfully contributed, expended, gave or received) or alternatively, combine Sections 91004, 91005, and 91005.5 with a maximum penalty of \$10,000 or three times the amount of benefit or not reported.
E-3	When necessary, permit the FPPC to access tax records in SEI and conflict of interest cases	New	Substantive	Currently, the FPPC cannot access tax records of respondents in order to fully investigate SEI conflict cases and must rely on records provided by officials which may differ from those reported to tax agencies.	Requires an amendment to the Revenue and Taxation Code to permit the executive director and enforcement chief to inspect state income tax returns under limited circumstances.

<b>E-4</b>	Authorize the FPPC to conduct audits of lobbyists	90000(a)	Substantive	Section 90000(a) authorizes FTB to conduct lobbyist audits but, due to staffing and budget, FTB has been unable to timely complete the audits. Identifying the FPPC as an auditor of lobbyists would convert this workload to the FPPC's audit division.	Amend Section 90000 to specifically identify FPPC as the auditor of lobbyists would authorize the FPPC to conduct mandatory audits.
<b>E-5</b>	Allow FPPC (or civil action) to pursue individuals for violations (and restitution) for conduct that spends public money on campaign activity	New	Substantive	As discussed at Commission meetings, currently there is no individual deterrent with respect to the expenditure of public funds on campaigns other than the aiding and abetting statute.	This change to the statute would allow the FPPC to target individuals who decide to use public funds, which is a significant deterrent.
<b>E-6</b>	Allow the FPPC to seek restitution of money from respondents in conflict of interest cases	New	Substantive	In conflict of interest cases, the Commission has expressed concern that the limited penalty authority of the FPPC is not a sufficient disincentive (e.g., Perea). Recoupment of any financial advantage would provide additional disincentive.	Allows recovery of restitution in conflict of interest cases.
<b>E-7</b>	Permit a limited number of FPPC investigators to be classified as "limited peace officers"	Amend Penal Code 830.11	Substantive	Commission investigators are at times tasked with collecting evidence in dangerous or in volatile situations. Support from other peace officers are not always available. Additionally, peace officers can carry official identification and credentials, access criminal databases, access databases to locate witnesses and respondents, and access information from other state agencies.	Permits a limited number of investigators to be designated "limited" peace officers like other investigators throughout the state following a feasibility study from the Commission on Peace Officer Standards and Training.

<b>E-8</b>	Require disclosure of direct and indirect ownership of limited liability companies.	New	Substantive	The use of limited liability companies to make contributions and expenditures in California elections has caused a pervasive challenge to discovering the true source of funds due to the structure of the corporate entities.	The proposal, modeled after the State of New York's LLC disclosure law, would require disclosure of direct and indirect ownership of limited liability companies to the Commission or Secretary of State within four months of a contribution or expenditure over a specific dollar amount.
<b>E-9</b>	Adopt a long-arm statute for FPPC administrative subpoenas in order to serve subpoenas outside state boundaries	New	Substantive	Contributions and expenditures into California state and local elections come from across the country. The enforcement of the Commission's subpoenas are challenging outside of state boundaries.	Proposal is modeled after Connecticut's long-arm statute.