



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward

From: Loressa Hon, Acting Executive Director
Phillip Ung, Director, Legislative and External Affairs

Subject: Legislative Delegation to Executive Director

Date: January 11, 2019

Introduction

At the December 2018 meeting, the Commission authorized sponsorship of potential bills. Legislative sponsors generally apply control over the bill when it is introduced in the Legislature. Sponsoring a bill commonly includes weighing the benefits or costs of proposed amendments ranging from the technical and clerical to substantive. It is reasonably foreseeable that the bills sponsored by the Commission would have proposed amendments from interest groups, legislative committees, or individual legislators.

Under the Governance Principles, the Commission adopts and revises positions on legislation effecting the Political Reform Act. The Executive Director is expressly prohibited from approving or revising positions on legislation.

Pursuant to Commission Regulation 18308.1(a)(6) “Authority of the Commission”:

“The Commission proposes, adopts, codifies, and monitors policies for the FPPC. This includes, but is not limited to... (6) Crafting and sponsoring legislation and adopting FPPC positions on efforts to amend the Political Reform Act.”

Pursuant to Commission Regulation 18308.3(a)(6) “Authority of the Executive Director”:

“Subject to the limitations of Commission established policy, the Executive Director acts on behalf of and in the name of the Commission between meetings of the Commission, including certifying actions taken by the Commission. The Executive Director may not establish or revise policies, promulgate or amend rules or regulations, issue or revise Commission opinions, or approve or revise positions on legislation pursuant to this subdivision.”

To “approve or revise positions on legislation” can reasonably be expanded to include accepting or refusing proposed amendments, because amendments can change the policy or intent in ways that creates a new version of legislation. If a circumstance arises where amendments are proposed to Commission-sponsored legislation between meetings and accepting or refusing the amendments is time sensitive, the Executive Director’s ability to accept or refuse proposed amendments is not permitted without Commission action.

Staff is requesting the Commission’s guidance on how to address issues of timing, decision making, and potential delegated authority related to proposed amendments. Staff has included

several options below. The Commission is not limited to staff options on how it wishes to proceed.

The options presented below attempt to balance decision-making authorized by the Governance Principles, alternative means of delegated authority, timing, notification and information, and substantive versus technical amendments.

Option A

No delegated authority is provided to the Executive Director to accept or refuse amendments and staff informs the Legislature that staff must wait for the Commission's feedback at a Commission meeting.

Option B

The Executive Director is authorized to accept or refuse technical and non-substantive amendments after consulting with the General Counsel and Legislative Director. All substantive amendments that change the scope, effect, or intent of the bill must be presented to the Law & Policy Committee and at a Commission meeting.

Option B+ (recommended by Law & Policy Committee):

The Executive Director is authorized to accept or refuse technical and non-substantive amendments recommended by the Legislative Director after consulting with the General Counsel and the Chair of the Law & Policy Committee. All substantive amendments that are more than technical in nature must be presented to the Law & Policy Committee and at a regular or special Commission meeting, depending on the immediacy of the need.

Option C

The Commission adopts goals and values for each sponsored legislation and delegates to the Executive Director to accept or refuse amendments that are in line with the adopted goals and values. The Executive Director will notify to the Commission in writing on actions taken under the delegated authority.

In limited circumstances, the Commission may use "special meetings" authorized by the [Bagley-Keene Open Meeting Act. \(Government Code Section 11125.4\)](#). Special meetings are permitted only in circumstances under the law where a finding of a "substantial hardship" or immediate action is required to protect the public interest. The finding must be supported by articulable facts followed by a two-thirds vote of the body adopting the findings. In addition to legal circumstances, staff believes there are additional logistical hurdles in planning a special meeting on short notice with Commissioners residing in different locations throughout the state. Namely, each location from which a Commissioner will participate must be open to the public and compliant with requirements under the Americans with Disabilities Act. A brief description of a "special meeting" and the circumstances required are provided in the Attorney General's "[A Handy Guide to The Bagley-Keene Open Meeting Act 2004](#)":

"A few years ago, special meetings were added to the Act to provide relief to agencies that, due to the occurrence of unforeseen events, had a need to meet on short notice and were hamstrung by the Act's 10-day notice requirement. (§ 11125.4.) The special meeting requires that notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet.

The purposes for which a body can call a special meeting are quite limited. Examples include pending litigation, legislation, licensing matters and certain personnel actions. At the commencement of the special meeting, the body is required to make a finding that the 10-day notice requirement would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding. The finding must be adopted by two-thirds vote and must contain articulable facts that support it. If all of these requirements are not followed, then the body can not convene the special meeting and the meeting must be adjourned.”

After the Law & Policy Committee meeting, the committee chair communicated to staff a replacement recommendation to “Option B+”:

“Option B+” Addendum recommended by Chair of Law & Policy Committee:

The following language is to be substituted for the L&P Committee recommended language designated as Option B+ as a recommendation as a written policy by the L&P Committee Chair, for approval by the Commission on Thursday next:

Legislative delegation by the Commission on amendments to FPPC sponsored bills.

(a) The executive Director shall issue the following written delegation to the Legislative Director:

The Legislative Director, is hereby empowered by me to approve or authorize any:

- 1) Non-substantive amendment to any FPPC sponsored bill;
- 2) Technical or clarifying amendment to any FPPC sponsored bill that he in good faith deems to be in harmony with or furtherance of the purposes of that bill.

The Legislative Director shall promptly inform me in writing, of any action taken under this delegation, including the bill number, substance of the amendment, circumstance, and location where the decision was made. This delegation letter and any reported action taken under this delegation will be made available for public inspection by posting on the FPPC website.

(b) When the Legislative director is in doubt as to the effect of any proposed amendment to a FPPC sponsored bill, the Executive Director is authorized to accept or refuse that technical and non-substantive amendment brought by the Legislative Director, after consulting with the General Counsel and the Chair of the Law & Policy Committee. All substantive amendments that are more than technical or clarifying in nature must be presented to the Law & Policy Committee and approved at a regular or special Commission meeting, depending on the immediacy of the need.