



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Brian Hatch, Commissioner, Chair of Law and Policy Committee; Maria Audero, Commissioner

Cc: Erin Peth, Executive Director; Brian Lau, Acting General Counsel

From: Phillip Ung, Director, Legislation and External Affairs

Subject: Legislation Update

Date: June 6, 2018

Introduction

Staff is currently tracking seven active bills, six of which would amend the Political Reform Act. At the May meeting, the Commission took position on four bills. Three of the four bill positions request the Legislature to make amendments to change the Commission's position. Bill authors have engaged with staff and are open to amending legislation which is discussed further in this memorandum. Staff has added one new bill related to open meeting laws. Staff is not recommending any additional positions for June.

Legislation currently being tracked by Commission staff and other related documents can be found on the [Commission's Pending Legislation](#) page.

Legislation with Active Positions (#1-4)

- AB 664 (Steinorth): Campaign fund expenditures; fair market value**
FPPC Position: *Oppose Unless Amended*
Status: Senate Elections Committee
Fiscal Estimate: Minor and absorbable
Last Amended: January 11, 2018
Last Action: Set for Senate Elections Committee hearing on June 19

Summary:

Existing law prohibits the spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation from campaign funds controlled by the elected officer or candidate.

Under the *Harden* (A-90-498) and *Tierney* (A-04-094) Advice Letters, the Commission staff has advised that the compensation from campaign funds must be fair market value or a gift may result, so long as the duties performed by a non-spouse relative are directly related to a political, legislative, or governmental purpose.

This bill would prohibit compensation above fair market value to a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate or elective office from a controlled committee of the elected officer or candidate for elective office. The bill would additionally prohibit compensation above fair market value to any business majority-owned or controlled by any spouse, domestic partners, or above named relatives. The bill further states that nothing in the bill authorizes a controlled committee to pay campaign funds in excess of fair market value in exchange for goods, services, facilities, or anything of value, to any person or vendor.

Staff Comments

Attached to this report is the Commission position letter sent to Assembly Member Steinorth's office on May 25. On the same day, Mr. Steinorth's staff reached out to the FPPC requesting the FPPC draft amendments that would alleviate the Commission's concerns. Attached are the staff's recommended amendments that staff believes alleviates the concerns expressed by the Commission during the May meeting.

2. [AB 2155](#) (Mullin): Campaign disclosure

FPPC Position: *Support if Amended*

Sponsor: California Clean Money Campaign

Status: Senate Rules Committee (for assignment)

Fiscal Estimate: No costs to the Commission

Last Amended: April 30, 2018

Last Action: Approved by the Assembly and sent to the Senate

Summary:

The Act requires advertisements, as defined, to disclose, among other things, the advertisement's funding source, including independent expenditures, and the names of the top contributors to the committee paying for the advertisement. The Act further requires that an advertisement supporting or opposing a candidate that is paid for by an independent expenditure include a statement that it was not authorized by a candidate or a committee controlled by a candidate. The Act further permits the Commission to adopt, amend, or rescind rules and regulations to carry out the purposes of the title.

This bill would exempt two additional types of communications from the Act's definition of advertisement. This bill would limit the Commission's regulatory authority for determining what types of communications are not advertisements. The bill prohibits the Commission from adopting regulations to change or insert quantity thresholds, as specified. The bill makes various formatting amendments required for television, video, print, and electronic media advertisements paid for by a committee not controlled by a political party or is not a candidate controlled committee established for an elective office of the controlling candidate.

Staff Comments:

On May 25, staff sent the Commission position letter (attached) to Assembly Member Mullin's office. On June 4, Trent Lange, president of the Clean Money Campaign and sponsor of AB 2155 verbally agreed to the Commission's suggestion to narrow the regulatory limit to sections in AB 249 rather than broadly applying it to all of Chapter 4 within the Act. Mr. Lange requested FPPC

staff draft the amendments for review by Mr. Mullin. Attached are the staff's recommended amendments that staff believes would earn the Commission's support.

3. [AB 2880](#) (Harper): Political Reform Act; local enforcement

FPPC Position: *Support if Amended*

Sponsor: California Common Cause

Status: Senate Elections Committee

Fiscal Estimate: Costs to the FPPC in the tens of thousands for each individual jurisdiction, reimbursed by the jurisdictions. Minor and absorbable costs to the FPPC to make the required report.

Last Amended: April 17, 2018

Last Action: Approved by the Assembly and sent to the Senate. Referred to Senate Elections Committee.

Summary:

Existing law authorizes the Fair Political Practices Commission, upon mutual agreement between the Commission and the Board of Supervisors of the County of San Bernardino, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance reform ordinance of the County of San Bernardino, as specified. Existing law also authorizes the Fair Political Practices Commission to enter such agreements with the City Council of the City of Stockton and the City Council of the City of Sacramento, respectively.

This bill would repeal those provisions and would instead generally authorize the governing body of a local government agency to contract with the Commission for the administration, implementation, and enforcement of a local campaign finance or government ethics law. The authorization is limited to jurisdictions with a population of less than 3,000,000. This bill would also clarify that any agreement with one of the cities enumerated above that was in effect on December 31, 2018, is deemed to comply with this provision. The authorization will sunset January 1, 2026. The Commission would be required to produce a report to the Legislature regarding the performance of any agreements on or before January 1, 2025.

Staff Comments:

On May 25, the Commission's position letter was sent to Assembly Member Harper's office, copied to Nicolas Heidorn of California Common Cause. Mr. Heidorn reached out to inform staff that they are open to amendments but had concerns about the 180-day notice period for terminating a contract. Mr. Heidorn suggested a 90-day notice period instead.

4. **SB 1239 (Hertzberg): Campaign disclosure: online filing system**

FPPC Position: *Support*

Sponsor: Secretary of State Alex Padilla

Status: Assembly Elections Committee

Fiscal Estimate: No costs to the Commission, potential minor cost savings.

Last Amended: April 24, 2018

Last Action: Approved by the Senate and sent to the Assembly. Referred to the Assembly Elections Committee.

Summary:

The Political Reform Act of 1974 generally requires elected officials, candidates for elective office, and committees formed primarily to support or oppose a candidate for public office or a ballot measure, along with other entities, to file periodic campaign statements and certain reports concerning campaign finances and related matters. The act generally provides for the filing of campaign statements and reports by various means, including personal delivery, guaranteed overnight delivery, facsimile transmission, and online transmission. The act requires the Secretary of State, in consultation with the Fair Political Practices Commission, to develop online and electronic filing processes for persons and entities that are required to file statements and reports with the Secretary of State's office. The act requires certain persons and entities to file online or electronically with the Secretary of State if their political contributions, expenditures, or loans reach specified monetary thresholds. The Act requires each committee that is required to file a statement of organization to pay the Secretary of State a fee of \$50 by January 15 of each year until the committee is terminated. The Act subjects a committee that fails to pay the fee on time to a penalty equal to three times the amount of the fee.

This bill would generally recast certain provisions governing the processing of campaign reports and statements to provide for the filing, verification, delivery, amendment, retention, and inspection of those documents online or electronically, as prescribed. The bill would repeal the above-mentioned monetary thresholds, thereby making the online and electronic filing requirements applicable to all specified filers. The bill would also repeal various obsolete or extraneous provisions of the act, and would make conforming and other technical, nonsubstantive changes. The bill would change the deadline for payment of the annual fee to April 30 of each year. The bill also makes other technical, non-substantive changes.

Staff comments:

On May 25, the Commission's position letter was sent to Senator Hertzberg's office, copied to the Secretary of State. The Secretary's office has informed staff that they will be making additional amendments to SB 1239. Staff has reviewed the proposed amendments (attached) and believes they are technical in nature. Staff recommends the Commission keep its "support" position.

Active Political Reform Bills (#5-6)

5. **AB 2188 (Mullin): Campaign disclosure**

FPPC Position: *None currently*

Sponsor: California Clean Money Campaign

Status: Senate Rules Committee (for assignment)

Fiscal Estimate: \$192,800 first year, \$183,000 ongoing
Last Amended: May 9, 2018
Last Action: Passed by the Assembly and sent to the Senate

Summary:

Among other things, the Act requires an electronic media advertisement, other than an Internet Web site, paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, to include the text “Who funded this ad?” and a hyperlink to an Internet Web site containing specified disclosures. However, the act requires that an advertisement made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, only include specified disclosures in a contrasting color and in no less than 8 point font on the committee’s profile, landing page, or similar location, and not on each individual post, comment, or other similar communication.

This bill would require the disclosures on the committee’s profile, landing page, or similar location to be on the cover or header photo of the committee’s profile, landing page, or similar location and in no less than 10 point font. The bill would require the disclosures to be fully visible on the cover or header photo when the profile, landing page, or similar location is viewed from any electronic device that is commonly used to view this form of electronic media.

This bill would require an online platform, as defined, to display a hyperlink with the text “Who funded this ad?” on an advertisement paid for by a committee. The bill would require an online platform to maintain and make available a complete record of any request to purchase an advertisement on the online platform made by a committee that purchased \$500 or more in advertisements on the online platform during the preceding 12 months. The bill would require an online platform to display a prominent button, tab, or hyperlink near the top of a profile, landing page, or similar location of the committee that links to a page clearly showing the records of any request made by the committee to purchase an advertisement on the online platform. The bill would make a person who intentionally violates these provisions for the purpose of avoiding disclosure liable in a civil or administrative action brought by the Commission or any person for a fine up to three times the cost of the advertisement, including placement costs.

This bill would require an electronic media advertisement, other than a mass electronic mailing, that is paid for by a political party or a candidate controlled committee established for an elective office of the controlling candidate, and that does not support or oppose a ballot measure and is not paid for by an independent expenditure, to include a specified disclosure regarding who paid for the advertisement.

6. [AB 2689](#) (Gray): Gift and contribution prohibition; Governor’s appointments

FPPC Position: *None currently*
Status: Senate Rules Committee (for assignment)
Last Amended: April 17, 2018
Fiscal Estimate: Minor and absorbable
Last Action: Approved by the Assembly and sent to the Senate

Summary:

The Political Reform Act establishes limits on gifts that a person or group can give to a candidate or state elective officer and limits how much a candidate or state elective officer can accept in a calendar year. The Act also establishes limits on contributions that a person or group can contribute to a candidate for state elective office and limits how much a candidate for state elective office can accept per election.

This bill would prohibit a person appointed by the Governor to an office subject to Senate or Assembly confirmation from making to a Senator or Assembly Member or a controlled committee of the Senator or Assembly Member, a gift or contribution during the period between the appointment or reappointment by the Governor and confirmation by the Senate. The bill would also apply this prohibition to candidates for the Senate or Assembly, as specified.

Miscellaneous Bills (#7)

7. [AB 2958](#) (Quirk): State Bodies; meetings; teleconference

Status: Senate Government Organizations Committee

Last Amended: April 25, 2018

Last Action: Referred to Senate Government Organizations Committee

Summary:

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body, as defined, be open and public, and all persons be permitted to attend any meeting of a state body, except as provided. Existing law does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. Existing law, among other things, requires a state body that elects to conduct a meeting or proceeding by teleconference to post agendas at all teleconference locations, to identify each teleconference location in the notice and agenda, and to make each teleconference location accessible to the public. Existing law requires the agenda to provide an opportunity for members of the public to address the state body directly at each teleconference location, as specified.

This bill, for an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body that does not have rulemaking or voting authority, would instead require a member of a state body participating by teleconference to be listed in the meeting minutes. The bill would require a state body that meets this description to designate a primary physical meeting location where a quorum of the members of the state body will attend and where participants may physically attend the meeting and participate. The bill would require that the agenda include the teleconference phone number and, if applicable, the Internet Web site or other information indicating how the public can access the meeting remotely. The bill would require these state bodies, on and after January 1, 2019, to adopt teleconferencing guidelines, as specified, before holding a meeting by teleconference pursuant to these provisions.

Staff Comments:

After consulting with Legal Division, staff has added AB 2958 to the tracking list for the information of the Commission because of previous discussions regarding the requirements of the Bagley-Keene Open Meeting Act and how it affects advisory committees.

