

**Meeting Minutes
(Unapproved and Subject to Change)
Fair Political Practices Commission
Law and Policy Committee Meetingⁱ
May 11, 2021 10:00 a.m.**

The Law and Policy Committee will hold a committee meeting on May 11, 2021, at 10:00 a.m. The committee will meet to discuss and determine recommendations to make to the full Commission and the public can both listen and participate in the committee proceedings. To submit public comment prior to the meeting, email commasst@fppc.ca.gov. To participate in real time, visit <http://mediasite.fppc.ca.gov/> or call into the phone number listed at the bottom of this notice.

1. Public Comment for items not on the agenda.

2. Approval of April 13, 2021 minutes.

MOTION: To approve April 13, 2021 Committee minutes. Moved by Commissioner Baker, seconded by Chair Miadich. The motion was approved 2-0.

3. Legislative Update. Staff: Lindsey Nakano, Legislative Counsel. The Committee will receive an update on the progress of PRA related legislation and future legislation approved by the Commission.

SB 686, a commission sponsored bill by Senator Glazer, and AB 236, by Assemblymember Berman, relating to LLC disclosure passed in their respective committees last month. AB 236 passed out of the assembly appropriation committee. SB 686 is on suspense in appropriations.

The Commission staff has determined that the FPPC will need one additional special investigator position for these bills and the Secretary of State is also adding a fiscal of \$561,000 in first year costs and \$121,000 annually thereafter. The costs will be for project development and one additional position to manage filing activity. Ms. Nakano also reached out to CalChamber regarding those two bills and shared with them the Commission's willingness to consider amendments to the threshold amount on the cumulative capital contributions and the look-back period.

AB 378, 1367, 1590 are moving along without opposition.

For SB 459 relating to lobbying reports and issue advertisements, Commission staff has determined that the bill will require three new positions, one in legal and two in enforcement.

Discussing SB 752 relating to disclosure requirements on online political ads, Commission staff has determined it will require one new position in enforcement. Staff has also provided technical feedback and a request to include an additional amendment relating to a disclosure on online ads.

Commissioner Baker asked about the previously discussed concerns regarding the one bank account element of Assemblymember Low's bill. Ms. Nakano stated that they are looking for a way to add that element back in a manner that addresses his concerns.

Chair Miadich asked about the timeline for the SB 686 and AB 236 amendments. Ms. Nakano stated that she will research the deadlines and let the Committee know.

4. Discussion on behested payments.

Ms. Harrison stated that staff has identified four areas that the Commission may wish to focus on for additional regulatory action to implement and administer the behested payments definitions and reporting laws, which can be found in section 82004.5, 82041.3, and 84224.

Ms. Harrison stated that one consideration was to draft regulatory language that provides guidance for specific sections in 82004.5, on how to evaluate and report payments properly.

Chair Miadich asked what in the statutory language supports a regulatory approach and what is the Commission aiming to solve. Ms. Harrison stated that the aim is to gain clarification.

Commissioner Baker asked about the indicators that suggested a lack of clarity regarding the topic.

Ms. Harrison stated that the indicators are coming from past advice letters and the complicated situation when there is the additional factor of direction control.

Commissioner Baker asked what the Commission would need to change without having to go to the legislature. Mr. Bainbridge stated that they are limited in what they can do due to the definition of what it is in the statute.

Chair Miadich asked for more clarification about the current gift rules and stated that the second proposal of increasing the specificity of the information that's reported would be highly beneficial.

Chair Miadich also suggested enforcing the gift rules that can address the egregious situations, and to

track the data about the issue of non-profits having relationships with public officials before weighing in on possible changes. Ms. Brereton stated that they have not been flagged with any issues regarding the enforcement of gift rules.

Ms. Harrison stated that the second consideration would be collecting more data about the charitable organizations and known relationships to gauge factors of influence, and a brief description of the proceeding where the elected official knows or has reason to know the donor payee is a participant.

Commissioner Baker asked that staff also look at other ways of connection that could have an impression or the description of whether the non-profit may have some permit or license or interest contract. Commissioner Baker prefers the 12-month timeframe but welcomes a discussion.

Chair Miadich stated he did not see a need for a look-back period larger than 12 months.

Ms. Harrison stated that the third consideration would to practice reasonable efforts to obtain the required payment amount information from the single source prior to the deadline, and then make a requirement that an amended report with the correct information to be filed within a particular time frame. Ms. Harrison suggest the Commission limit the use of good faith estimates to certain circumstances that would warrant it.

Ms. Harrison stated that the fourth consideration would be amending, repealing, or replacing the language in regulation 18215.3 so the solicitation language can be more straightforward.

Chair Miadich asked who is responsible for making the determination whether a payment is received by the nonprofit was responsive to a solicitation. Ms. Harrison stated that it would likely be a collaborative process between the elected official and the non-profit.

Chair Miadich asked if an elected official is identified as a speaker then it is not a behest but if there is an honorary title where the elected official is listed as a member then it is a behest. Ms. Harrison stated that generally if their name is featured and singled out as an honorary board member then that would qualify as a behest but being listed as speaker does not necessarily mean the elected official agrees or consents to the fundraising aspect of an event.

Commissioner Baker stated that they should aim to provide as much clarity as possible regarding when the reporting period obligation is triggered to assist in compliance.

Commissioner Baker asked how an elected official will know how their contributions are categorized and where the official's obligation stops.

Chair Miadich stated that he believes the first consideration should focus on an alternate approach.

Chair Miadich asked for an update on this item at the July 2021 Committee meeting.

5. Discussion of items for June 2021 Committee meeting. Committee members and staff will discuss proposed agenda items for the May 2021 committee meeting.

Chair Miadich stated the online disclosure regulations and a legislative update would be discussed in June. Commissioner Baker requested important deadlines be included in the Legislative update.
