



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **October 19, 2023**, at the campus of California State University, Fresno, Leon S. Peters Ellipse Gallery, 5241 North Maple, Avenue, Fresno, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m. on October 17, 2023.**

BACKGROUND/OVERVIEW:

The express purposes of the Act, set forth in Sections 81001 and 81002, include reducing the influence of large campaign contributors, abolishing laws and practices that unfairly favor incumbents, and promoting fair elections. The Act imposes contribution limits in furtherance of these purposes.

Section 85318 permits a candidate for elective state, county, or city office to raise general election campaign funds during the primary election for the same office. Upon the defeat of the candidate, Section 85318 requires the candidate to return the funds to contributors for the general election on a pro rata basis. While strict, the requirements of Section 85318 serve the purpose of preventing candidates defeated in a primary election from circumventing the Act's contribution limits by using general election funds raised during the primary election, which would otherwise exceed the primary election's applicable contribution limits, for purposes unrelated to the general election.

Sections 85306 and 85317 set forth parameters within which candidates are permitted to transfer and carryover funds from one committee to another. Section 85306 permits candidates to "transfer campaign funds from one controlled committee to a controlled committee for elective state, county, or city office of the same candidate." Moreover, Section 85306 requires candidates to attribute transferred contributions using either a "last in, first out" or "first in, first out" accounting method. Funds may not be transferred, if the funds attributed to a specific contributor exceed the contribution limits of Section 85301 or 85302 when aggregated with all other transfers attributed to, and contributions from, the same contributor.

Sections 85317 and 85318 of the Act address scenarios for the return and transfer of campaign funds after an election. Regulation 18531.2, interpreting Section 85318, requires a candidate to refund contributions raised for a general election if the candidate is defeated in the

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

primary election, or withdraws from the general election. However, the regulation does not currently address refunding contributions when a candidate chooses to withdraw from the primary election. Since winning the primary is a prerequisite to appear on the ballot in the general election, a candidate's withdrawal from the primary election also effectuates a withdrawal from the general election for that office. To address this issue, Commission staff recommends adding a provision to the regulation explicitly treating withdrawal from the primary election in the same manner as defeat in the primary election or withdrawal from the general election.

Similarly, Regulation 18537.1 interpreting Section 85317 concerns the "carry over" of campaign funds from a candidate-controlled committee to that candidate's committee for a subsequent election to the same office. Section 85317 does not require attribution to specific contributors for the carry over of contributions after a general election. However, that section presumes the candidate ran in the election, so it does not address the situation where a candidate is elected to office by receiving a majority of votes in the primary election, without advancing to the general election. For certain, mostly local offices, a candidate that receives a majority of the votes in a primary election wins the office and does not run in the general election. To address this issue, Commission staff has identified three possible options for implementing existing requirements in circumstances where a general election is not required.

REGULATORY ACTION:

The Commission may review and consider all aspects of the refunding of general election contributions regulation, including, but not limited to, the adoption of regulatory language requiring the refund of contributions when a candidate chooses to withdraw from the primary election. The Commission may also consider all aspects of the regulation establishing rules for the carry over of campaign funds when a candidate is elected to office at the primary election without advancing to the general election, including the three proposed options outlined below. While the Commission may review and consider any aspect of Regulations 18531.2 and 18537.1, it is anticipated that the Commission will specifically consider each of the following proposals made by Commission staff:

Regulation 18531.2

Amend 2 Cal. Code Regs. Section 18531.2 subdivision (a) to add the requirement that a candidate who withdraws from the primary or special primary election must return contributions raised for the general election.

Regulation 18537.1

(Option 1) Amend 2 Cal. Code Regs. Section 18537.1 subdivision (d) to add the requirement that if a candidate receives a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election, the remaining campaign funds may be transferred to a committee for a subsequent election to the same office without attributing funds to specific contributors.

(Option 2) Amend 2 Cal. Code Regs. Section 18537.1 subdivision (d) to add the requirement that if a candidate receives a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election, the

remaining campaign funds may be transferred to a committee for a subsequent election to the same office without attributing funds to specific contributors. Funds raised for the general election transferred to a committee for a subsequent election to the same office shall be attributed to specific contributors as provided in Section 85306 and Regulation 18536.

(Option 3) Amend 2 Cal. Code Regs. Section 18537.1 subdivision (d) to add the requirement that if a candidate receives a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election, the remaining campaign funds may be transferred to a committee for a subsequent election to the same office without attribution, while funds raised for the general election must be refunded under Section 85318 and Regulation 18531.2.

SCOPE:

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY:

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE:

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 85306, 85317, and 85318.

CONTACT:

Any inquiries should be made to Zachary Norton, Fair Political Practices Commission, 1102 Q St., Suite 3050, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.