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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward
From: Phillip Ung, Director, Legislative and External Affairs
Subject: Legislative Update
Date: February 20, 2019

Commission-sponsored Legislation

Staff made significant progress finding authors for Commission-sponsored legislation. Assembly Elections Committee introduced the “omnibus non-substantive” bill (AB 946). Senator Tom Umberg, chair of the Senate Elections Committee, introduced the “separate bank accounts” bill (SB 423). Assembly Member Marc Levine introduced two commission-sponsored bills, the “minor and clarifying” and “regulation codification” legislation (AB 902 & 903). Assembly Member James Gallagher will author the “treasurer acknowledgement” legislation (AB 909). One bill is currently under review by an office to determine how the legislation might fit into the legislator’s prospective bill packet.

Staff has had difficulty finding a receptive audience for the “candidate controlled ballot measure committee.” Nevertheless, staff continues outreach.

As detailed in the accompanying memorandum sent to the Acting Executive Director, I accepted three amendments to the “omnibus non-substantive” clean-up bill after issues were raised by the committee consultant about select provisions.

Pending Legislation

As of this writing, the Legislature has introduced 14 bills to amend the Political Reform Act. Attached is the staff analysis of AB 220 (Bonta) and AB 225 (Brough). The Law & Policy Committee has recommended positions on AB 220 and AB 225.

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

Bills with Active Positions (#1-6)

1. AB 902 (Levine): Codify Commission Regulation.

FPPC Position: *Sponsor*

Status: Introduced, awaiting referral to committee

Introduced: February 20, 2019

Last Action: Introduced.

Summary:

The Political Reform Act authorizes the Commission to adopt, amend, or rescind regulations to carry out the purposes and provisions of the Act and to govern the procedures of the Commission. Long-standing and generally accepted regulations become essential to proper administration of the Political Reform Act. There are several regulations the Commission staff has identified as being long-standing, non-controversial, and essential to complying the Act.

This bill does the following:

1. Codify [Regulation 18116](#) to clarify that, where the filing deadline for filing statements or reports falls on a Saturday, Sunday, or official state holiday, the filing deadline shall be extended to the next regular business day with the exception of specified reported filed immediately before an election.
2. Codify [Regulation 18117](#) that failure by a filing officer or filing official to comply with a duty or to provide notice of a filing or disclosure obligations does not affect a person's duty to file statements and reports disclosing information required by the Act.
3. Clarify in statute that "candidate" includes an elected officeholder from [Regulation 18404](#), recasts Section 82007 to improve readability.
4. Repeals Section 85311, recasts its provisions in newly added Section 82015.5, and integrates [Regulation 18215.1](#) to clarify the same aggregation definition applies for limits and reporting purposes for state and local committees.
5. Codify [Regulation 18616.4](#) to extend filing requirements of lobbyist employers to lobbying coalitions and define lobbying coalition in the Act.
6. Codify [Regulation 18229](#) to include registered domestic partners recognized under state law in the definition of "spouse."
7. Codify [Regulation 18426.1](#) permitting recipient committees to designate an assistant treasurer, who may sign and verify campaign statements on behalf of the committee under certain circumstances.
8. Repeals and recasts Section 84105, integrating [Regulation 18427.1](#) to add detail that major donor notice is required to be sent when a committee receives contributions totaling \$5,000 in a calendar year; recasts to improve readability.
9. Codify [Regulation 18729](#) to specify what information must be provided whenever an official must disclose a leasehold interest.
10. Clarify Section 87313 that a person who makes a gift is the source of the gift, unless acting as an intermediary; recasts section to improve readability. ([Regulation 18945](#))
11. Add new Section 89503.5 from [Regulation 18941](#) to clarify in statute when an official "receives" or "accepts" a gift.

12. Codify [Regulation 18996](#), repeal and recast Section 90002, to restore statutory notice to filers regarding what is subject to audit that was inadvertently deleted in prior legislation.

2. AB 903 (Levine): Minor and Clarifying Amendments to Political Reform Act.

FPPC Position: *Sponsor*

Status: Introduced, awaiting referral to committee

Introduced: February 20, 2019

Last Action: Introduced.

Summary:

This bill would clarify that communications paid for with public moneys by a state or local government agency, under certain conditions, are considered expenditures, as specified, and not included in the exception described above. Clarify the language in Section 84200.5 to eliminate confusing language leading to multiple potential interpretations. Clarify the disclosure of income from a gift or business entity include the street address of each source or entity.

3. AB 909 (Gallagher): Treasurer Signature

FPPC Position: *Sponsor*

Status: Introduced, awaiting referral to committee

Introduced: February 20, 2019

Last Action: Introduced.

Summary:

This bill requires a treasurer or assistant treasurer identified on the Statement of Organization to sign a separate statement acknowledging that the person must comply with duties imposed by the Act and regulations and that violation of those duties could result in criminal, civil, or administrative penalties. Requires the Statement of Acknowledgment be filed with the Secretary of State at the same time as the Statement of Organization or an amendment identifying a new treasurer or assistant treasurer.

4. AB 946 (Assembly Elections Committee): Omnibus Non-substantive

FPPC Position: *Sponsor*

Status: Introduced, awaiting referral to committee

Introduced: February 20, 2019

Last Action: Introduced.

Summary:

This bill does the following:

1. Repeal §81016. This section was an implementing section of Proposition 9 in 1974 directing the Department of Finance to sufficient funds available to the Secretary of State to implement the title. Also, it sets the operative date of Proposition 9. This section is obsolete and no longer essential.

2. Repeal §82009. This section defines “civil service employee,” a term defined in other parts of the California Code. It is extraneous and the Commission may refer to other California codes for a definition.
3. Repeal §83123. The Commission no longer has a division of local enforcement to enforcement provisions relating to local government agencies. The Commission has long ago consolidated into a single Enforcement Division with the authority to enforce the Act’s provisions locally, as applicable. This section is obsolete and no longer essential.
4. Repeal §83123.5, subdivision (f). The Commission has successfully completed this requirement to report on the performance of the County of San Bernardino agreement. This subdivision is no longer applicable and extraneous.
5. Repeal §84200.6. This section is extraneous and only repeats filing requirements for committees. Committees must comply with the filing requirements regardless of Section 84200.6 provisions.
6. Repeal §84202, subdivision (b); other conforming amendments. This subdivision is extraneous because subdivision (b) cross-references Section 84202.5, which was repealed in 2016 (Stats. 2015, Ch. 364).
7. Repeal §84252, subdivision (b). This subdivision is extraneous because subdivision (b) cross-references Section 84203.5, which was repealed in 2016 (Stats. 2015, Ch. 364).
8. Amend §84305, subdivision (e), paragraph (2). The amendment repeals a cross-reference to Section 84217, which was repealed in 2018 legislation (Stats. 2018, Ch. 662).
9. Amend §84602, subdivision (a), paragraph (1)(A)-(B) and paragraphs (10)-(11). There are obsolete date references in these paragraphs that are no longer essential.
10. Amend §87500.2, subdivision (c), paragraph (1); subdivision (h). The pilot program referred to in this section no longer exists. Striking out obsolete references. An electronic filing system used by cities and counties still must receive approval and certification from the Commission.

5. [SB 71 \(Leyva\): Campaign expenditure limitations: harassment and discrimination](#)

FPPC Position: *Sponsor*

Status: Senate Elections and Constitutional Amendment Committee

Fiscal Estimate: Minor and absorbable

Introduced: January 9, 2019

Last Action: Referred to Senate Elections Committee (1/16/19)

Summary:

The Political Reform Act of 1974 authorizes certain candidates and elective officers to establish a separate legal defense fund campaign account to defray attorney’s fees and other related legal

costs incurred in the defense of the candidate or elective officer who is subject to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officers' governmental activities and duties, as specified.

This bill would prohibit the expenditure of funds in a campaign committee account or legal defense fund account to pay or reimburse a candidate or elected officer for attorney's fees or other legal costs in connection with claims of unlawful practices made pursuant to California Fair Employment and Housing Act. This would include expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.

At the March 2018 meeting, the Commission rescinded the [Mendoza Advice Letter A-18-009](#). The letter concluded then-Senator Tony Mendoza may establish a legal defense fund to defray attorney's fees related to a claim of wrongful termination, proceedings related to Senate Resolution 69 (2018), and a subsequent civil proceeding should one be filed. The letter had also stated Mr. Mendoza may use campaign and legal defense funds to defend himself from claims of sexual harassment that arose directly out of his activities, duties, or status as a candidate or elected officer.

Staff Comments:

The rescission of the *Mendoza Advice Letter* has left a gap in the Commission's policy of whether the payments or reimbursements are permitted for claims related to violations of the Fair Employment and Housing Act. This gap can be filled through the passage of this proposed bill that will expressly prohibit such payments and reimbursements.

6. SB 423 (Umberg): Separate Bank Accounts for Recipient Committee

FPPC Position: *Sponsor*

Status: Introduced, awaiting referral to committee

Introduced: February 20, 2019

Last Action: Introduced.

Summary:

This bill would expand the bank account requirement to include all recipient committees, as defined in [subdivision \(a\) of §82013](#). This would mean all contributions (§82015) received by the committee would have to be deposited in the designated account, and all expenditures (§82025) made by the committee would have to be drawn from the designated account.

Political Reform Act Bills (#7-10)

7. [AB 220](#) (Bonta): Campaign funds: childcare costs.

Status: Assembly Elections Committee

L&P Recommendation: Support if Amended

Introduced: January 16, 2019

Last Action: Referred to Senate Elections Committee (02/04/19).

Summary:

The Political Reform Act prohibits the use of campaign funds to pay for professional services not directly related to a political, legislative, or governmental purpose. The Commission has previously advised that expenses incurred by a candidate in providing a baby-sitter for his or her children are reasonably related to a political purpose, but not directly related. (*Mahoney* Advice Letter, No. A-94-285.) As such, we advised that campaign fund expenditures on baby-sitting services are permissible if there is no substantial benefit to the candidate. In other words, if each baby-sitting payment is less than \$200 per event, the campaign fund expenditure is permissible.

This bill would authorize the use of campaign funds to pay for child care expenses resulting from a candidate or officeholder engaging in campaign activities or performing official duties.

Staff Comments:

Last year, the FEC ruled that federal congressional candidates can use campaign funds to pay for child care costs that result from time spent running for office ([FEC Advisory Opinion 2018-06](#)). Commission staff analysis of AB 220 raises general concerns about ambiguous terms and the application of the policy that may be addressed with future amendments to the bill.

The Law & Policy Committee recommended a “support if amended” position with the direction that staff develop amendments to address ambiguous terms and other undefined or underdeveloped provisions.

8. [AB 225](#) (Brough): Campaign funds: childcare costs.

Status: Assembly Elections Committee

L&P Recommendation: Support if Amended

Introduced: January 16, 2019

Last Action: Referred to Assembly Elections Committee (02/04/19)

Summary:

The Political Reform Act prohibits the use of campaign funds to pay for professional services not directly related to a political, legislative, or governmental purpose. The Commission has previously advised that expenses incurred by a candidate in providing a baby-sitter for his or her children are reasonably related to a political purpose, but not directly related. (*Mahoney* Advice Letter, No. A-94-285.) As such, we advised that campaign fund expenditures on baby-sitting services are permissible if there is no substantial benefit to the candidate. In other words, if each baby-sitting payment is less than \$200 per event, the campaign fund expenditure is permissible.

This bill would provide that campaign funds may be used to pay for child care provided for a candidate’s dependent child if the costs are incurred as a direct result of campaign activity.

Staff Comments:

Last year, the FEC ruled that federal congressional candidates can use campaign funds to pay for child care costs that result from time spent running for office ([FEC Advisory Opinion 2018-06](#)). Commission staff analysis of AB 225 raises general concerns about ambiguous terms and the application of the policy that may be addressed with future amendments to the bill.

The Law & Policy Committee recommended a “support if amended” position with the direction that staff develop amendments to address ambiguous terms and other undefined or underdeveloped provisions.

9. [AB 322](#) (Gallagher): Electronic filing

Status: Assembly Elections Committee

Introduced: February 11, 2019

Last Action: Referred to Assembly Elections Committee (02/11/19).

Summary:

Would require a local government agency to post on its internet website a copy of any specified statement, report, or other document filed with that agency in paper format. This bill would require that the statement, report, or other document be made available for four years from the date of the election associated with the filing. By imposing a new duty on local government agencies, this bill would impose a state-mandated local program.

10. [AB 359](#) (Melendez): Revolving door prohibition; Members of the Legislature

Status: Assembly Elections Committee

Introduced: February 4, 2019

Last Action: Referred to Assembly Elections Committee (02/11/19).

Summary:

The Political Reform Act of 1974 prohibits a Member of the Legislature, for a period of one year after leaving office, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making appearances before, or communications with, the Legislature or its committees, Members, or officers or employees, if the appearance or communication is made for the purpose of influencing legislative action. If the Member resigns from office, this prohibition applies from the effective date of the resignation until one year after the adjournment sine die of the session in which the resignation occurred.

This bill would extend the time periods for these prohibitions for a Member of the Legislature to 5 years.

Spot Bills (#11-14)

11. [AB 201](#) (Cervantes): Campaign disclosure: mass text messages.

Status: Introduced, awaiting referral to committee

Introduced: January 14, 2019

Last Action: Introduced.

Summary:

The bill is currently a “spot bill” that declares the intent of the Legislature to enact legislation establishing disclosure requirements for campaign-related mass text messages that include the name or image of a candidate for elective office or refer to a ballot measure.

12. [AB 571](#) (Mullin): Contribution Limits.

Status: Introduced, awaiting referral to committee
Introduced: February 14, 2019
Last Action: Introduced.

Summary:

The Political Reform Act of 1974 prohibits a person, other than a small contributor committee or political party committee, as defined, from making to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office from accepting from a person, a contribution totaling more than \$3,000 per election. A candidate for elective state office or committee controlled by that candidate is also prohibited from making a contribution to another candidate for elective state office in excess of this limit. This bill would make a technical, nonsubstantive change to the latter provision.

13. [AB 626](#) (Quirk-Silva): Conflicts of Interest; Government Code 1090

Status: Introduced, awaiting referral to committee
Introduced: February 19, 2019
Last Action: Introduced.

Summary:

Current law prohibits members of the Legislature, and state, county, district, judicial district, and city officers or employees, from being financially interested in a contract, as specified, made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions. Current law excepts certain remote interests of officers from this prohibition, subject to disclosure and a specified procedure. This bill would make nonsubstantive changes to these provisions relating to remote interests described above.

14. [SB 300](#) (Umberg): Political Reform Act; Ballot Measures

Status: Introduced, awaiting referral to committee
Introduced: February 15, 2019
Last Action: Introduced.

Summary:

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures and imposing other reporting and recordkeeping requirements on campaign committees, including ballot measure committees. This bill would make technical, nonsubstantive changes to the definition of “measure” for these purposes.