



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Commissioner Hatch, Chair of Law & Policy Committee
From: Phillip Ung, Director, Legislative and External Affairs
Subject: Legislative Update
Date: February 5, 2019

Commission-sponsored Legislation

Staff made significant progress finding authors for Commission-sponsored legislation. The “omnibus non-substantive” clean-up bill will be a committee bill authored by the Assembly Elections Committee. Senator Tom Umberg, chair of the Senate Elections Committee, has committed to authoring the “separate bank accounts” legislation. Three other bills are currently under review by several offices to determine how the legislation might fit into the legislators’ prospective bill packets. Staff has had difficulty finding a receptive audience for the “candidate controlled ballot measure committee.” Nonetheless 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 six bills to amend the Political Reform Act. Staff has attached analyses of AB 220 (Bonta) and AB 225 (Brough)

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)

1. [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.

Political Reform Act Bills (#2-5)

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

Status: Introduced, awaiting referral to committee

Introduced: January 16, 2019

Last Action: Introduced.

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.

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

Status: Introduced, awaiting referral to committee

Introduced: January 16, 2019

Last Action: Introduced.

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.

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

Status: Introduced, awaiting referral to committee

Introduced: January 30, 2019

Last Action: Introduced.

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.

5. **AB 359 (Melendez): Revolving door prohibition; Members of the Legislature**

Status: Introduced, awaiting referral to committee

Introduced: February 4, 2019

Last Action: Introduced.

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 (#6)

6. **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.