

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 **December 21, 2017**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **December 19, 2017**.

BACKGROUND/OVERVIEW:

Regulation 18225 – Expenditure.

Section 82025 defines the term “expenditure” to mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. “Expenditure” does not include a candidate’s use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. Current Regulation 18225 implements the statute by offering further detail to the definition of expenditure.

Assembly Bill 249 (Stats. 2017, Ch. 546), effective January 1, 2018 (“AB 249”), incorporates the substance of the language in Regulation 18225 into amended Government Code Section 82025 therefore, Regulation 18225 is no longer needed. Staff proposes repeal of Regulation 18225 for this reason.

Regulation 18247.5 – Primarily Formed Committees.

Section 82047.5 of the Political Reform Act defines the term “primarily formed committee” to mean a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following: (a) a single candidate; (b) a single measure; (c) a group of specific candidates being voted upon in the same city, county, or multicounty election; (d) two or more measures being voted upon in the same, city, county, multicounty, or state election.

Regulation 18247.5 further defines a “primarily formed committee” as one that supports or opposes a single candidate or measure, or a specific group of measures or local candidates on the same ballot. Staff has provided informal advice that “same ballot” means “same election” in cases where local jurisdictions vote by district so candidates or measurers may be up at the same

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 18110 through 18997 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.

election, but on different ballots. Regulation 18247 contains redundant statutory language, as well as references to statutes repealed by AB 249. Staff proposes eliminating redundant language and deleting references to sections that have been repealed by AB 249.

Regulation 18402 – Committee Names.

Existing Section 84503 requires any advertisement for or against any ballot measure to include a disclosure statement identifying any person whose cumulative contributions are \$50,000 or more, as specified. Existing Regulation 18402(c) provides that “Whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization.”

AB 249 repeals existing Section 84503 and replaces it with a new Section 84503. (Stats. 2017, Ch. 546, Secs. 9, 10, and 29.) New Section 84503 requires any advertisement paid for by a recipient committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, to include the words “committee major funding from” followed by the names of the top contributors to the committee paying for the advertisement, as specified. New Section 84503(c) provides that “If this article requires the disclosure of the name of a top contributor that is a committee pursuant to subdivision (a) of Section 82013 and is a sponsored committee pursuant to Section 82048.7 with a single sponsor, only the name of the single sponsoring organization shall be disclosed.” New Section 84503(c) makes existing Regulation 18402(c) an inaccurate statement of the law. Therefore, staff recommends amending existing Regulation 18402(c) to conform with language in AB 249.

Existing Section 84504 requires, among other things, any ballot measure committee to name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the committee required by law, including its statement of organization.

AB 249 repeals existing Section 84504 and replaces it with a new Section 84504. (Stats. 2017, Ch. 546, Secs. 11, 12, and 29.) New Section 84504 applies to any radio or telephonic advertisement paid for by a committee, other than a political party committee or a candidate controlled committee for an elective office of the controlling candidate and requires those advertisements to include one of several specified disclosures subject to specified conditions. New Section 84504 does not relate to ballot measure committee name and identification requirements.

Regulation 18402 sets forth the Act’s rules governing committee names. Regulation 18402(c)(4)(E) requires the statement of organization of a committee primarily formed to support or oppose a ballot measure to include the committee’s name as specified in Sections 84107 and 84504 and Regulation 18450.3. Because AB 249 repealed existing Section 84504 staff recommends amending existing Regulation 18402(c)(4) to strike any cross references to 84504 and to conduct any necessary non-substantive maintenance of the regulation. Regulation 18402 also contains a reference to Regulation 18450.3. AB 249’s repeal of existing Section 84504 allows for the repeal of Regulation 18450.3 therefore cross references to this regulation should also be removed.

Regulation 18420 – Reporting of Campaign Contributions and Expenditures of State or Local Government Agencies.

Sections 84200 et seq. of the Act require campaign committees to report receipt of campaign contributions received and expenditures made as specified. Regulation 18420 further defines when a payment made by a state or local government agency is an expenditure or contribution under the Act. Regulation 18420 includes a reference to Regulation 18225, which defines the term “expenditure” under the Act. Regulation 18225 is proposed to be repealed in light of AB 249 as explained above, therefore staff proposes the reference to Regulation 18225 be removed from Regulation 18420 and replaced with a reference to Section 82025, which now contains the substance of Regulation 18225.

Regulation 18423 – Payments for Personal Services as Contributions and Expenditures.

Section 82015 provides a definition of contribution under the Act. Regulation 18423 further defines when payments made by an employer to an employee for services performed by an employee for political purposes become a contribution under the Act. This regulation contains a reference to Regulation 18225, which is proposed to be repealed due to changes in the law made by AB 249 as explained above, therefore staff recommends replacing this reference with one to Section 82025.

Regulation 18435 – Definition of Mass Mailing and Sender.

Section 84305 of the Act establishes sender identification requirements, requiring candidates and committees to properly identify themselves when sending a mass mailing. Regulation 18435, defines the terms “sender” and “pay for” as used in Section 84305, and requires that the sender identification requirements apply to a candidate or committee that sends over 200 substantially similar messages distributed through electronic mail in a calendar month.

AB 249 amends Section 84305, which among other changes, include incorporating the definition of the term “pay for,” as well as the sender identification requirement for electronic mail, into Section 84305(e). To help clarify Regulation 18435, staff proposes removing the language from the regulation that is now included in the amended version of Section 84305.

Regulation 18450.3 – Committee Name Identification. Advertisement Disclosure.

Existing Section 84504 requires a ballot measure committee to name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the committee required by law, including its statement of organization. If major donors of \$50,000 or more share a common employer, the identity of the employer is also required to be disclosed. Any ballot measure committee is required to print or broadcast its name as part of any advertisement or other paid public statement. If candidates or their controlled committees, as a group or individually, meet the contribution thresholds for a person, they are required to be identified by the controlling candidate’s name.

AB 249 repeals existing Section 84504 and replaces it with a new Section 84504 effective January 1, 2018. (Stats. 2017, Ch. 546, Secs. 11, 12, and 29.) New Section 84504

applies to radio or telephonic advertisements paid for by certain committees, and requires those advertisements to include certain disclosures subject to specified conditions. New Section 84504 does not relate to ballot measure committee name and identification requirements.

Existing Regulation 18450.3 interprets existing Section 84504 for purposes of the implementation of that section's ballot measure committee name and identification requirements. However, AB 249's repeal of existing Section 84504 removes the basis for existing Regulation 18450.3, and new Section 84504 does not relate to ballot measure committee name and identification requirements. Staff recommends repealing this regulation.

Regulation 18450.5 – Amended Advertising Disclosure.

Existing Section 84503 requires any advertisement in support or opposition of a ballot measure to contain a disclosure identifying the highest two persons contributing fifty thousand dollars or more, stated in order of contribution levels or, if equal, in chronological order.

Existing Section 84504 requires a ballot measure committee to identify itself using a name or phrase that identified the economic or special interest of its major donors of fifty thousand dollars or more, and named the employer if the major donors shared a common employer.

Existing Section 84506 requires any advertisement in support or opposition of a candidate or ballot measure to contain a disclosure identifying the name of the committee making the independent expenditure; and the two highest persons contributing fifty thousand dollars or more, stated in order of contribution levels and, if equal, in chronological order.

Existing Section 84509 requires a committee to change its advertisement to reflect its changed disclosure information when it files an amended campaign statement under Section 81004.5.

Existing Regulation 18450.5 interprets the required advertisement disclosure amendments for existing Sections 84503 and 84506 (new persons qualifying as a disclosable contributor); and Sections 84504 and Regulations 18402 and 18450.3 (required committee name changes). Regulation 18450.5 also interprets the timing of the advertisement disclosure amendments for existing Section 84509 (disclaimer amendments following a Section 81004.5 amended campaign statement).

AB 249 repeals existing Sections 84503, 84504, 84506 and 84509. AB 249 replaces Sections 84503, 84504 and 84509 with new sections effective January 1, 2018. (Stats. 2017, Ch. 546, Secs. 9, 10, 11, 12, and 19.) New Section 84509 sets forth the timelines for updates to advertisement disclosures reflecting changes in the order of top contributors required under new Sections 84503, 84504, 84504.1, 84504.2, 84504.3, and 84504.5. AB 249 does not specifically address updates to committee name changes, therefore language relating to updates of name changes is the only portion of Regulation 18450.5 that not replaced by provisions of AB 249. Staff proposes eliminating language in this regulation that is now available in statute as a result of AB 249.

Regulation 18521.5 – Ballot Measure Committees Controlled by Candidates for Elective State Office.

Section 84504 of the Political Reform Act provides specific requirements pertaining to committee names. It requires any committee that supports or opposes one or more ballot measures to name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of fifty thousand dollars or more in any reference to the committee required by law. It also required disclosure of any common employer of any major donors of fifty thousand dollars or more, as well as disclose of this information in any advertisement paid for by a committee that supports or opposes one or more ballot measures.

AB 249 repealed Section 84504, and replaced it with a statute that governs the identification requirements for radio and telephonic advertisements. To help clarify Regulation 18521.5, staff proposes removing the references to Section 84505 and Regulation 18450.3 that are no longer applicable as the result of AB 249, in addition to minor grammatical changes.

REGULATORY ACTION:

Repeal 2 Cal. Code Regs. Section 18225 – Expenditure.

This regulation is being repealed.

Amend 2 Cal. Code Regs. Section 18247.5 – Primarily Formed Committees.

Amendments to subdivision (a) contain the language “in the same election” in lieu of the language “on the same ballot” to codify current advice.

Subdivisions (b) and (c) are removed in their entirety because those provisions are either no longer needed due to new provisions in AB 249 or redundant with current statutory language.

Lastly, minor grammatical changes were made to the regulation for clarity throughout and language that repeated language already in statute was removed and replaced with references directly to the relevant statute.

Amend 2 Cal. Code Regs. Section 18402 – Committee Names.

Regulation 18402 is being amended to strike cross references to any provisions rendered inoperative by the enactment of AB 249. Also, minor grammatical and technical changes are made for clarity throughout.

Amend 2 Cal. Code Regs. Section 18420 – Reporting of Campaign Contributions and Expenditures of State or Local Government Agencies.

Regulation 18420 is being amended to replace a reference to Regulation 18225 with a reference to Section 82025, which now contains the substance of Regulation 18225. Also, minor grammatical and technical changes are made for clarity throughout.

Amend 2 Cal. Code Regs. Section 18423 – Payments for Personal Services as Contributions and Expenditures.

Regulation 18423 is being amended to replace a reference to Regulation 18225 with a reference to Section 82025, which now contains the substance of Regulation 18225. Also, minor grammatical and technical changes are made for clarity throughout.

Amend 2 Cal. Code Regs. Section 18435 - Subdivisions (c), and (e), are removed as these definitions are now included in Section 84305 under AB 249. Also, minor grammatical and technical changes are made for clarity throughout.

Repeal 2 Cal. Code Regs. Section 18450.3 – Committee Name Identification. Advertisement Disclosure.

This regulation is being repealed.

Amend 2 Cal. Code Regs. Section 18450.5 – Amended Advertising Disclosure.

Existing Regulation 18450.5 is being amended to eliminate language no longer needed in light of the repeal of existing Sections 84503, 84504, 84506, and 84509 under BA 249. Also, minor grammatical and technical changes are made for clarity throughout.

Amend 2 Cal. Code Regs. Section 18521.5 – Ballot Measure Committees Controlled by Candidates for Elective State Office.

References to Section 84504 and Regulation 18450.3 are being deleted. Also, minor grammatical and technical changes are made for clarity throughout.

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 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: Government Code 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 Political Reform Act.

REFERENCE: The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 82013, 82015, 82016, 82025, 82027.5, 82031, 82041.5, 82047.5, 84102, 84103, 84107, 84200 et seq., 84305, 84501, 84502, 84503, 84504, 84504.1, 84504.2, 84504.3, 84504.4, 84504.5, 84505, 84506, 84506.5, 84509, 84510, 84511, 85201, 85301, 85302, 85303, 85304, 85304.5, 85310 and 85316.

CONTACT: Any inquiries should be made to Sukhi K. Brar, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.php?id=247#2>.