

Recent Changes to the Political Reform Act

Below are summaries of the recent legislative and regulatory changes to the Political Reform Act (the “Act”). All except two of the legislative provisions take effect January 1, 2024. SB 29 and AB 421 took immediate effect upon being signed by the Governor. The Commission approved all of the regulatory changes during 2023, except Regulation 18410, which was approved in 2022 but goes into effect January 1, 2024. To view the full text of the bills, visit: <http://leginfo.legislature.ca.gov/>. To view the full text of the FPPC regulations, visit: <http://www.fppc.ca.gov/the-law/fppc-regulations.html>.

Legislative Changes

P.R.E.P. – Commission’s Political Reform Education Program: Codifies the Commission’s Political Reform Education Program (“PREP”) in statute authorizing the Commission to establish and administer an educational program for persons who violate the Act as an alternative to administrative, civil, or criminal penalties, and would set forth minimum requirements for eligibility, which are consistent with the Commission’s existing eligibility requirements for participation. The bill also authorizes the Commission to charge a fee to a participant in PREP, payable to the General Fund, which may not exceed the reasonable costs of administering the program. Lastly, the bill requires filing officers to waive the late filing fee for a person who completes PREP and to waive the late fee for a person who could not timely file due to the person being seriously ill or hospitalized. This bill was operative on October 10, 2023. (SB 29 (Glazer) – Chapter 696, Statutes of 2023.)

Disclaimers on Paid Third-Party Social Media Posts: Requires a person whom a committee pays to support or oppose a candidate or ballot measure on an internet website, web application, or digital application other than the committee’s own website, profile, or landing page, to include a disclaimer that states or is substantially similar to the following: “The author was paid by [name of committee and committee identification number] in connection with this posting.” The bill requires a committee to notify the person posting the content with the disclaimer requirement. If a person fails to post the disclaimer, they would not be subject to administrative, civil, or criminal penalties, but the Commission would be authorized to seek injunctive relief to compel disclosure. This bill exempts the disclaimer requirement for content posted by a compensated employee of a committee on the employee’s own social media page or account if the only expense or cost of the communication is compensated staff time unless the person’s principal duties as an employee are to post content on the person’s own social media page or account. This bill is operative January 1, 2024. (SB 678 (Umberg) – Chapter 156, Statutes of 2023.)

Requirements for Amending the Political Reform Act: Existing law allows the Act to be amended by the Legislature if certain conditions are met, including that at least 12 days before passage in each house, the bill in its final form has been delivered to the Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to that person. This bill shortens the notice period described above from 12 to 8 days, except that bills that did not previously amend the Act would continue to be subject to the 12-day notice period. The bill adds a section to the Act requiring the Legislative Counsel to, through that public notification system, create an option for the public to sign up for email alerts whenever a bill is introduced or amended that amends the Act. These automated alerts about Act bills are required to be sent no later than 9 a.m. the calendar day after the legislative action. This bill is operative January 1, 2024. (SB 681 (Allen) – Chapter 499, Statutes of 2023.)

Section 1090 and Independent Contractors: Clarifies the circumstances under which, for purposes of Section 1090, an independent contractor is not an “officer,” and, if the independent contractor is an officer when the independent contractor did not participate in the making of a subsequent contract such that they may be hired for the subsequent contract. This bill applies when a public entity that has entered a contract with an independent contractor to perform one phase of a project seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project. This bill establishes that a person who acts in good faith reliance on these provisions is not in violation of the above-described conflict-of-interest prohibitions and would prohibit them from being subject to criminal, civil, or administrative enforcement under those prohibitions if the initial contract includes specified language and the independent contractor is not in breach of those terms. The bill also provides that it is a complete defense in any criminal, civil, or administrative proceeding if the person acts in good faith reliance on these provisions, and meets specified conditions, but fails to include the specified language in the initial contract. This bill is operative January 1, 2024. (AB 334 (Rubio) – Chapter 263, Statutes of 2023.)

Ballot Pamphlet Information for Referendum Measures: Requires that the ballot pamphlet for referendum measures to include a list of the three persons who made aggregate contributions and expenditures of \$50,000 or more, also known as “top funders,” with the heading, “TOP FUNDERS OF PETITION TO OVERTURN THE LAW.” If a primarily formed ballot measure committee or a general purpose committee qualifies as a top funder, the highest contributors to the committee must instead be listed in the ballot pamphlet as the top funders, if the contributor’s contributions to the committee combined with any individual contributions to qualify the referendum would qualify that contributor as a top funder. The bill requires the Secretary of State to determine the list of top funders no later than the date the referendum qualifies for the ballot. This bill was operative on September 8, 2023. (AB 421 (Bryan) – Chapter 162, Statutes 2023.)

Regulatory Changes

DISCLOSE Act Changes

Regulation 18402 – Committee Names: Amendments to Regulation 18402 include a reference to Section 84502 in subdivision (c) of this Regulation as that Section permits the shortening of a committee in specified instances.

Regulation 18450.3 – Top Contributor Disclosure for Affiliated Entities: Amendments to Regulation 18450.3 specify that in accordance with Section 84503(b), the top contributor’s name shall not include such terms as ‘incorporated,’ ‘committee,’ ‘corporation, etc.,’ unless the term is part of the contributor’s name in common usage or parlance.

Regulation 18450.4 – Video and Television Advertisement Disclosure: Amendments to Regulation 18450.4 include the following: (1) updates of cross-references to Section 84504.3(g) in subdivision (b) to Section 84504.3(f); (2) the addition of subdivision (c) specifying that advertisements viewed via CTV and OTT are within the definition of “television” and that these advertisements will have the same disclosures as those for television; (3) the addition of subdivision (d) in the Regulation defining which symbols may be used to clearly mark top contributor names as required by Section 84504.1(b)(4); and (4) clearly specifying that there must be sufficient vertical separation of names such that text is legible and each contributor distinguishable.

Regulation 18450.6 – Disclosure on Advertisements in Languages Other than English: Amendments to Regulation 18450.6 detail what specific advertisements committees may use a shortened committee name, in accordance with Section 84502(e), instead of the committee’s full name as listed on its most recent Statement of Organization (Form 410).

Regulation 18450.8 – Disclosure for Advertisements on Listening Applications that are Both Audio and Visual: Amendments to Regulation 18450.8 include non-substantive updates to the cross-reference to Section 84504.3(g) in subdivision (a) to Section 84504.3(f) and deletes the reference to Section 84504.4, the requirements for radio advertisements since the requirements are captured in Section 84504.

Regulation 18450.9 – Website Advertisements and Social Media Advertisements: Amendments to Regulation 18450.9 include non-substantive updates with the cross-reference to Section 84504.3(d) in subdivision (a) to Section 84504.3(b) and the cross-reference to Section 84504.3(h) to Section 84504.3(g). Amendments also include the addition of subdivision (c) to this Regulation, specifying the formatting required for the disclosures on social media ads paid for by political party and candidate controlled committees for elective office required by Section 84504.4(b), which would be the same formatting requirements applicable to social media advertisements done by other types of committees.

Conflict of Interest Changes

Regulation 18351 – Conflict of Interest Code of the Fair Political Practices

Commission: Amendments to Regulation 18351 update the Commission’s Conflict of Interest Code to reflect the changes in the Commission’s organizational structure. The changes reflected the addition of two positions within the Executive Office and one position within the Legal Division. The updates also included the new titles and positions within the new Audits and Assistance Division and removed those positions within the Enforcement Division that are now under the new Audits and Assistance Division.

Lobbying Changes

Regulation 18202 – Definitions. Quasi-Legislative Administrative Action:

Amendments to Regulation 18202 clarify that actions taken by the California Redistricting Commission (“CRC”) are quasi-legislative administrative actions and therefore subject to the Act’s lobbying rules. The new language of the Regulation explains that explicitly identifying the actions of CRC as quasi-legislative does not imply that the actions of any other agency are not, but rather, the regulation applies in conjunction with other rules and regulations already in place.

Campaign Changes

Regulation 18410 – Statement of Organization: As noted in the [2022 New Law Fact Sheet](#), amendments to Regulation 18410 requiring disclosure on a Committee’s Statement of Organization of the names of persons, other than the treasurer, who have authorization to obtain the committee’s bank account records from the financial institution where the account is maintained were approved by the Commission in 2022. These amendments go into effect on January 1, 2024.

Regulation 18531 – Return or Attribution of Excessive Contributions: Amendments to Regulation 18531 eliminate redundant language that has now been codified in statute, address the return or attribution of over-the-limit non-monetary contributions, and address provisions in Section 85319.5 that provide for the new attribution allowance of excess contributions to a different election if certain criteria are met. Additionally, amendments require written confirmation from a contributor referenced in Section 85319.5(d)(1) to be made in writing and be obtained prior to the attribution of excess contributions to a different election. Lastly, amendments provide that a committee “informs” a contributor that their contribution was in excess of the applicable contribution limit if the committee sends written notification to the contributor noting that their contribution exceeded the applicable limit by the applicable deadline for returning or attributing the contribution or excess portion thereof. A committee is required to send notification to a contributor that their contribution, or a portion thereof, was automatically attributed under Section 85319.5(d)(2) and that they may request a refund.

Enforcement Changes

Regulation 18361.1 – Administrative Subpoenas: Amendments to Regulation 18361.1 replace the current requirements for obtaining an administrative subpoena, which included that Commission staff, under the direction of the Executive Director, seek to obtain voluntary compliance with the Act and that staff make reasonable efforts to obtain information voluntarily before issuing an administrative subpoena. Amendments to Regulation 18361.1 replace the reasonable efforts to obtain information voluntarily standard with a specific requirement that staff requests voluntary production of information in writing no less than 21 days before serving an administrative subpoena on a prospective recipient. The 21 days would begin when staff communicates in writing to the prospective recipient requesting voluntary disclosure of information prior to the issuance of an administrative subpoena.

Senate Bill 1439 (Levine Act) Changes

Regulation 18438 – Application of Government Code Section 84308: Adoption of Regulation 18438 clarifies that Section 84308’s amended provisions would not apply to contributions made or received or proceedings participated in prior to January 1, 2023. Adopting this Regulation codified the Commission’s *Kendrick* Opinion, No. O-22-002.

Regulation 18438.1 – Officers and Agencies Under Government Code Section 84308: Amendments to Regulation 18438.1 further define terms within Section 84308, including clarifying when officers of an exempt agency are exempt from a proceeding, defining the term “officer of an agency” to include candidates concurrently serving in a decisionmaking governmental position, and defining “constitutional officers.” Amendments also included re-organizing and restating Regulation 18438.1’s exception relating to members of the Governor’s Cabinet into subdivision (b).

Regulation 18438.2 – Proceedings Under Government Code Section 84308: Amendments to Regulation 18438.2 provide that a “proceeding involving a license, permit, or other entitlement for use” is a proceeding involving an entitlement for use that is either (1) applied for by the party, (2) formally or informally requested by the party; or (3) a contract between the agency and the party or a franchise granted by the agency to the party, except for those types of contracts exempted under Section 84308. Amendments to this Regulation also provide that a “competitively bid contract” is a contract required by law to be awarded to the lowest responsible bidder with a responsive bid, not simply any contract awarded to the lowest bidder. Additionally, amendments to Regulation 18438.2 specify the circumstances in which a proceeding is considered “pending.” A proceeding is pending for an officer when the decision is before the officer for the officer’s consideration, or it is reasonably foreseeable that the decision will come before the officer and the officer has reason to know an entitlement for use proceeding is before the agency for its decision or other action. A proceeding is pending for a party/ participant when it is before the jurisdiction of the agency for its decision or other action.

Regulation 18438.3 – Agents Under Government Code Section 84308: Amendments to Regulation 18438.3 clarify the definition of “agent.” A person is the “agent” of a party to, or a participant in, a pending proceeding involving a license, permit, or other entitlement for use only if the person represents that party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding. Amendments to the Regulation also identify certain types of communications not considered to be made “for the purpose of influencing the proceeding.” Lastly, the aggregation requirements under Regulation 18438.3 were moved to Regulation 18438.5 to be contained in one location.

Regulation 18438.4 – Participants Under Government Code Section 84308: Amendments to Regulation 18438.4 further clarifies who constitutes a participant by defining the terms “lobbies in person,” “testifies in person before the agency,” and “otherwise acts to influence officers of the agency.” The revised definition of “lobbies in person” emphasizes its application based on direct communication with an officer. The revised definition of “otherwise acts to influence” emphasizes its application to circumstances where the definition of “lobbies in person” or “testifies in person” definitions do not apply.

Regulation 18438.5 – Aggregated Contributions Under Government Code Section 84308: Amendments to Regulation 18438.5 consolidate aggregation requirements under Regulations 18438.3 and 18438.5 in one single regulation succinctly. Amendments clarify the relevant period in which contributions made by an agent are to be aggregated with those made by a party or participant as the shorter of either the previous 12-month period or “the period beginning on the date the party or participant first hired the agent as either a paid employee, contractor, or consultant.” Amendments also incorporate aggregation by reference to Section 82015.5 and include an exemption for uncompensated officers of nonprofit organizations. Lastly, amendments to this Regulation provide that an officer does not violate Section 84308 by receiving a contribution from an individual or entity required to be aggregated where the party, participant, or agent has not disclosed the contribution and the officer does not otherwise know the contribution must be aggregated.

Regulation 18438.6 – Solicitation, Direction, and Receipt of Contributions Under Government Code Section 84308: Amendments to Regulation 18438.6 provide the circumstances in which a person “makes” and an officer “receives” a contribution and specifies what types of controlled committees through which an officer may receive a contribution, including officeholder controlled committees formed pursuant to Section 85316(b) and Regulation 18531.62. Amendments also clarify when an officer “solicits” a contribution and redefine when an officer “directs” a contribution.

Regulation 18438.7 – Prohibitions and Disqualification Under Section 84308: Repeal and adoption of Regulation 18438.7 provides clarification and addresses three key components: (1) determining who qualifies as a “participant” for disqualification purposes; (2) understanding an officer’s duties regarding determining an individual’s potential financial interests; (3) understanding an officer’s duties regarding recusal once a disqualifying financial interest has been determined. Subdivision (a) provides the standards by which an officer is considered to know or have reason to know that a

participant has a financial interest in a proceeding. Subdivision (a)(2) establishes certain “bright line” rules that define circumstances in which an officer is deemed to have reason to know of a participant’s financial interest and consequently may not take part in a proceeding unless additional information is known to the officer. The Regulation also specifies the permissible return of a contribution based on timing within the proceeding and specifies when an officer, under limited circumstances, may participate in a proceeding prior to returning a contribution.

Regulation 18438.8 – Disclosure Under Government Code Section 84308:

Amendments to Regulation 18438.8 specify disclosure requirements for officers and parties. Amendments allow an officer to make the necessary disclosure after learning of a contribution during a meeting but prior to continuing to take part in the proceeding. Moreover, if no public meeting is held, disclosures may be made in “the agency’s official records.” Amendments also include the requirement for parties to disclose all contributions that must be aggregated under Section 82015.5. Lastly, amendments provide that disclosure may be made by the officer or an employee of the agency on behalf of the officer, and such disclosure may be made orally or in writing at a meeting, such as a list of relevant contributions provided as part of a meeting agenda.

Regulation 18705 – Legally Required Participation: Amendments to Regulation 18705 now encompass disqualifications under Section 84308. Amendments provide that disclosure in the context of legally required participation may be made by the officer or an employee of the agency on behalf of the officer, and the disclosure may be made orally or in writing. Lastly, amendments address disclosure in circumstances where the officer learns of a contribution mid-proceeding and is unable to provide specific information beyond basic disqualifying facts.

Other Changes

Regulation 18318 – Collections. Executive Director’s Authority for the Settlement of an Order for Monetary Penalties: Adoption of Regulation 18318 delegates the Commission’s authority to the Executive Director to settle monetary penalties for a lesser sum where the following requirements are met: the monetary penalty order is final, three demand letters have been issued, staff has made reasonable efforts to collect the debt, and the Executive Director has determined that the settlement is appropriate considering the four factors outlined in this Regulation under subdivisions (a)(1)-(4). The Regulation also requires the Executive Director to describe the factors justifying the action in the settlement agreement and to report executed settlements to the Commission.