



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke and Commissioners Audero, Casher, Wasserman, and Wynne

From: Phillip Ung, Legislative and External Affairs Director

Subject: Legislative Update – April 2016

Date: April 11, 2016

The Commission is currently tracking 22 bills and one constitutional amendment. Staff is highlighting two bills in this month's report: one for a support position (SB 1349), and the other to monitor to address concerns (AB 2523). The report also includes updates on the status of five bills in which the Commission took active positions last month.

The last day for policy committees to hear fiscal bills introduced in the house of origin is April 22, 2016. And the deadlines for policy committees to hear non-fiscal bills and for fiscal committees to hear bills are both in May.

Recommended Position and Concerns with Legislation (#1-2)

1. SB 1349 (Hertzberg): Cal-Access

Status: Senate Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 28, 2016

Last Action: Referred to Senate Elections and Constitutional Amendment Committee (3/28/16)

Staff Recommendation: ***Support***

Summary:

The bill requires the Secretary of State, in consultation with the Commission, to develop and launch a new, data-driven disclosure system for campaign finance and lobbying by February 1, 2019. Additionally, the bill requires the Secretary to produce a report by December 31, 2017 on the capability to accept campaign statements from local jurisdictions. The bill expressly exempts the system's development from the information technology procurement requirements prescribed by law. The bill also specifies certain features and operations for the new system.

Staff Recommendation:

Commission staff has consulted closely with external stakeholders, including the Secretary of State's office, on the development of this legislation. As previously stated by Chair Remke, the modernization of the Cal-Access system is a top priority of the Commission as the

current system no longer meets the needs of the Political Reform Act and greatly limits the Commission's ability to fulfill its mission.

Staff will continue to work with the author and sponsors to refine the bill to meet the needs of the Commission, focusing on implementation and enforcement. Staff recommends the Commission support this bill, but note that we are neutral on the provision exempting the system from IT procurement requirements as that issue is outside the Commission's expertise.

2. AB 2523 (Mullin): Contribution Limits: Local Elections

Status: Assembly Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Introduced: February 19, 2016

Amended: April 6, 2016

Last Action: Set for hearing April 13, 2016

Staff Recommendation: ***Monitor to Address Concerns***

Summary:

The Political Reform Act contains contribution limits for state office and statewide offices. The Act specifies nothing in the law prevents the Legislature or local agency from adopting additional requirements, and nothing in the Act nullifies contribution limitations or prohibitions in local jurisdictions. All ordinances or other provisions adopted by local governments must be filed with the Commission.

This bill would repeal permissive language in the Election Code that allows counties (Elec. Code, § 10003), cities (Elec. Code, § 10202), and special districts (Elec. Code, § 10544) to adopt ordinances and resolutions limiting campaign contributions. In place of the permissive language, the bill would require a candidate for local elective office to adhere to either: (1) the state legislative contribution limit of \$4,200 per election, as adjusted by the Commission (Gov. Code, § 85301(a)); or (2) the limits adopted by local ordinance or resolution, which may be *less or greater* than the state limit.

For jurisdictions that do not adopt their own contribution limits, a violation of the state legislative limit adopted by this statute would be punishable by civil fines of \$5,000 or three times the amount in excess of the contribution limit, and as a criminal misdemeanor if the person willingly or knowingly violated the law. Under the bill, the local district attorney would have the sole responsibility to investigate and prosecute these civil and criminal penalties. If a jurisdiction adopts its own contribution limits, it also would be responsible for adopting its own enforcement process, which may include administrative, civil and criminal penalties.

Staff Recommendation:

Staff has expressed concerns with the author's office and the sponsor, Common Cause, about: 1) the campaign finance proposal not being in the Political Reform Act; 2) the likely confusion to local candidates and the possible unintended consequences to the Commission

regarding advice and enforcement on local campaign issues that would continue to fall under the Act and the Commission's jurisdiction (i.e., laundered campaign contributions); 3) the priority the district attorneys would place on enforcing violations of campaign finance laws and their capacity to pursue violations; and 4) what systems would be established to investigate complaints and approve administrative penalties for jurisdictions who adopt contribution limits and how those systems interact with the Commission's enforcement powers. County, city, special district, and district attorney associations have met with the author with the intention to request amendments to the bill.

Instead of recommending a formal position at this time, staff recommends taking a "monitor to address concerns" approach. The bill may be amended substantially in the near future, thus staff can monitor and see if these concerns are addressed before the Commission takes an active position.

Bills with Active Positions (#3-7)

3. AB 2250 (Ridley-Thomas): Foreign Contributions

Status: Assembly Appropriations Committee

FPPC Position: ***Support***

Fiscal Estimate: ***Minor and absorbable***

Introduced: February 18, 2015

Last Action: Approved in Assembly Elections (Ayes 5, Noes 1). Referred to Assembly Appropriations Committee (3/30/16)

Summary:

The Political Reform Act prohibits a foreign government or principal, as defined, from making a contribution or expenditure *in connection with a ballot measure* and also prohibits a person or committee from soliciting or accepting a contribution from a foreign government or principal for this purpose. (Section 85320.) This bill would expand the scope of these prohibitions by also prohibiting a foreign government or principal from making a contribution or expenditure, and a person or committee from soliciting or accepting this type of contribution, *in connection with any election in California* (not just ballot measures). While this activity is currently prohibited under federal law, this bill expands the Commission's authority to enforce incidents of foreign contributions or expenditures into California campaigns should the Federal Election Commission (FEC) not act. This bill has an urgency clause so it can be in place in advance of the 2016 general election.

Staff Update

The bill was approved by the Assembly Elections Committee on partisan lines and was referred to Assembly Appropriations Committee for fiscal analysis. Republicans on the Assembly Elections Committee discussed concerns with foreign nationals not being included in the law. AB 2250 expands current law to include candidate campaigns, but does not seek to amend the scope of the qualifying "foreign entities" set forth in existing law.

4. AB 2558 (Steinorth): San Bernardino County Enforcement

Status: Assembly Local Government Committee

FPPC Position: **Support**

Fiscal Estimate: Not yet requested

Introduced: February 19, 2016

Last Action: Approved in Assembly Elections Committee Consent Calendar (Ayes 7, Noes 0). Referred to Assembly Local Government Committee (3/30/16)

Summary:

Current law, until January 1, 2018, authorizes the Commission, upon mutual agreement between the Commission and the Board of Supervisors of the County of San Bernardino, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance reform ordinance of the County of San Bernardino. (Section 83123.5.) This bill would repeal the January 1, 2018, sunset date, thereby extending the operation of these provisions indefinitely.

Staff Update

The bill was approved on consent calendar in Assembly Elections Committee and unanimously in Assembly Local Government Committee. The “FPPC Report to the Legislature - San Bernardino,” highlighting the successes of our agreement with the county, is available on the FPPC website.

5. AB 700 (Gomez): Advertisement disclosure

Status: Senate Elections and Constitutional Amendment Committee

FPPC Position: **Oppose unless amended**

Fiscal Estimate: **\$350,000**

Introduced: February 25, 2015

Amended: January 14, 2016

Last Action: Referred to Senate Elections and Constitutional Amendment Committee (2/4/16)

Summary:

The Act provides comprehensive regulations for campaign finance disclosure requiring committees that support or oppose ballot measures to use the name or phrase that clearly identifies the economic or other special interest of its donors of \$50,000 or more. If major donors share a common employer, then the employer is disclosed.

The bill would redefine and recast the Act’s advertisement disclaimer provisions. The bill prescribes the disclosure statements, location, and format criteria required for television, radio, telephone, and internet advertisements with some exemptions; excludes apparel, sky writing, and certain electronic media. The bill would require on-advertisement disclosure of the top three contributors. Certain committees would be exempt from the top contributor disclosure, including major donors and individuals and entities making independent expenditures.

The bill also explicitly exempts from the definition of “advertisement” a communication paid for by a political party or a candidate controlled election committee. There is no explanation

for this broad exemption. In addition, the bill uses the term “earmarked funds” to determine the top three contributors, which is inconsistent with the prohibition against “earmarking” under current law. (Gov. Code, § 85704.) Finally, it should be noted that there is a potential risk for litigation due to the compelled speech issues in the bill as a result of expanding the advertisement rules to general purpose committees.

AB 700 received three substantial amendments in a single week in January prior to being approved by the Assembly Appropriations Committee and the Assembly Floor. AB 700 was approved by the Assembly (60 ayes – 15 noes). After several attempts to schedule an earlier meeting, Commission staff met with the author’s office and sponsor on March 3, 2016, to express our concerns.

Staff Update

As stated at the last hearing, the Commission’s concerns are not directed at the public policy goals proposed by AB 700. And in an effort to help achieve the proponent’s stated goal of increased disclosure, while addressing our fundamental concerns regarding implementation and enforcement, staff is drafting suggested amendments. These amendments will be shared with the author, sponsor, and Senate Elections Committee staff when complete and prior to the April Commission Hearing.

6. AB 1200 (Gordon): Lobbying: procurement contracts

Status: Assembly Concurrence File

FPPC Position: **Oppose**

Fiscal Estimate: **\$872,000 (two years), \$760,000 (ongoing)**

Introduced: February 27, 2015

Amended: February 10, 2016

Last Action: Passed by Senate (Y:26 N:5 A:9), referred to Assembly for Concurrence in Senate Amendments (3/3/16)

Summary:

The Act regulates the activities of lobbyists, lobbying firms, and lobbyist employers who attempt to influence legislative and administrative actions. This includes placement agents who attempt to influence investment decisions of CalPERS, CalSTRS, and the UC Retirement Systems. The Act requires lobbying entities to register and file quarterly disclosure reports with the Secretary of State.

AB 1200 proposes to establish reporting, disclosure, and other lobbying requirements on persons who attempt to influence government procurement decisions where total estimated costs of the procurement exceed \$250,000. This requirement would only include persons who are contracted to provide such services, not in-house employees.

Staff Update

The bill remains on the Assembly Concurrence File and can be taken up for a vote at the pleasure of the author.

As always, staff welcomes the opportunity to meet with the author’s office and other interested parties and agencies, such as the Department of General Services, to better

understand the issues and discuss possible alternative approaches. The Commission remains fully committed to ensuring the integrity of public contracting as we continue to enforce the relevant portions of the Act, including prohibitions against public officials having a personal financial interest in contract decisions or being improperly influenced by gifts.

7. AB 1582 (Travis Allen): Conflicts of interests: post-secondary educational institutions

Status: Assembly Elections and Redistricting Committee

FPPC Position: **Oppose**

Fiscal Estimate: Not yet requested

Introduced: January 5, 2016

Amended: February 18, 2016

Last Action: Set for hearing on April 13, 2016

Summary:

The Act requires every governmental agency to adopt and promulgate a conflict of interest code to include specific information. Current law, outside the Act, prohibits a faculty member or academic department from demanding anything of value, royalties, or other compensation from sales of course materials that include the instructor's writing or other work.

The bill requires the conflict of interest code of each public college and university to require instructors and employees to disclose any item of value, any royalties, or compensation the employee receives as a result of adopting course materials for coursework or instruction. Although an employee would be required to file a Statement of Economic Interest (Form 700) and report disclose the financial interest, the disclosure would not result in disqualification.

Staff Update

The bill was set to be heard in Assembly Elections Committee, but was removed from the agenda by the author.

Other Political Reform Act Bills (#8-19)

8. AB 2002 (Stone): Lobbying: California Coastal Commission

Status: Assembly Natural Resources Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 28, 2016

Last Action: Approved in Assembly Elections Committee (Ayes 6, Noes 1). Referred to Assembly Natural Resources Committee (3/30/16)

Summary:

The Act defines and regulates administrative actions and requires lobbying registration, disclosure and compliance from those who qualify. This bill would further define administrative action to include the Coastal Commission's quasi-judicial proceedings (such

as issuing permits). The bill also further exempts certain individuals who receive compensation to influence an administrative action if the person limits the activity to no more than one per calendar year or is a local government agency employee acting in the scope of employment.

The language of AB 2002 was taken from SB 929 (Kehoe, 2005), a bill that did not pass its house of introduction. Commission staff has discussed the bill with the author's office. At this time, the current language appears to be placeholder language. The concern expressed by the author's office is that the Coastal Commission allows ex parte communications with its commissioners on quasi-judicial, non-enforcement proceedings. These quasi-judicial proceedings to issue permits make up the vast majority of the Coastal Commission's activities. The Act does not currently include quasi-judicial proceedings within its definition of administrative actions as these proceedings are regulated by the Administrative Procedure Act (APA).

Normally, in proceedings subject to the APA, ex parte communications are strictly prohibited. However, in the Public Resources Code, the Coastal Commission is explicitly exempted from the prohibition. Interestingly, this exemption is not unique to the Coastal Commission – at least 14 other agencies appear to have some form of exemption from the APA's prohibition on ex parte communication.

Rather than classifying these communications in *quasi-judicial proceedings* as “lobbying” for the purposes of the Coastal Commission as proposed by this bill, staff questions whether the exemption from the APA should be re-examined. At the very least, this issue should be considered on a more global level before each exempt agency is added piecemeal to the Act and each with its own set of distinctive requirements.

9. AB 2070 (Harper): Local Enforcement for Orange County

Status: Assembly Elections and Redistricting Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Introduced: February 17, 2016

Last Action: Set for hearing on April 13, 2016

Summary:

Current law authorizes the Commission upon mutual agreement with the Board of Supervisors of the County of San Bernardino to have primary responsibility for administering and enforcing San Bernardino County's local campaign ordinance. This bill would authorize the Commission and the Board of Supervisors of Orange County to enter into a similar agreement. The bill contains an urgency clause. The FPPC also would be required to submit a report to the Legislature, in consultation with the County, on or before January 1, 2019.

According to the author, Orange County passed Measure E in 2014 that began the process of adopting campaign finance ordinances within the county and authorized the county to enter into a mutual agreement with the FPPC. In order to enter into an agreement, the Legislature must approve legislation authorizing the activity. Depending on when the bill is chaptered,

the urgency clause may be a concern if the county intends to have a contract prior to the conclusion of the 2016 election.

10. AB 2284 (Patterson): Use of surplus funds

Status: Assembly Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: 4/6/16

Last Action: Set for hearing on April 13, 2016

Summary:

This bill would prohibit a State Senator or Member of the Assembly who decides to resign from office before the expiration of his or her term from subsequently using campaign funds held in trust for any purpose other than paying outstanding campaign debts or reasonable expenses. The bill would amend the list of specified purposes allowable for the use of surplus campaign funds to include the payment of expenses to hold a special election to fill the vacancy created by the Member's resignation and would require the former Member to pay from his or her surplus campaign funds such election-related expenses, to the extent he or she has funds available to do so.

According to the author, when legislators resign prior to finishing their term, special elections cost counties funds needed for the programs. The author's intent is to require legislators who resign prior to the expiration of their term to offset or pay for the entire cost of the special election and any remaining funds can only be used for charitable contributions.

11. AB 2318 (Low): FPPC Enforcement of use of public resources

Status: Assembly Judiciary Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 28, 2016

Last Action: Approved in Assembly Elections Committee on Consent Calendar (Ayes 7, Noes 0). Set for hearing on April 12, 2016

Summary:

Current law prohibits the use of public funds for campaign activities. Current law also prohibits a nonprofit organization or an officer, employee, or agent of a nonprofit organization from using, or permitting another to use public resources received from a local agency for campaign activity, as defined, and not authorized by law. This bill would authorize the Commission to bring a civil action or to commence an administrative action for violation of these provisions.

At the request of Commission staff, the bill was amended to be placed in the Political Reform Act. Future amendments will be requested to ensure the new language conforms to existing provisions of the Act.

12. AB 2628 (Levine): Employment Restrictions: Revolving Door

Status: Assembly Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 17, 2016

Last Action: Set for hearing on April 13, 2016

Summary:

The Act imposes restrictions on post-governmental employment of specified public officials of state and local agencies. This bill would prohibit an elected or appointed officer of a state or local agency, for a period of one year after leaving office, from maintaining employment with or being a compensated consultant of any other board, commission, or other body on which the officer served as a member while holding the elective or appointed office.

The bill would prohibit an elected or appointed officer of a state or local agency from performing services that would qualify the officer as a lobbyist, and performing services as a compensated consultant or employee of an entity having a direct financial interest in a permit, regulatory, or enforcement action pending before the agency. The bill also requires each state agency and each local agency to maintain a website and post statements of economic interests on that website.

13. AB 2823 (Gatto): Statement of Economic Interests

Status: Assembly Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 31, 2016

Last Action: Set for hearing on April 13, 2016

Summary:

This bill contains two major provisions vetoed in AB 10 (Gatto, 2015): 1) increasing the threshold at which a public official has a disqualifying financial interest in sources of income, business investments, or real property; and 2) revising the dollar amounts associated with the value ranges for reporting the value of economic interests.

According to the author, the intent is to revive AB 10 (Gatto, 2015) which was vetoed by Governor Brown in October 2015. AB 10 increased the thresholds at which a public official has a disqualifying financial interest in sources of income from \$500 to \$1,000, in investments in business entities from \$2,000 to \$5,000, and in interests in real property from \$2,000 to \$10,000. AB 10 conformed adjustments to the thresholds at which income, investments, and interests in real property must be disclosed on a public official's statement of economic interests. It also revised the dollar amounts associated with the value ranges for reporting the value of economic interests. And required certain public officials to disclose information on the official's statement of economic interests relating to governmental decisions for which the public official had a disqualifying financial interest, as specified.

The Governor's veto message: "The Political Reform Act already requires public officials to disclose their income, investments and business activities with enough particularity so that conflicts of interest can be identified. This bill adds yet more complexity to existing reporting requirements without commensurate benefit, and I am not convinced that this bill will provide more useful information to the public."

14. AB 2840 (Lopez): Prohibition on Non-profit Travel

Status: Assembly Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Introduced: February 19, 2016

Last Action: Set for hearing on April 13, 2016

Summary:

This bill would prohibit a 501(c)(3) nonprofit organization from providing to a Member of the Legislature, and a Member of the Legislature from accepting, any payments, advances, or reimbursements for travel, as defined. This bill contains other related provisions and other existing laws.

According to the author: "Unfortunately special interest groups have hidden behind non-profits they have created in order to take legislators away to luxurious destinations to educate them on the issues facing Californians. Simple disclosure of such trips still allows for such groups to have greater influence with elected officials."

Commission staff is currently in the process of receiving budget appropriation to implement SB 21 (Hill, 2015) that would require disclosure of non-profit travel by elected officials under certain conditions.

15. ACA 9 (Gomez): Post-governmental Employment: Legislative Vacancies

Status: Assembly Rules Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Introduced: February 19, 2016

Last Action: Introduced

Summary:

This constitutional amendment would revise the post-governmental employment restrictions of the Legislature to begin when the legislator resigns to one year after the date the legislator's term was scheduled to expire.

The bill does not amend the Political Reform Act directly, but may require conforming changes to the Act if approved by the voters.

16. SB 976 (Vidak): Post-governmental Employment

Status: Senate Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 17, 2016

Last Action: Set for hearing April 19, 2016

Summary

The Act prohibits former members of the Legislature from lobbying the Legislature for one year after leaving office. The Act also prohibits former state elected officers, other than a member of the Legislature, from lobbying any administrative agency for one year.

The bill would extend the post-governmental employment restrictions for members of the Legislature to include the day the legislator left office to the end of the next legislative session after the member left office. The bill would also extend the prohibition on former state elected officers, other than a member of the Legislature, to two years.

17. SB 1011 (Mendoza): Public Officers: Contracts: Financial Interests

Status: Senate Floor; Third Reading

FPPC Position: None currently

Fiscal Estimate: Minor and absorbable

Amended: March 17, 2016

Last Action: Senate Third Reading File (3/31/16)

Summary:

This bill would, on and after January 1, 2018, include within the definition of remote interest that of a public officer in the financial interest of the public officer's child, parent, sibling, or the spouse of the child, parent, or sibling, in a contract made by that public officer, where the interest is actually known to the public officer, and the officer knowingly or willfully fails to disclose those interests. The FPPC is charged with enforcing and advising on Government Code Section 1090.

SB 1011 is a revived version of SB 330 (Mendoza, 2015) with a narrowed definition of the public officer's family member.

18. SB 1107 (Allen): Public Financing of Campaigns

Status: Senate Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 28, 2016

Last Action: Set for hearing on April 19, 2016

Summary:

The Act prohibits a public officer from spending or receiving public funds for the purpose of seeking elective office. (Section 85300.) The Act's prohibition on public financing of campaigns now applies to all jurisdictions except charter cities.

This bill would allow a public officer to spend or receive funds for the purpose of seeking elective office if: 1) funds were authorized in a dedicated account; 2) funds were available to all candidates regardless of incumbency or political party; and 3) the government entity had established criteria for receiving funds by statute, resolution, or charter. This bill also includes language substantially similar to the provisions of AB 2250 (Ridley-Thomas). The bill proposes new restrictions on surplus funds for committees controlled by officeholders who have been permanently banned from seeking public office under Elections Code Section 20, because they have been convicted of a felony involving bribery, extortion or perjury.

SB 1107 is a majority vote bill because it would call for an election and refer the legislation to a voter ballot. The author hopes to place this measure on the 2016 November Ballot.

19. SB 1251 (Moorlach): State Financial Obligations: Ballot Pamphlet

Status: Senate Public Employment and Retirement Committee and Senate Governmental Organizations Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Amended: March 31, 2016

Last Action: Set for hearing in P, E & R Committee April 11, 2016; Set for G.O. Committee on April 12, 2016

Summary:

This bill would amend the Political Reform Act's provisions related to the state ballot pamphlet to require the publication to include state financial obligations, as specified.

The Act contains several provisions related to the state ballot pamphlet. The changes to sections of the Act appear to be conforming changes with those made in the Election Code.

20. SB 1467 (Bates): Contribution Limits on Candidate-Controlled Ballot Measure Committees

Status: Senate Elections Committee

FPPC Position: None currently

Fiscal Estimate: Not yet requested

Introduced: February 19, 2016

Last Action: Set for hearing on April 19, 2017

Summary:

This bill would prohibit a person from making to a committee controlled by a candidate for elective office that is primarily formed to support or oppose one or more ballot measures, and prohibit such a committee from receiving, a contribution in excess of the contribution limit for elective state offices, as specified.

The author's staff has indicated that amendments are forthcoming. The amendments would remove the contribution limit requirement and instead place restrictions on how ballot

measure funds are spent as it relates to the candidate, and how the candidate's image and name is used in ballot measure committee communications.

Spot bills not expected to affect the Political Reform Act

Bill authors have indicated to Commission staff that the following bills are placeholders for other legislation not related to the Political Reform Act.

21. AB 2044 (Harper): Committee Thresholds

22. SB 921 (Anderson): Campaign Statements