



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

EXECUTIVE STAFF REPORTS

October 19, 2017 Commission Hearing

Contents

<u>ENFORCEMENT DIVISION</u>	2
<u>LEGAL DIVISION</u>	3
<u>EXTERNAL AFFAIRS AND EDUCATION DIVISION</u>	13
<u>LEGISLATIVE UPDATE</u>	14

I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of September 8, 2017 through October 5, 2017, the Enforcement Division received 41 complaints, opened 7 for investigation, and rejected 13. The Enforcement Division received 171 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 158 cases including:

- 50 warning letters,
- 32 no action letters,
- 1 advisory letter,
- 34 as a result of the adoption of stipulations and defaults at the September Commission meeting, and
- 41 committees were administratively terminated.

The Division had 1,082 cases in various stages of resolution at the time of the September Monthly Report and currently has approximately 1,138 cases in various stages of resolution, including the 22 cases before the Commission as listed in the October 2017 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 57 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 88 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

II. LEGAL DIVISION

STAFF:**JACK WOODSIDE, GENERAL COUNSEL****JOHN WALLACE, ASSISTANT GENERAL COUNSEL****TRISH MAYER, ASSISTANT CHIEF****A. Pending Litigation*****Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.***

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act¹ (the Act) because it does not “further the purposes of the Act,” an express requirement in the Act for legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, “entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The appeal will be filed with the Third District Court of Appeal. Notice of Appeal must be filed 60 days after notice of entry of judgment, which has not been served to date. Thus, the deadline to file the appeal is not currently set. The Governor’s Office has also decided to appeal the decision.

Frank J. Burgess v. Fair Political Practices Commission

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission’s decision and order in *In re Frank J. Burgess*, Case No. 12/516.

¹ The 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 Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source unless otherwise indicated.

Mr. Burgess's case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ's decision to the Commission. On March 19, 2015, the Commission rejected the ALJ's decision and decided the case based on the record and the parties' supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act and imposed a \$5,000 fine on July 7, 2015.

Mr. Burgess challenged that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the Superior Court issued its judgment granting the petition on due process grounds. The Court further ordered the Commission to file a Return to the Writ on or before November 7, 2016.

After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the Superior Court's judgment stand and to vacate and set aside its Decision and Order in the underlying matter, thereby dismissing the administrative proceedings against Mr. Burgess. The Commission timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 ("private attorney general"). The FPPC in conjunction with the Attorney General's office prepared an opposition to this motion which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the Superior Court took the matter under submission after argument by the parties. On April 10, 2017, the Superior Court granted Burgess's motion for attorney's fees. The Commission voted in closed session to appeal the Superior Court's order granting Burgess attorney's fees at the June meeting.

The Court entered an order requiring the parties to participate in a settlement conference set for October 30, 2017, at 10:00 a.m. However, the Court recently vacated the settlement conference, granted calendar preference on its own motion due to respondent's age and health issues, and ordered the parties to file their respective briefs within the time periods specified by rule without any extension. Appellant's opening brief is due or before November 6, 2017.

B. Outreach and Training

- Trish Mayer, Zachary Norton, Emelyn Rodriguez, and Sukhi Brar of the Legal Division and Courtney Miller, Glen Bailey, and Jay Wierenga of the External Affairs and Education Division helped to staff a booth at the League of California Cities Annual Expo in Sacramento on September 13th and 14th. Having a Commission booth at this particular Expo provided an opportunity for staff to talk to a different audience than the normal training and outreach sessions. It was very beneficial to make an appearance before council members and city managers – a group that typically does not reach out to the Commission staff. Staff spoke to about 45 individuals regarding general conflict of interest rules, Enforcement procedures, Form 700 filings, and training opportunities. Staff also handed out factsheets and other training materials in addition to providing hands-on demonstrations on navigating the Commission's website.

- On September 21, 2017, Commission Counsel L. Karen Harrison spoke to 75 members of the San Luis Obispo County Bar Association, elected officials and special district members. The presentation covered the Commission's organization, enforcement process, "behested payment" reports, and conflicts of interest under the Act.
- On September 27, 2017, Commission Counsel Matthew F. Christy spoke to approximately 50 attendees of a breakout session on conflicts of interest under the Act and Section 1090 at the California Special District Association's Annual Conference in Monterey. The presentation included discussion of the Act's conflict of interest provisions, Section 1090's prohibition of an official having a financial interest in a public contract, and recent conflict of interest advice letters relevant to special districts.

C. Advice

In September 2017, the Legal Division responded to the following requests for advice:

- ***Requests for Advice:*** Legal Division Political Reform Consultants and attorneys collectively responded to more than 632 e-mail and telephone requests for advice.
- ***Advice Letters:*** Legal Division received 16 advice letter requests and issued 18 advice letters.
- ***Section 1090 Letters:*** Legal Division received four new advice letter requests concerning Section 1090 and issued eight. This year to date we have received 65 advice requests regarding Section 1090.

D. Advice Letter Summaries

Full copies of FPPC Advice Letters, including those listed below, are available at:
<http://www.fppc.ca.gov/the-law/opinions-and-advice-letters/law-advice-search.html>.

Behested Payment

Amy Webber

[A-17-206](#)

Payments solicited by a mayor for a governmental purpose must be reported as a "behested payment" if payments from a single source equal or exceed \$5,000. There is no exception for payments solicited for the benefit of government employers. Moreover, while there is an exception in Section 82015(b)(2)(B)(ii) for certain payments, it only applies to payments made by a government entity at the behest of the official.

Conflict of Interest

Kristin Pelletier[I-17-144](#)

Councilmember whose husband worked, in the previous 12 months, for a subsidiary wholly owned by a large corporation is prohibited under the Act from taking part in governmental decisions that will have a foreseeable and material effect on a second subsidiary nearly wholly owned by the same large corporation.

Darcy C. Vaughn[A-17-180](#)

The Act does not prohibit a Councilmember, who in her private capacity is an insurance agent and owns an insurance agency within the City, from taking part in decisions on whether the City should permit cannabis-related businesses within the City. While new cannabis distributors would be required to carry insurance under State law, the additional insurance needs from the small subset of cannabis distributors within the City would not have a reasonably foreseeable material financial effect on the Councilmember's agency. Furthermore, no source of income to the Councilmember would be foreseeably and materially financial effected.

Bruce Gibson[A-17-188](#)

Under the Act's public generally exception for decisions applicable to decisions with limited neighborhood effects, a county supervisor may take part in decisions regarding the extension of fire protection service by the county to the area that includes his home.

Michael Torres[A-17-193](#)

Under the Act a Councilmember may take part in decisions involving the application and development of Project located near a private social and fitness club, where she is a corporate re-admit member. Decisions regarding the Project may have an effect on the Club and its property, but these decisions are not likely to affect the Councilmember's personal expenses, income, assets or liabilities. This is because her membership in the club is not considered an interest in the real property or assets of the club. Moreover, it is unlikely that the decision will have any effect on the price of the membership.

Dr. Sean Wright[A-17-201](#)

The city will be considering a proposed mixed-use development (23.03 acres) to be developed with 10.45 acres of commercial use, 7.00 acres of condominiums/98 units, and 4.5 acres of single family/22 lots on the currently vacant plot of land within 700 feet of the mayor's commercial condominium used for his chiropractic office. Based on the significant change in use of the currently undeveloped property within 700 feet of the mayor's property, and potential effects on traffic levels in the area, the mayor will have a conflict of interest in the decisions.

Sue Gallagher[A-17-204](#)

The Act does not prohibit the Vice Mayor of the City of Santa Rosa from taking part in decisions relating to the City's policies and programs to address local homelessness despite being employed by St. Vincent de Paul Sonoma County, a nonprofit organization seeking to alleviate hunger and poverty in the region. This is because the decisions would not have a reasonably foreseeable material financial effect on St. Vincent de Paul since the nonprofit has no financial

dealings with the City, and is not and has not been a participant in the City's homeless or housing programs or initiatives.

Juan Garza[A-17-207](#)

The Act prohibits a City of Bellflower Councilmember from taking part in decisions relating to a proposed Outdoor Advertising Development Plan because those decisions would have a reasonably foreseeable material financial effect on the Councilmember's private employer. In his private capacity, the Councilmember is a vice president of a public relations firm. The proposed Plan includes an exclusive development agreement with an outdoor advertising business that is a competitor to two clients of the Councilmember's employer. Because there is a nexus between the Councilmember's public relations firm and the decisions relating to the Plan, the reasonably foreseeable financial effect of those decisions would be material.

Amy Albano[A-17-208](#)

A Councilmember who owns a residence within 500 feet of a proposed housing project is disqualified from taking part in the decisions regarding the project and must recuse herself from the decisions including decisions regarding the scope of any required or draft environmental report. The report is "inextricably related" to decisions regarding the project. However, the councilmember is permitted to appear before the city council at noticed public meetings to represent her personal interest and is not prohibited from communications with the general public or the press.

Jason S. Rosenberg[A-17-209](#)

South San Francisco will consider a planning application by a developer. The developer is a member of the South San Francisco Chamber of Commerce. The Vice Mayor receives a salary as the CEO of the Chamber. However, she does not have disqualifying conflict of interest in the decisions regarding the application because there is no apparent connection between the application and the Chamber, such that the Chamber would experience a material financial effect.

Betsy Martyn[I-17-212](#)

The Board of Directors of the Big Bear Airport District voted to place on a future agenda the censure of one of their members. The member subject to the censure vote asked the District to pay for his legal representation. This item will also be up for a vote before the Board. Generally, a public official may make, participate in making, and influence a governmental decision about whether he or she will be provided with a defense or indemnification for damages, but only where the agency is obligated to provide the defense and indemnification. Based on the District's policy, the District is not obligated to provide the defense and indemnification and therefore the Board Member is prohibited from making, participating in making, or influencing the decision regarding his representation.

Travis Lyon[A-17-225](#)

The Chairman of the Community Planning Group is also a Trustee for the Union School District. However, salary and reimbursement from the school district is not considered income pursuant to the "government salary" exception in Section 82030(b)(2). Thus, he will not have a conflict of interest in decisions potentially affecting the school district.

Gifts

Victor Wang

[A-17-213](#)

Under the facts provided, travel, lodging, and meal payments from a governmental entity are reportable gifts that are not subject to the gift limits pursuant to Section 89506.

Peter Leroe-Muñoz

[A-17-215](#)

A public official may accept complimentary transportation, lodging, entrance fees, meals and other items to attend a foreign trip in his role as CEO of a nonprofit. Under the Act, the payments for travel, lodging and subsistence are reportable gifts that are not subject to the gift limits because they are provided by a 501(c)(3) organization, are reasonably related to a legislative or governmental purpose, and concern international public policy. Any other payments will be reportable gifts subject to gift limits.

Ben Hueso

[A-17-219](#)

A State official received an invitation to participate in the Southern Pacific Leaders Educational Seminar in Israel, funded by the American Israel Education Foundation (“AIEF”). AIEF’s payments for travel, lodging, and subsistence on the trip are reportable gifts that are not subject to the gift limits because they are reasonably related to a legislative or governmental purpose and/or concern international public policy and are provided by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

Section 1090

Ariel Hurtado, MD

[A-17-100](#)

A member of a Health Care District Board was advised under the Act that he may participate in a decision before the Board concerning the selection of a health insurance plan for employees of a hospital governed by the Board. The official is an anesthesiologist and in his private capacity he sees patients that have the insurance plan currently in place for hospital employees. The official performs work at the hospital governed by the district, but is paid a flat fee through a contract he has with another doctor at the hospital for the work he performs. We advised that the contracting doctor was the source of income to the official.

The official also owns his own medical office and accepts all insurance plans without discrimination. We advised that the official’s patients are the source of income to the official, not the insurance company, because it is the patient that selects the doctor and the insurance plan. We found no reasonably foreseeable material financial effect upon any of the official’s financial interests as a result of the decision of the Board, which included his business, the contracting doctor or his patients.

Under Section 1090, we found there was no potential financial gain to the official or possibility of profit as result of the decision before the Board because the decision would have no bearing on the patients the official sees or his profits because the patients select the provider and insurance plan.

Sarah E. Tobias[A-1-121](#)

Where the Act prohibits the Councilmember from making, participating in making, or influencing a governmental decision that will affect his own property, he may nonetheless appear in his private capacity (in the same manner as any other private citizen) and submit formal requests to the City of Tulare for zoning changes and general plan amendments applicable to property he wholly owns. Where the property is not wholly owned, the Councilmember cannot “influence” the governmental decision by submitting the application. The co-owner would be required to submit the application.

In addition, so long as the applications and approvals are regulatory in nature (and not contingent on the applicant providing some type of public improvement or facility as consideration), the Councilmember is not prohibited from submitting the applications for zoning changes and/or general plan amendments by Section 1090.

Robert L. Patterson[A-17-123](#)

Neither the Act nor Section 1090 prohibits a city councilmember, with property in an improvement or sub-improvement area subject to a special tax, from taking part in decisions to refinance bonds that will result in a reduction and refund of the special tax so long as the reduction and refund applies equally, proportionally, or by the same percentage to all other properties within the area subject to the tax.

Molly L. Dillon[I-17-139](#)

Considering a Councilmember’s employment with a private program administrator for an energy program sponsored by a joint powers agency, Section 1090 does not preclude the city from joining the joint powers agency and authorizing the program administrator to operate within the city. However, the Act requires that the councilmember recuse himself from the decisions. Additionally, Section 1090 does prohibit the city from entering into a separate agreement with the program administrator unless the councilmember resigns from the position with the program administrator, has options for shares totaling less than three percent of the program administrator’s shares, and recuses himself from the decision.

Jon Ansolabehere[A-17-160a](#)

Where an Architectural Review Commissioner intends to apply to a nonprofit to work on an art installation that will be a component of a redevelopment project that is subject to Commission approval, neither the Act nor Section 1090 prohibits him from contracting with the nonprofit to work on the art piece in his private capacity, as long as the Commissioner has no input or participation in the decisions regarding the redevelopment project. As the commission approval is regulatory in nature, it is not a contract for purposes of section 1090, but because approval of the project will provide an opportunity for the commissioner to “compete or be eligible” to participate in the art piece, he has a disqualifying conflict of interest under Section 87100 in decisions regarding approval of the redevelopment project.

Ansolabehere Advice Letter No. A-17-160 is SUPERSEDED by *Ansolabehere* Advice Letter No. A-17-160a

Keith Collins[A-17-184](#)

City Councilmembers who live on streets that will be resurfaced as a part of a city plan to resurface all residential streets do not have a conflict of interest under either the Act or Section 1090 because the effect of a decision concerning repair or maintenance of the streets is not material under applicable conflict regulations, and with respect to Section 1090, the Councilmembers do not have financial interests in the contract at issue under the facts presented.

Joshua Nelson[A-17-186](#)

The Act prohibits the President of the North Tahoe Public Utilities District from taking part in decisions relating to the potential separation of the District and the Woodvista Golf Course's respective diversion rights, both memorialized in a single State Water Resources Control Board permit, because that decision would have a reasonably foreseeable material financial effect on the President's financial interest in the Golf Course. Section 1090 would not prohibit the District from entering into an arrangement with the Golf Course to jointly apply to separate their respective diversion rights because the modification of a regulatory permit does not involve a "contract" for purposes of Section 1090.

Candice K. Lee[A-17-192](#)

The Successor Agency to the Covina Redevelopment Agency was not precluded under Section 1090 from entering into an agreement to sell property to a privately-held real estate company because the Board Member of the Agency did not have a financial interest in the real estate company. The only remote connection that the Board Member had to the contract was that he acted as an unpaid chief marketing officer to a brewery (a separate and distinct business) partially owned by two brothers (collectively less than 50%) that also have a co-ownership interest in the real estate company.

Likewise, the Board Member did not have a financial interest in the real estate company as defined under the conflict of interest provisions of the Act. The Agency's governmental decisions regarding the company would have no bearing on the brewery.

Revolving Door**Diane Elliott**[I-17-185](#)

A retired state employee was advised that generally the permanent ban applies where the official participated in a project as a public official by taking part in proceedings personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information. The permanent ban would not bar the official's participation in a request for qualifications ("RFQ") on behalf of the official's employer if (1) the RFQ does not constitute a continuation of earlier proceedings; (2) the official did not participate in the proceedings, or (3) the official's participation in the proceedings was merely in an oversight role.

Fred Balcom[I-17-214](#)

Generally, where the State of California is not a party to, nor has a direct and substantial interest in, a proceeding, and all the parties are private entities, the permanent ban would not prohibit a former state official from testifying in court as a paid expert witness.

E. Miscellaneous Decisions

None to report.

F. Potential Upcoming Regulations

November 2017: Regulation 18531.5. Recall Elections. Proposed amendments to Regulation 18531.5 to conform to the *Rios* Opinion, No. O-17-001.

December 2017: Regulation 18450.1 – Definitions. Advertisement Disclosure. Following prenotice, proposed amendments to clarify and distinguish yard signs from larger signs.

G. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- Department of Resources, Recycling, and Recovery
- Fair Employment and Housing Department
- Government Operations Agency
- Governor's Office of Business and Economic Development (GO-Biz)
- Sierra Nevada Conservancy

Exemptions and Extensions

Exemption

- None

Extension

- None

Multi-County Agency Conflict of Interest Codes

- Modoc Resource Conservation District
- North Valley Schools Insurance Group
- Oxford Preparatory Academy
- Pierce Joint Unified School District
- Public Agency Risk Sharing Authority of California
- Sacramento County Office of Education
- Sonoma Clean Power Authority
- West Kern Water District

H. Probable Cause Hearings

Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.

The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.

1. ***In the Matter of Sallings for Santa Clara School Board 2014 and Noelani Sallings, Case No. 16/009.*** On August 16, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and Sallings failed to timely file the semi-annual campaign statement due on February 1, 2016, in violation of Section 84200.

Count 2: The Committee and Sallings failed to timely file the semi-annual campaign statement due on August 1, 2016, in violation of Section 84200.

Count 3: The Committee and Sallings failed to timely a 2012 Annual Statement of Economic Interests by April 1, 2013, in violation of Section 87300.

Count 4: The Committee and Sallings failed to timely a 2012 Annual Statement of Economic Interests by April 1, 2014, in violation of Section 87300.

Count 5: The Committee and Sallings failed to timely a 2012 Annual Statement of Economic Interests by December 31, 2014, in violation of Section 87300.

Count 6: The Committee and Sallings failed to timely a 2012 Annual Statement of Economic Interests by April 1, 2016, in violation of Section 87300.

2. ***In the Matter of Karl Jacobson, Case No. 16/031.*** On September 7, 2017, after hearing, probable cause was found to believe Respondent committed the following violation of the Act:

Count 1: Karl Jacobson, a Governing Board Member of the Orchard School District Board of Trustees, failed to timely file a 2014 Annual Statement of Economic Interests (Form 700) by April 1, 2015, in violation of Section 87300.

3. ***In the Matter of Salem for Council and Mercedes Salem, Case No. 16/747.*** On September 19, 2017, after hearing, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and Mercedes Salem failed to timely file the semi-annual campaign statement due on August 1, 2016, in violation of Section 84200.

Count 2: The Committee and Mercedes Salem failed to timely file the semi-annual campaign statement due on January 31, 2017, in violation of Section 84200.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: COURTNEY MILLER, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 381 requests for technical assistance via phone in September.

Training & Outreach

Political Reform Consultants conducted the following workshops and outreach activities:

Glen Bailey conducted a Campaign Filing Officer workshop for San Mateo County. Fifteen staff members from the San Mateo County Elections Division attended the workshop.

Deborah Hanephin conducted a Candidate/Treasurer outreach for a Victorville City Council member who was in town attending the League of California Cities Conference.

Alex Castillo and Glen Bailey conducted a Filing Officer outreach in Amador County. They covered both campaign filing officer and SEI filing officer responsibilities during the outreach.

Glen Bailey partnered with Rene Robertson from the Administration and Technology Division to train a SEI Filing Officer from the California Department of Fish and Wildlife.

Additional Outreach Activities

Members from the External Affairs and Education Division staffed the FPPC booth at the League of California Cities Conference earlier this month. Staff answered questions and provided general information about the e-Filing program for the Form 700. Several conference attendees stopped by to let the FPPC know how much they appreciated the agency's participation at the event, and the overall advice options provided to the public.

IV. LEGISLATIVE UPDATE

STAFF: PHILLIP UNG, DIRECTOR, LEGISLATIVE AND EXTERNAL AFFAIRS

The Legislature has recessed for the year. There are seven bills pending action by the Governor. Three bills have been signed into law. The Governor has until October 15 to sign or veto legislation.

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

Political Reform Act or Related Bills Presented to Governor (#1-7)

1. **AB 249 (Mullin): Advertisement Disclosure and Earmarking of Funds**

FPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: \$364,864 first year; \$348,365 ongoing costs. Three positions.

Last Amended: August 29, 2017

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 Act prohibits any person from making any contribution to a committee on the condition or with the agreement that it will be contributed to a particular candidate (i.e., earmarked) unless the true source of the contribution is fully 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, print, radio, telephone, and electronic media advertisements with some exemptions. The bill would require on-advertisement disclosure of the top three contributors. Certain committees would be exempt from the top contributor disclosure, including candidate, political party, major donors and independent expenditure committees.

Current law allows for fines up to 3 times the cost of the advertisement (treble damages) in both civil and administrative actions for any violation of the advertising provisions, which is an important enforcement tool to deter illegal practices. This bill narrows the available damages by limiting the types of advertising violations to which treble damages apply and, for some violations, requiring that the person intentionally violate the rules to avoid disclosure.

The bill expands earmarking to include payments to any committee or ballot measure and not just to candidates. The proposed definitions of when earmarking occurs are narrowed by

requiring the true source to “expressly consent” to earmarking, or requiring contributions be attributed to a “specifically identified committee, ballot measure, or candidate,” the bill would allow the true source of funds to remain undisclosed in the majority of cases where laundering is based on circumstantial evidence of both the communications and actions of the parties and their representatives. The bill would prohibit the Commission from using “timing” as the sole basis for finding violations related to earmarking.

The bill would permit any dues, assessments, fees and similar payments made to membership organizations that are less than \$500 per calendar from a single source for the purpose of making expenditures and contributions to state or local ballot measures or candidates without disclosure of the true source of that money. This exception would have unknown effects and could cause unintended consequences in local jurisdictions where contribution limits are much lower than state limits (e.g., San Francisco has a \$500 contribution limit).

There is a potential risk of litigation resulting from provisions that would: (1) expand advertisement rules to general purpose committees; and (2) require the beginning or end of video advertisements to have 1/4 to 1/3 of the screen blacked out.

If signed into law, administering a wholesale change in the Act’s disclosure regime during an election year will require expedited action by staff to minimize as much as possible any significant issues for the regulated community. The Commission will need to update and communicate substantive changes to regulations, manuals, and fact sheets in time for local and state primary elections.

2. AB 867 (Cooley): Behested Payments

FPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: Minor and Absorbable

Last Amended: April 17, 2017

Summary:

The Act defines “contribution” as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. The Act further describes types of payments that are expressly included or excluded from the definition, including specified payments made at the behest of a committee, elected officer, or member of the Public Utilities Commission. The Act requires that certain behested payments that are made principally for legislative, governmental, or charitable purposes be reported, as specified.

This bill revises the definition of “contribution” for purposes of the Act and creates sections for the definitions of “behested payments,” “election-related activities,” and “made at the behest of.”

3. AB 1620 (Dababneh): Post-Governmental EmploymentFPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: Minor and Absorbable

Last Amended: August 21, 2017

Summary:

The Act prohibits a former Member of the Legislature from receiving compensation to communicate to or appear before the Legislature to influence legislative action. This prohibition lasts for one year after leaving office.

The bill would extend the prohibition for a Member of the Legislature who resigns from office prior to the completion of a term. For these individuals, the prohibition begins the day of resignation and ends one year after the adjournment *sine die* of the legislative session which the officer was elected to serve.

4. SB 45 (Mendoza): Mass Mailing ProhibitionFPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: \$141,171 first year; \$134,171 ongoing

Last Amended: July 17, 2017

Summary:

Existing law provides that no newsletter or other mass mailing shall be sent at public expense. The Commission's regulation defines criteria for mass mailings at public expense, and lists certain forms of mass mailings that will be permitted despite the Act's prohibition, including announcements of specified meetings or events sent by elected officials.

This bill would adopt the Commission's regulation in its entirety, including the list of exceptions from the prohibition. The bill also would provide that despite the exceptions, a mass mailing shall not be sent within the 60 days preceding an election by or on behalf of a candidate, state or local, whose name will appear on the ballot, except as otherwise specified in the bill.

5. SB 226 (Hertzberg): Slate MailersFPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: Minor and Absorbable

Last Amended: June 15, 2017

Summary:

The Act regulates slate mailer organizations and prescribes specific disclosures on slate mailers and mass mailings. There are slate mailer organizations that identify themselves as representing non-governmental organizations including organizations composed of or affiliated with public

safety-related occupations. The Act specifies additional disclosures for mailers that imply association with public safety-related occupations.

Regarding public safety-related occupations, this bill would require the slate mailer organization to disclose on the mailing, in a specified format, the number of members of public safety personnel the slate mailer organization represents, or a statement that the organization does not represent any public safety personnel.

6. SB 267 (Pan): City of Sacramento Enforcement

FPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: City of Sacramento to reimburse FPPC's costs

Urgency: Yes

Last Amended: June 20, 2017

Summary:

The Act authorizes the Commission to contract with the County of San Bernardino and the City of Stockton to provide impartial, effective administration, implementation, and enforcement of local campaign finance ordinances.

This bill would authorize the Commission and the City of Sacramento to enter a similar agreement. The bill also requires the Commission provide a report to the Legislature no later than four years after contracting with the City of Sacramento. This bill contains an urgency clause.

7. SB 358 (Stern): Secretary of State; local disclosure websites

FPPC Position: *None*

Status: Presented to Governor

Fiscal Estimate: No cost to the Commission

Introduction: February 14, 2017

Summary:

The Act requires candidates and committees to file periodic campaign statements with the Secretary of State or the local filing officer.

This bill would require the Secretary of State to post hyperlinks on his or her website of any local government agency that has publicly-disclosed campaign finance information and update the hyperlinks accordingly.

Chaptered Bills (#8-10)

8. AB 187 (Gloria): Local Ballot Measure Expenditure Reporting

FPPC Position: *None*

Fiscal Estimate: Minor and absorbable

Last Action: Approved by the Governor. Chaptered by Secretary of State – Chaptered 183, Statutes of 2017. (09/01/2017)

Summary:

The Act subjects a committee that receives contributions totaling \$2,000 or more in a calendar year to specified reporting requirement, that committee is required to file online or electronically each time it makes contributions of independent expenditures of at least \$5,000 to support or oppose the qualification or passage of a single state ballot measure. Existing law requires that the filing occur within 10 business days of the contribution or independent expenditure and that it contain detailed information relating to the committee, ballot initiative, and contribution or independent expenditure.

This bill additionally requires a committee to file a report each time it makes contributions totaling \$5,000 or more or independent expenditures aggregating \$5,000 or more to support or oppose the qualification of a single local ballot measure. The report will be filed with the local filing officer within 10 business days of reaching the aggregated amount.

9. AB 551 (Levine): Post-Governmental Employment; Exemptions

FPPC Position: *None*

Fiscal Estimate: Minor and Absorbable

Last Action: Approved by the Governor. Chaptered by Secretary of State – Chaptered 196, Statutes of 2017. (09/01/2017)

Summary:

The Act prohibits a local official from receiving compensation to communicate with or appear before their former agency to influence legislative action. This prohibition lasts for one year after leaving office. The Act excludes from the prohibition government-to-government communications.

This bill prohibits an independent contractor of a local government agency or a public agency from appearing or communicating on behalf of that agency before their former agency. The prohibition lasts for one year.

10. AB 895 (Quirk): Campaign Statements; Electronic Filing

FPPC Position: *None*

Fiscal Estimate: Minor and Absorbable

Last Action: Approved by the Governor. Chaptered by Secretary of State – Chaptered 111, Statutes of 2017. (07/24/2017)

Summary:

The Act requires certain individuals and entities to file campaign statements with the Secretary of State including requiring some to file online and others to file online voluntarily. The Act requires paper filers to continue to file in paper format until the Secretary of State determines

online filing is secure and effective. The Act also requires paper filing be considered the official filing for audits and other legal purposes.

This bill would eliminate the requirement of certain filers to file in the paper format if they file online. The bill will be implemented upon certification by the Secretary of State of the new Cal-ACCESS system.