



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

September 21, 2017 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of August 4, 2017 through September 7, 2017, the Enforcement Division received 56 complaints, opened 19 for investigation, and rejected 33. The Enforcement Division received 236 non-filer referrals during this time.

Also during this time, the Enforcement Division closed a total of 142 cases including:

- 47 warning letters,
- 43 no action letters,
- 27 as a result of the adoption of stipulations and defaults at the August Commission meeting, and
- 25 committees were administratively terminated.

The Division had 956 cases in various stages of resolution at the time of the August Monthly Report and currently has approximately 1,082 cases in various stages of resolution, including the 37 cases before the Commission as listed in the September 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, 63 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 97 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 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 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. The briefing is complete and 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.” Respondents have until October 24, 2017, to file a Notice of Appeal. This matter will be discussed in closed session.

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.

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

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source, unless otherwise indicated.

briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Political Reform 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 September 12, 2017, at 10:00 a.m.

B. Outreach and Training

On August 29, 2017, Political Reform Consultants Ivy Branaman and Glen Bailey conducted in-depth conflict of interest code training to 10 staff members at the office of Department of Corrections and Rehabilitation. Topics discussed included reviewing the current conflict of interest code, analyzing disclosure categories, how to designate positions, and how to assign categories to those positions.

C. Advice

In August 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 728 e-mail and telephone requests for advice.
- **Advice Letters:** Legal Division received 22 advice letter requests and issued 18 advice letters.
- **Section 1090 Letters:** Legal Division received eight new advice letter requests concerning Section 1090 and issued five. This year to date we have received 61 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>.

Conflict of Interest

Michael Torres

[A-17-135](#)

A city council member was advised that he was prohibited from participating in decisions to make significant improvements to a commercial street located within 500 feet of his real property due to a conflict of interest under the Act. Improvements included replacing existing streets, sidewalks, curbs, and storm drainage facilities. Additionally, new aesthetic features were to be contemplated. These aesthetic features included replacing existing benches, trees, news racks and bike racks, upgrading existing streetlights, adding string lights, and altering certain pieces of existing concrete to include color and/or texture.

Ashley K. Dunning

[A-17-157](#)

A board member of a employee retirement association does not have reportable investment interests in mutual funds because the definition of the term “investment” under the Act excludes interests in diversified mutual funds if they are registered with the SEC. Additionally, where the board member did not have an investment interest in, and does not hold a business position with, the mutual fund company, he does not need to recuse himself from discussions and decisions by the board concerning the mutual fund.

Eric S. Vail

[A-17-162](#)

Based on the Planning Commissioner’s employment and job duties with Parex USA, Inc., he will have a conflict of interest in any decision for which he made sales solicitations to the applicant on behalf of his employer. In those cases, a nexus would exist. In other cases, the Commissioner will not have a conflict of interest. This is because (1) the decisions of the Planning Commission do not require that a specific product be used and (2) where Parex USA products were used, the estimated benefit to Parex USA was approximately \$490 per house. Since Parex USA is an international business that generates \$1.2 billion per year in gross revenues and \$40 million in gross revenues within Southern California, any impact on Parex USA by a decision on a development project in the city would not materially affect the business.

Mark W. Steres

[A-17-170](#)

The city requested advice on behalf of two councilmembers. The Councilmember that owned property within 500 feet of a proposed Metro Gold Line train station and proposed 450 space parking structure had a conflict of interest in decisions relating to the proposals because of the substantial nature of the proposed change in use at the sites, and the short distance between his property and the Project sites.

A second Councilmember that owned property within 500 feet of an existing intersection that the proposed Metro Gold Line would pass through (but located more than 500 feet from the proposed station and parking structure) would not have a conflict of interest. His property is buffered from the proposed Station and Parking Structure but other homes. Moreover, at the

intersection in question, the proposed train will run parallel to an existing set of train tracks and a major arterial street at the point nearest to his property. Thus, there would not be a substantial change in use or noise at that area.

Kristopher J. Kokotaylo [A-17-173](#)

Commission regulations permit an official, despite a conflict of interest, to appear as a member of the general public before the official's own agency regarding matters related solely to the his or her personal interests, including interests in real property owned entirely by the official, members of his or her immediate family.

Quinn M. Barrow [A-17-178](#)

A Councilmember that owns property within 500 feet of the boundary of an Assessment District formed to underground utility poles and wires, and within 500 feet of the location where some of the poles to be ungrounded, has a conflict of interest in decisions related to the Underground Utility Assessment District. The conflict is based on both the proximity of the district and project to the Councilmember's property and the effect of the project on the Councilmember's view from his property.

Juan F. Garza [A-17-187](#)

A Councilmember was found not to have a disqualifying conflict of interest in making governmental decisions regarding the requirement, application, and permitting processes for cannabis businesses, despite the fact that the Councilmember's employer representing cannabis-related clients in the jurisdiction. Any financial effect of the City Council's decisions is not material on the Councilmember's employer given the small proportion of consulting services that the employer devotes to cannabis-related clients.

Caren Ray [A-17-189](#)

The City is amending its municipal code regarding accessory dwelling units. A Councilmember that currently has a permitted accessory dwelling unit will not have a conflict of interest in considering the new ordinance because the new ordinance provides development standards for new accessory dwelling units and will not impact the Councilmember's existing accessory dwelling unit.

Dan Long [I-17-190](#)

A member of the Ventura County Fair Board and City of Ventura Planning Commission is considering running for city council. The official would not have a conflict of interest under the Act merely by holding multiple office. The Commission does not have jurisdiction over Section 1099 (regarding incompatible offices) and conflicts of interest under the Act are based on financial effects. However, as a current member of an appointed commission who is considering running for elected office, the Act will prohibit him from soliciting contributions from parties or participants with business before the planning commission, and from making decisions where a contributor is a party or participant.

Michael C. Ghizzoni [A-17-194](#)

A county supervisor, who owns property within the boundaries of a proposed Groundwater Sustainability Agency does not have a prohibited financial interest in the formation of the

Agency, because she does not have a groundwater well on her property, and the mere formation of the Agency would likely have no financial effect on her property, or at most, a “nominal, inconsequential and insignificant” financial effect.

Scott E. Porter[A-17-203](#)

A Councilmember is employed by a firm. One of the firm’s clients is the Southern California Association of Governments (SCAG). The Councilmember does not have a conflict of interest in decisions affecting the City’s membership in SCAG, because the Councilmember has no financial interest in SCAG and the decision will have no financial effect on his employer, the firm.

Gifts**Dan Flores**[A-17-197](#)

The American Israel Education Foundation is paying for an elected Trustee for the Colton Joint Unified School District’s travel, lodging and subsistence relating to his trip to Israel for the Educational Seminar for Southern Pacific Latino Leaders. The educational seminar will explore critical policy and security issues affecting both Israel and the United States. Pursuant to Section 89506(a)(2), payments for the official’s lodging, transportation and food related to the trip are reportable gifts that are not subject to gift limits because the American Israel Education Foundation is a non-profit, 501(c)(3) organization, and the trip is directly related to a legislative or governmental purpose and concerns international public policy.

Lobbying**Nicolas Heidorn**[A-17-172](#)

The Act’s home hospitality exception to the definition of gift does not allow a lobbyist to host a potluck at his home and provide gifts to state officials that he is registered to lobby. According to the facts, there was no pre-existing personal relationship between the parties. The lobbyist’s relationships with the officials were initially formed as the result of his lobbying activities. Therefore, the lobbyist is prohibited from arranging or providing any of the officials with gifts of more than \$10 in a calendar month.

Section 1090**Sherri Howard**[A-17-081](#)

A water district hired a consultant to perform routine maintenance services to a wildlife area as mitigation for an ongoing landscape restoration project. After services were completed, the water district proposed to award a second contract to the consultant to perform long-term maintenance of the design-build area. The second contract did not violate the prohibitions of Section 1090 as the consultant’s original contract work was monitored and approved at all times by a general contractor to the ongoing landscape restoration project.

Thomas F. Schroeter[A-17-083](#)

A city manager who is a volunteer on the governing board of a nonprofit hospital does not have a reasonably foreseeable disqualifying interest under the Act in decisions related to the hospital’s

construction project. Additionally, under Section 1090, the city manager does not have a financial interest in the contract between the City and the hospital.

Sarah E. Tobias

[A-17-120](#)

(1) The city's refund of fees paid by a councilmember in connection with a development project (without the councilmember's participation in his official capacity) does not create a conflict of interest nor is it subject to Section 1090. The refund is provided in the normal course of business by the city under a city ordinance. The councilmember will not make, participate in making, or influence the city decision. Moreover, the refund of the councilmember's own funds is not a contract in itself for purposes of Section 1090. (2) Decisions to adopt or change fees related to subdivision and parcel maps would have a foreseeable and material effect on the councilmember who is a developer and he would have to disqualify from those decisions. However, these decisions would not be "contracts" subject to Section 1090.

Kevin J. Healy

[A-17-159](#)

Section 1090 prohibits the City from entering into a contract for the design and construction of a Fire Station because the architectural firm/potential contractor participated in the making of that contract through its performance of a previous contract with the City to provide preliminary design work on the Fire Station. Under the previous contract for preliminary design work, the firm provided site plans, floor plans, and a preliminary cost estimate for Fire Station, among other things, and the firm was required to file statements of economic interest with the City under that contract. Because the ultimate design and construction contract would at least in part be based on the firm's preliminary design work, the firm participated in the making of that contract for purposes of Section 1090.

Lori Cowan

[A-17-177](#)

A county supervisor, who also works as a real estate agent, does not have a conflict of interest in a decision concerning a contract with a non-profit entity merely because the nonprofit operates the program on property leased from the former client. The decision would not have a financial effect on her client because the nonprofit merely leases the property from the client. Further, Section 1090 does not apply since the official has no financial interest in the nonprofit.

E. Miscellaneous Decisions

Regulation 18740 provides that an official or candidate is not required to disclose the name of a person under Section 87207 if the disclosure would violate California or Federal law, and authorizes the General Counsel to make this determination. For the following request, General Counsel determined that the disclosure of two individuals as sources of income on the official's Statement of Economic Interest Form 700 would violate the attorney-client privilege under California law. Pursuant to Regulation 18740, the Chair approved this determination, and issued a final order of nondisclosure in August.

Robert Q. Warshawsky, Court Commissioner
Solano County Superior Court

F. Upcoming Regulations

October 2017:

- Pre-Notice: Regulation 18450.1. Definitions, Advertisement Disclosure. Update definitions for the various types of advertisements (e.g., billboards, yard signs) subject to disclosure requirements.
- Regulation 18535. Restrictions on Contributions Between State Candidates. Amend the regulation to clarify and implement the Commission's recent opinion that Sections 85305 and 85315 require that there be no limit on contributions from state candidates to a recall committee controlled by another state candidate to oppose the recall of that state candidate.

G. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes

- California African American Museum
- Department of Motor Vehicles
- Ocean Protection Council
- Victim Compensation Board

Multi-County Agency Conflict of Interest Codes

- Butte Water District
- Central Coast Water Authority
- Nevada Joint Union High School District
- North Coast Schools Insurance Group
- San Bernardino Community College District

Exemptions and Extensions

Exemption

- None

Extension

- None

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.

1. ***In the Matter of Susan Shelley, Case No. 15/003.*** On August 17, 2017, after hearing, probable cause was found to believe Respondent committed the following violations of the Act:

Count 1: *Late Filing of Preelection Campaign Statement.* Respondents Shelley and the 2013 Committee failed to timely file a preelection campaign statement related to the September 17, 2013 Special Primary election by the due date of August 8, 2013, violating Sections 84200.5(c), and 84200.8(a).

- Count 2: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2013 Committee failed to timely file a preelection campaign statement related to the September 17, 2013 Special Primary election by the due date of September 5, 2013, violating Sections 84200.5(c), and 84200.8(b).
- Count 3: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2013 Committee failed to timely file a preelection campaign statement related to the November 19, 2013 Special General election by the due date of October 10, 2013, violating Sections 84200.5(c), and 84200.8(a).
- Count 4: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2013 Committee failed to timely file a preelection campaign statement related to the November 19, 2013 Special General election by the due date of November 7, 2013 violating Sections 84200.5(c), and 84200.8(b).
- Count 5: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2014 Committee failed to timely file a preelection campaign statement related to the September 17, 2013 Special Primary election by the due date of August 8, 2013, violating Sections 84200.5(c), and 84200.8(a).
- Count 6: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2014 Committee failed to timely file a preelection campaign statement related to the September 17, 2013 Special Primary election by the due date of September 5, 2013, violating Sections 84200.5(c), and 84200.8(b).
- Count 7: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2014 Committee failed to timely file a preelection campaign statement related to the November 19, 2013 Special General election by the due date of October 10, 2013, violating Sections 84200.5(c), and 84200.8(a).
- Count 8: *Late filing of Preelection Campaign Statement.* Respondents Shelley and the 2014 Committee failed to timely file a preelection campaign statement related to the November 19, 2013 Special General election by the due date of November 7, 2013, violating Sections 84200.5(c), and 84200.8(b).
- Count 9: *Failure to File \$5,000 Report.* Respondents Shelley and the 2014 Committee failed to timely file a \$5,000 report due April 5, 2013 disclosing receipt of \$25,000 in loans from Shelley outside the 90-day election cycle, violating Section 85309(c).
- Count 10: *Failure to File \$5,000 Report.* Respondents Shelley and the 2014 Committee failed to timely file a \$5,000 report due July 12, 2013 disclosing receipt of \$5,000 in loans from Shelley outside the 90-day election cycle, violating Section 85309(c).

Count 11: *Failure to File \$5,000 Report.* Respondents Shelley and the 2014 Committee failed to timely file a \$5,000 report due March 3, 2014 disclosing receipt of an \$8,200 contribution outside the 90-day election cycle, violating Section 85309(c).

2. ***In the Matter of Juan Sandoval Elect for County Superintendent of Schools 2014, Juan Sandoval and Vangie Urias, Case No. 14/434.*** On August 29, 2017, after hearing, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee, Sandoval and the treasurer failed to properly report contributions received and expenditures made on the pre-election statement covering the period of March 18 – May 17, 2014, in violation of Section 84211(a), (b), (c), (d), (f), (i), (j) and (k).

Count 2: The Committee, Sandoval and the treasurer failed to properly report contributions received and expenditures made on the semi-annual statement covering the period of May 18 – June 30, 2014, in violation of Section 84211(a), (b), (c), (d), (f), (j) and (k).

Count 3: The Committee, Sandoval and the treasurer accepted cash contributions of \$100 or more, in violation of Section 84300(a).

Count 4: Sandoval made approximately \$3,945 expenditures from accounts other than the one designated for campaign activity, in violation of Section 85201(e).

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

3. ***In the Matter of Pam Bertani and Pam Bertani for Solano County Supervisor 2014, Case No. 14/1112.*** On August 2, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: The Committee and Bertani failed to disclose contributor information on the pre-election campaign statement for the period of January 1, 2014 through March 17, 2014, in violation of Section 84211(a)–(f).

Count 2: The Committee and Bertani failed to disclose contributions, expenditures, and contributor information on the pre-election campaign statement for the period of March 18, 2014 through May 17, 2014, in violation of Section 84211 (a)–(f).

Count 3: The Committee and Bertani failed to disclose contributions, expenditures, and contributor information on the semi-annual campaign statement for the period of May 18, 2014 through June 30, 2014, in violation of Section 84211(a)–(f).

Count 4: The Committee and Bertani failed to timely file a 24-Hour Contribution Report for a non-monetary contribution made on April 24, 2014, in violation of Sections 84203 and 84203.3.

Count 5: The Committee and Bertani failed to timely file a 24-Hour Contribution Report for a non-monetary contribution made on May 5, 2014, in violation of Sections 84203 and 84203.3.

Count 6: The Committee and Bertani failed to timely file a 24-Hour Contribution Report for non-monetary contributions made on May 21 and 22, 2014, in violation of Sections 84203 and 84203.3.

Count 7: The Committee and Bertani failed to timely file a 24-Hour Contribution Report for a non-monetary contribution made on October 29, 2014, in violation of Sections 84203 and 84203.3.

4. ***In the Matter of Gloria Olmos, Re-Elect Gloria Olmos for School Board 2013, and Elect Gloria Olmos for South El Monte City Council Member 2015, Case No. 14/1263.*** On August 17, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

Count 1: Olmos and the School Board Committee failed to timely file a semi-annual campaign statement for the January 1, 2014 through June 30, 2014 reporting period by the July 31, 2014, deadline, in violation of Section 84200(a)

Count 2: Olmos and the School Board Committee failed to timely file a semi-annual campaign statement for the July 1, 2014 through December 31, 2014 reporting period by the February 2, 2015 deadline, in violation of Section 84200(a).

Count 3: Olmos and the School Board Committee failed to timely file a semi-annual campaign statement for the January 1, 2015 through June 30, 2015 reporting period by the July 31, 2015 deadline, in violation of Section 84200(a).

Count 4: Olmos and the City Council Committee failed to report expenditures, accrued expenses, and the total amount of contributions received during the pre-election statement covering the reporting period of September 20, 2015 – October 17, 2015, in violation of Section 84211(a), (j), and (k).

Count 5: Olmos and the City Council Committee failed to report expenditures, accrued expense, and the total amount of contributions received during the semi-annual reporting period of October 18, 2015 – December 31, 2015, in violation of Section 84211(a), (j), and (k).

Count 6: Olmos and the City Council Committee failed to timely file a 24-hour report within 48 hours of receiving an in-kind contribution of \$1,000 or more, in violation of Sections 84203(a) and 84203.3(b).

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: COURTNEY MILLER, MANAGER

Phone Advice Requests

The External Affairs and Education Division responded to 556 requests for technical assistance via phone in August.

Training Presentations

Political Reform Consultant Alexandra Castillo traveled to Long Beach to present Campaign Filing Officer, SEI Filing Officer and Candidate and Treasurer workshops. Approximately 53 participants attended the Campaign Filing Officer and SEI Filing Officer workshops, and approximately 33 participants attended the Candidate and Treasurer workshop.

Political Reform Consultants Alexandra Castillo and Glen Bailey conducted an SEI Filing Officer outreach session with 2 filing officers at Golden Sierra Job Training Agency in Auburn.

Political Reform Consultants Deborah Hanephin and John Kim conducted an SEI Filing Officer and Campaign Filing Officer outreach session with 2 filing officers for El Dorado County.

Political Reform Consultants Ivy Branaman and Glen Bailey conducted in-depth conflict of interest code training to 10 staff members at the office of Department of Corrections and Rehabilitation. Topics discussed included reviewing the current conflict of interest code, analyzing disclosure categories, how to designate positions, and how to assign categories to those positions.

IV. LEGISLATIVE UPDATE

STAFF: PHILLIP UNG, DIRECTOR, LEGISLATIVE AND EXTERNAL AFFAIRS

As of this writing, there are 8 active bills affecting the Political Reform Act. This is a reduction from 11 bills in the August report. Two bills were signed into law by the Governor. One bill was moved to “Bills Not Expected to Move” section.

The last day to amend any bills related to the Political Reform Act was September 1. The Legislature will conclude its 2017 session on September 15. At the Commission meeting on September 21, 2017, staff will provide a verbal update on the current status of the bills since the 2017 legislative session will have concluded.

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

Recommendations (#1)

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

FPPC Position: *None currently*

Staff Recommendation: ***Oppose Unless Amended (Requesting a Two-Year Bill)***

Status: Senate Floor

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

Last Amended: August 29, 2017

Last Action: Approved by Senate Appropriations Committee and referred to the Senate Floor. (09/01/2017)

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.

Staff Recommendation: *Oppose Unless Amended (Requesting a Two-Year Bill)*

In late August 2017, AB 249 received significant amendments and began moving quickly through the legislative process. Staff recommends the Commission take an “opposed unless amended” position on the bill. In effect, we are recommending that this be a two-year bill, which would provide more time to address both the substantive and technical concerns with the current version. Staff’s recommendation is based on the following issues:

- **Narrows Enforcement Remedies Available for Violations of Advertising Disclosure Provisions.** 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. These amendments were put into the bill for the first time on August 23rd.
- **Potentially Narrows Circumstances of Illegal Earmarking.** While staff appreciates that the goal of the bill is to expand earmarking to include payments to any committee or ballot measure and not just to candidates, nevertheless the proposed definitions of when earmarking occurs are too narrow. 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. Without any explanation, the bill also would prohibit the Commission from using “timing” as the sole basis for finding violations related to earmarking.
- **Creates Exception for Membership Organizations.** It 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). This approach also would create a two-track disclosure system where “membership organizations” would only disclose donors at the \$500 threshold while all other committees would continue to disclose \$100 donors. Also, a court may determine that this earmarking exception does not further the purposes of the Act.
- **Risk of Litigation.** 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.
- **Adds Complexity During Election Year.** Overall, as to the advertisement provisions, staff believes the bill would add unnecessary complexity to the Act with little commensurate

benefit. Staff is also concerned that administering a wholesale change in the Act's disclosure regime during an election year could cause significant confusion and compliance issues for the regulated community. Staff will need to update and communicate substantive changes to regulations, manuals, and fact sheets in time for local and state primary elections. All these concerns could negatively impact accountability and enforcement under the Act.

Chaptered Bills (#2-4)

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

FPPC Position: *None currently*

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.

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

FPPC Position: *None currently*

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.

4. AB 895 (Quirk): Campaign Statements; Electronic FilingFPPC Position: *None currently*

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.

Political Reform Act or Related Bills (#5-11)**5. AB 867 (Cooley): Behested Payments**FPPC Position: *None currently*

Status: Senate Floor – Third Reading

Fiscal Estimate: Minor and Absorbable

Last Amended: April 17, 2017

Last Action: Ordered to Senate Floor - Senate Third Reading. (06/27/2017)

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.”

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

Status: Senate Floor

Fiscal Estimate: Minor and Absorbable

Last Amended: August 21, 2017

Last Action: Ordered to Senate Floor – Senate Third Reading (08/29/2017)

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.

7. SB 24 (Portantino): Statement of Economic Interests

FPPC Position: *None currently*

Status: Assembly Inactive File

Fiscal Estimate: Minor and absorbable.

Introduction: December 5, 2016

Last Action: Removed from Assembly Consent Calendar and ordered to inactive file.
(08/31/2017)

Summary:

The Act requires the disclosures to include a statement indicating, within a specified value range, the fair market value of investments or interests in real property and the aggregate value of income received from each reportable source.

This bill would revise the dollar amounts associated with these ranges to provide for 8 total ranges of fair market value of investments and real property interests, and 10 total ranges of aggregate value of income.

8. SB 45 (Mendoza): Mass Mailing Prohibition

FPPC Position: *None currently*

Status: Senate Floor – Senate Special Consent Calendar

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

Last Amended: July 17, 2017

Last Action: Ordered to Senate Special Consent Calendar. (09/01/2017)

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.

9. SB 226 (Hertzberg): Slate Mailers

FPPC Position: *None currently*

Status: Enrolled. At Senate Desk.

Fiscal Estimate: Minor and Absorbable

Last Amended: June 15, 2017

Last Action: Returned by the Governor at the request of the Senate. Held at desk.
(08/31/2016)

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.

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

FPPC Position: *None currently*

Status: Senate Floor – Senate Special Consent Calendar

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

Urgency: Yes

Last Amended: June 20, 2017

Last Action: Ordered to Senate Special Consent Calendar. (09/01/2017)

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.

11. SB 358 (Stern): Secretary of State; local disclosure websitesFPPC Position: *None currently*

Status: Enrolled.

Fiscal Estimate: No cost to the Commission

Introduction: February 14, 2017

Last Action: Approved by Assembly Consent Calendar. Engrossing and enrolling (08/31/2017)

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.

Bills Expected Not to Move Further in 2017 (#12-21)**12. AB 14 (Gomez): Advertisement Disclosure and Earmarking of Funds**FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Urgency: Yes

Last Amended: July 6, 2017

Last Action: Amended and Re-referred to Assembly Elections and Redistricting Committee (05/01/17)

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 discussed.

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. 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. It should be noted that there is a potential risk for litigation resulting from the provision in the bill that would expand the advertisement rules to general purpose committees. This bill contains an urgency clause.

13. AB 664 (Steinorth): Campaign Expenditures

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 14, 2017

Last Action: Failed Passage in Assembly Elections and Redistricting Committee. Granted Reconsideration. (04/26/17)

Summary:

The Act requires that contributions deposited into a campaign account for a candidate for elective office be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. The Act imposes limitations on certain expenditures as political, legislative, or government purposes. Government Code 84307.5 prohibits compensation from campaign funds to a candidate's spouse or domestic partner in exchange for services rendered.

This bill would prohibit payment, in exchange for services rendered, to a parent, spouse or domestic partner, grandparent, sibling, child, or grandchild of that officer or candidate.

14. AB 774 (Harper): Foreign Contributions

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 15, 2017

Last Action: Failed Passage in Elections and Redistricting Committee. Granted Reconsideration. (04/26/17)

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 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 the law by also prohibiting a foreign government, principal, or foreign national 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. There is a risk for potential litigation because the bill expands the current law prohibition to foreign nationals.

15. AB 1089 (Mullin): Local Contribution Limits

FPPC Position: *None currently*

Status: Assembly Appropriations Committee – Suspense File

Fiscal Estimate: \$1,091,973 (first year), \$1,035,973 (ongoing)

Introduction: February 17, 2017

Last Action: Held under submission. (05/26/2017)

Summary:

The Act contains contribution limits and other restrictions related to 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 nullifies contribution limitations or prohibitions in local jurisdictions. All ordinances or other provisions adopted by local governments must be filed with the Commission.

The bill would establish a state-mandated contribution limit on local and special jurisdictions, which the Commission would be required to regulate and enforce. The state-mandated contribution limit is equal to the limits of state legislative candidates and would be adjusted for cost-of-living. Jurisdictions that adopt their own limit or have already established a limit would not be subject to the state limit established by this bill.

16. AB 1234 (Levine): Contribution Limits; Political Parties

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

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

Introduction: February 17, 2017

Last Action: Held under submission. (05/26/2017)

Summary:

The Act contains contribution limits on state offices, statewide offices, the Governor and small contributor committees. The Act exempts a political party committee from these contribution limits.

This bill would eliminate the exemption and make political party committees subject to contribution limits.

17. AB 1333 (Dababneh): Local Government Agency Notices

FPPC Position: *None currently*

Status: Assembly Appropriations Committee – Suspense File

Fiscal Estimate: Assembly Appropriations estimate over \$150,000

Introduction: February 17, 2017

Last Action: Held under submission. (05/26/2017)

Summary:

Whenever an ordinance is submitted to voters of a county, city, or district at an election, election officials must print the ordinance and make a copy of the ordinance available to any voters who requests a copy.

This bill adds a new chapter to the Act to require every local government agency that maintains a website to post notice of any upcoming election in which voters will vote on a tax or bond measure of the agency. The bill also requires every local government agency that publishes an electronic newsletter to include the notice in the newsletter.

18. AB 1458 (Friedman) Candidate websites; Cal-Access

FPPC Position: *None currently*

Status: Assembly Floor

Fiscal Estimate: Minor and Absorbable

Last Amended: April 18, 2017

Last Action: Refused passage on Assembly Floor. (06/01/2017)

Summary:

The Act requires candidate and committees to file periodic campaign statements with the Secretary of State or local filing officer. Secretary of State is required to disclose certain information from campaign statements in a user-friendly, easily understandable format.

This bill would require a candidate for state elective office to include and conspicuously display on their campaign homepage a hyperlink to the Secretary of State's online disclosure website that displays the candidate's campaign finance information. This requirement would not apply to social media.

19. AB 1524 (Brough): Mass Mailing Prohibition

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Heard in Assembly Elections and Redistricting Committee; Two-year Bill
(04/26/17)

Summary:

Commission regulations defines criteria for mass mailings at public expense and specify certain forms of mass mailing that are not subject to the Political Reform Act's prohibition against mass mailings.

This bill would prohibit a mass mailing that complies with the Commission's regulatory criteria from being sent within the 90 days preceding an election by or on behalf of a candidate, state or local, whose name will appear on the ballot or on behalf of an agency, if a measure on the ballot will have a direct financial impact on the agency. The bill exempts school districts or community

college districts who provide impartial and informative information regarding a bond issue or other measure. The bill does not apply to mass mailings required by law.

20. SB 529 (Nguyen): Inspection of Public Records

FPPC Position: *None currently*

Status: Senate Elections and Constitutional Amendment Committee

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Set for hearing. Cancelled at Request of Author; Two-Year Bill (04/04/17)

Summary:

The Act provides that every report and statement filed pursuant to the Act is a public record and open for public inspection and reproduction. The Act prohibits any conditions upon persons seeking to inspect reports and statements.

This bill specifies recipient committee campaign statements filed with local filing officers be furnished promptly and would clarify that a request to inspect does not need to be made pursuant to the California Public Records Act.

21. SB 679 (Morrell): Post-Governmental Employment

FPPC Position: *None currently*

Status: Assembly Appropriations Committee

Fiscal Estimate: Minor and Absorbable

Last Amended: April 26, 2017

Last Action: Approved by Assembly Elections Committee (7 ayes, 0 noes) and referred to Assembly Appropriations Committee. (06/28/2017)

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.

This bill prohibits lobbying by Members of the Legislature who resign prior to the end of their term. This prohibition lasts for two years commencing on the day of resignation.