



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward

From: Jack Woodside, General Counsel; Brian Lau, Assistant General Counsel;
John M. Feser Jr., Senior Commission Counsel

Subject: Recommendations and Proposed Revisions to FPPC Statement of Governance Principles
(Regulations 18308, 18308.1, 18308.2 & 18308.3)

Date: April 17, 2018

After the discussion of the Statement of Governance Principles at the March Commission meeting, staff researched various legal and operational issues raised by the proposal. On March 29, 2018, the Ad Hoc Committee and Legal Division staff discussed the potential legal issues and the effect on the Commission's day-to-day operations. On April 4, 2018, the General Counsel provided the Ad Hoc Committee with an alternative proposal that staff believed addressed legal and operational concerns, while satisfying the stated goals of the revision by the Ad Hoc Committee.

On April 9, 2018, the Ad Hoc Committee provided the current proposed regulations,¹ along with a cover memorandum, which were placed on the April meeting agenda. While amendments have been made from the first proposal, concerns still exist. The issues raised in this memorandum have been discussed with the Ad Hoc Committee, but are memorialized here for the benefit of the other Commissioners not serving on the Ad Hoc Committee.

This memorandum summarizes relevant law and makes recommendations regarding the proposed regulations. Attached is also an edited version of the regulations, which attempts to implement staff's recommendations, while meeting the stated goals of the Ad Hoc Committee. The primary focus is to provide recommendations to ensure the proposed Statement complies with governance statutes in the Political Reform Act (PRA) and limits under the Bagley-Keene Act (BK Act), while facilitating efficient day-to-day operation of the FPPC in accordance with the Commission's responsibility for impartial, effective administration and implementation of the PRA.

RECOMMENDATIONS

A. Further Ensure Compliance with PRA Governance Statutes and Effective Administration of the Commission.

The governance principles should clearly establish that subcommittees are advisory in nature and that any recommendation by a two-member committee is made to the Commission for a Commission determination. Recommendations by a two-member subcommittee to the ED or Commission staff should be avoided. The following would clarify that the two-member committees are advisory in nature and facilitate effective daily operations of the Commission:

¹ The Ad Hoc Committee has converted the Statement to a proposed regulation format, proposed Regulations Sections 18308, 18308.1, 18308.2, and 18308.3.

- *Ensure the committees do not assert the Commission’s authority between Commission meetings; e.g. committee “recommendations” to any person or group. (Section 83108.)*
- *Refer to standing committees as “standing advisory committees.” (Section 83108.)*
- *Ensure standing committees do not take a Commission position on any matter between meetings, such as legislation. (Section 83108.)*
- *Delegate Commission authority between meetings to the Chair that is consistent with PRA’s governance statutes. (Sections 83106, 83108.)*
- *Delegate Commission authority between meetings to the Chair and ED that ensures effective FPPC daily operations. (Sections 83106, 83111.)*

B. Further Ensure Compliance with Open Meeting Requirements.

The governance principles should avoid the potential for serial communications that violate the BK Act and complications that may arise from Commissioners contacting Commission staff in their capacities as committee members or individuals. The following would clarify that the two-member committees will comply with the BK Act while facilitating effective daily operations of the Commission:

- *Utilize committees comprised of one Commissioner and either the ED or Chair to avoid serial communications among the Commissioners. (Sections 11125.5(b), 83111.)*
- *Clarify that Commissioners may only contact Commission staff in their capacities as committee members, not in their individual capacities, to avoid potential serial meetings. (Sections 11125.5(b), 83111.)*
- *Further clarify the interactions among and between the ED, the Chair, Commission staff, and the Commissioners where communications and recommendations are made by and to two-member committees. (Sections 11125.5(b), 83111.)*

LEGAL BACKGROUND

A. Summary of PRA Statutes That Control the Commission’s Governance.

In construing a statute, courts first determine the law’s purpose by examining the usual and ordinary meaning of the statute’s words. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388.) “The statute’s plain meaning controls the court’s interpretation unless its words are ambiguous.” (*Ibid.*) The PRA statutes that control the Commission’s governance are straightforward and unambiguous.

The Commission consists of five members, no more than three of the same political party. (Section 83100.)² The Governor must appoint the Chair and an additional member who may not be from the same political party. (Section 83101.) The Attorney General, Secretary of State and the Controller each appoint one member. (Section 83102.)

² All statutory references herein are to the Government Code unless otherwise stated.

The Chair is compensated as a full-time employee at the same rate as the president of the Public Utilities Commission. (Section 83106.) The remaining members are compensated \$100 for each day he or she engages in official duties, and reimbursed for expenses incurred in performing official duties. (*Ibid.*)

The Commission must appoint an Executive Director, and appoint and discharge officers, counsel and staff. (Section 83108.) The Commission may delegate authority to the Chair or Executive Director to act in the name of the Commission between Commission meetings. (Section 83108.)

The Commission has primary responsibility for the impartial, effective administration and implementation of the PRA. (Section 83111.)

B. Summary of BK Act Statutes That Limit the Commission’s Governance and BK Act Challenges For Five-Member State Bodies.

1. Summary of relevant BK Act statutes that limit the Commission’s governance.

The Commission is a “state body” subject to the BK Act. (Section 11121.1.) A majority of Commissioners may not, outside of a Commission meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the Commission. (Section 11125.5(b)(1).) This does not prevent a Commission employee or official from engaging in separate communications, outside of a Commission meeting, to answer questions or provide information regarding a matter that is within the subject matter of the Commission, if that person does not communicate to Commissioners the comments or position of any other Commissioner or Commissioners. (Section 11125.5(b)(2).)

2. BK Act challenges for five-member state bodies in California.

Section 83117(c) provides in relevant part: “Upon request of the Commission, the Attorney General shall provide legal advice and representation without charge to the Commission.” Deputies Attorney General Ted Prim and Julia Zuffelato gave the Commission legal advice regarding the BK Act at the October 2017 Commission meeting. (See FPPC Minutes of Hearing, Commission Meeting October 19, 2017, Approved November 16, 2017 (the October Minutes).)

In June 2015, a comprehensive study and analysis of California’s open meetings laws, including the BK Act and the Brown Act, was published by the Little Hoover Commission, an independent state oversight agency (the Hoover Report).³ The Hoover Report identifies problems with the BK Act, including its adverse effects on efficient operation of state bodies. Most relevant to the Commission and the current Statement are the 2009 changes⁴ to the BK Act, which added Section 11125.5(b), cited above. (Hoover Report at p. 11.)

The Hoover Report and the AG Office’s advice to the Commission establish that the 2009 BK Act changes have imposed significant limits on state bodies in California, particularly five-member state

³ *Conversations for Workable Government*, Little Hoover Commission, Report #227, June 2015; <http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/227/Report227.pdf>.

⁴ Former law eliminated by the 2009 BK Act changes provided: “Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.” (Hoover Report at p. 11.)

bodies that seek to utilize two-member committees.⁵ For instance, the fact that serial meetings are illegal “prevents situations on a five-member board in which Commissioner A conveys his or her views on an agenda item privately to Commissioner B who then conveys it privately to Commissioner C to formulate majority consensus for an eventual public vote.” (Hoover Report at p. 6; see also October Minutes, Ted Prim at pp. 7-10.)

An example of the practical effect of the 2009 BK Act changes is the California Public Utilities Commission (CPUC), a state agency with five full-time board members and 1,000 staffers. Two members of CPUC’s five-member body can have informal policy discussions under the BK Act. A commissioner with expertise on a topic can share information or a report with staff, who can inform all other board members, but only if that person does not communicate to members of the legislative body the comments or positions of other members of the body. (Hoover Report at p. 21.) In practice, however, the 2009 BK Act changes have imposed significant limits on the CPUC’s daily operations:

The five CPUC board members have largely stopped talking with one another about issues on their collective agenda, the Commission learned. As a result of the Bagley-Keene Act changes, few informal discussions precede the public meetings where board members make multibillion-dollar decisions about some of California’s most complex matters. Indeed, the Commission was told in 2014 that most CPUC board members spent little time at the office – because they couldn’t talk with one another there, even informally about general policy issues.

(Hoover Report at p. 4.) Stanford Law Professor Michael Asimow explained to the Little Hoover Commission: “My interviews with officials of the [CPUC] indicate the CPUC is tied in knots by Bagley Keene and unable to properly carry out its vast and vital regulatory responsibilities. It cannot manage the agency, achieve consistent results in different cases, or set priorities.” (*Id.* at p. 13.)

According to the Hoover Report, the number of members on a commission significantly affects the scope of the BK Act’s limits. For example, the Coastal Commission utilizes two-member subcommittees. Like the standing committees in the current proposed Statement, the Coastal Commission committees meet privately on specific topics, have no authority to make decisions on behalf of the Commission, report back in open session with the substance of subcommittee meetings and any recommendations. However, in stark contrast to the five-member CPUC and FPCC, the Coastal Commission has fifteen members and twelve voting members. Thus, two commissioners can meet and confer without nearing a quorum. The Coastal Commissioner acknowledged that for smaller commissions or boards, the subcommittees it utilizes may not be feasible or appropriate. (Hoover Report at pp. 19-20.)

The effect of the 2009 BK Act changes on the California Energy Commission’s (CEC) governance structure confirms that two-member committees on a five-member commission may not be feasible or appropriate, as the Coastal Commissioner asserted. The Hoover Report states:

⁵ Significantly, the Hoover Report explains that government attorneys give cautious advice regarding the 2009 BK Act changes. Examples include, among others: (1) “The (Hoover) Commission learned that public sector attorneys have urged such an abundance of caution as a result of the changes that many elected and appointed officials fear talking with one another outside public meetings” (Hoover Report at p. ii); (2) the 2009 changes have “been widely interpreted by state government attorneys to prevent members from having internal or informal discussions about any items of business within the subject matter jurisdiction of their board or commission” (*Id.* at p. 8); (3) “Many local and state government attorneys maintain that due to the statutes’ inclusion of two words, ‘to discuss,’ elected and appointed officials of local government and state boards and commissions can no longer have informal conversations with their colleagues outside public meetings about issues pending before them – or even have general policy discussions” (*Id.* at p. 10); and (4) the Coastal Commissioner described “very cautious advice from our attorneys as to the scope of discussions we may have among ourselves” (*Id.* at p. 20.)

Commissioner Douglas, who chaired the CEC at the time the Bagley-Keene changes went into effect, said the organization's governance system changed significantly as a result. "We completely revamped our internal processes. We completely revamped our ways of doing business," she said. "Not solely because of these amendments. But these amendments were the precipitating cause of our making very substantial changes."

Ms. Douglas said the CEC functioned for years with two-commissioner subcommittees on different topics that interacted with the chair, the Commission, the public and stakeholders. But she said the system became unworkable when other commissioners believed they couldn't have discussions with those subcommittee members due to 2009 Bagley-Keene Act changes. Single-commissioner committees that could talk with only one other commissioner replaced the old system.

"We moved away from a decades-long culture of designating advisory policy committees to work with stakeholders and frame issues and help bring recommendations to the business meeting to a culture where we modeled the CPUC by assigning lead commissioners and having those lead commissioners, not exclusively, but virtually exclusively, buddy ... with the chair. We moved to a hub and spoke model with the chair at the hub," Ms. Douglas told the Commission. "That's had various implications, some good, some bad, but it's a very different way of doing business than what we had before. We're trying to manage and trying to maintain our silos because we've decided silos are the easiest way to handle these issues," Ms. Douglas said.

(Hoover Report at p. 18.)

In sum, the 2009 changes to the serial meeting prohibitions have posed real challenges to state agencies, especially those comprised of five members who wish to form two-member committees.

C. Proposed Revisions to the Current Proposed Statement.

Attached for your review and consideration are proposed revisions to the proposed second Statement.

1 Adopt 2 Cal. Code Regs., Section 18308 to read:

2 **§ 18308. Commission Governance**

3 To ensure that the accountability and authority for governance and management of the
4 Fair Political Practices Commission (FPPC or Agency) is clearly stated, the Commission has set
5 forth regulations to specify the roles of the Commission, and its delegation of powers and duties
6 to the Chair or the Executive Director.

7 All authority granted by statute to the Commission is retained, except as specifically
8 delegated herein or by other regulation. The Commission's statutory duty is to ensure that the
9 Political Reform Act is impartially and effectively administered and implemented.

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Commented [A1]: Preferable just to select and use one of these terms.

1 Adopt 2 Cal Code Regs., Section 18308.1 to read

2 **§ 18308.1. Authority of the Commission**

3 (a) The Commission proposes, adopts, codifies, and monitors policies for the FPPC. This
4 includes, but is not limited to:

5 (1) Approving or revising annual policy goals and objectives ~~recommended by the Law~~
6 ~~& Policy Committee~~ and evaluating efforts made to meet those goals and objectives.

7 (2) Approving or revising the annual FPPC budget ~~recommended by the Budget &~~
8 ~~Personnel Committee.~~

9 (3) Interpreting the Act, through regulations, opinions and such other means as the
10 Commission deems appropriate and lawful.

11 (4) Enforcing the Act, by initiating or hearing administrative actions, authorizing civil
12 actions, approving stipulations and such other means as the Commission deems appropriate and
13 lawful.

14 (5) Authorizing or initiating actions taken to defend the Commission’s interpretations of
15 the Act in the courts.

16 (6) ~~Upon recommendation of the Law & Policy Committee, t~~Taking positions on efforts
17 to amend the Political Reform Act.

18 (7) ~~Upon the recommendation of the Budget & Personnel Committee, adopt criteria to be~~
19 ~~followed by the Law & Policy Committee for t~~Taking positions on legislation fiscally impacting
20 the operations of the FPPC and establishing criteria for Chair and Executive Director review of
21 legislation between Commission Meetings.

22 (8) Reviewing and approving budget and budget change proposals and establishing
23 criteria for the submission of the budget and budget change proposals to the Commission by the
24 Executive Director. ~~Upon the recommendation of the Budget & Personnel Committee, adopt~~
25 ~~criteria to be followed by the Executive Director and the Budget & Personnel Committee, on the~~
26 ~~methods to be employed to keep confidential, the content of any draft budget or budget change~~
27 ~~proposal, whenever the Committee conducts a review of a draft budget or budget change~~
28 ~~proposal, which has been proposed by the Executive Director, or when reporting the Budget &~~
29 ~~Personnel Committee draft budget or budget change proposal recommendations to the~~
30 ~~Commission.~~

Commented [A2]: This Regulation establishes authority of Commission. "Recommendation" language suggests Commission is limited to acting only after recommendations by subcommittees. Under its statutory authority, the Commission can act with or without recommendation so this language is unnecessary and misleading.

Commented [A3]: There are additional issues if the Committees are delegated authority as opposed to advisory committees. The statute permits the Commission to delegate its power to act between public meetings to only the Chair or Executive Director. Staff has been told that the committees are not intended to take actions between meetings and are merely advisory, but Staff is concerned that recommendation to subordinate staff are not truly "recommendations." Moreover, this language appears to permit a subcommittee to take a Commission position on legislation. If the subcommittee is advisory, it cannot take positions on legislation on the Commission 's behalf.

1 ~~(9) Upon recommendation of the Law & Policy Committee, adopting or revising a policy~~
2 ~~governing the procedures to be followed by a Standing Committee, in order that it might allow~~
3 ~~the Chair or any other Commissioner who is not a member, to appear at a Standing Committee~~
4 ~~meeting, subject to any applicable statutory restrictions.~~

5 (940) Upon recommendation of the Law & Policy Committee, adopting or revising a
6 schema for the codification of the various rules, policies and resolutions of the Commission.

7 ~~(101) Upon recommendation of the Law & Policy Committee, adopting or revising a~~
8 policy and procedures manual.

9 ~~(112)~~ Authorizing issuance of forms and manuals used to comply with the Act.

10 (b) The Commission ensures the proper management of the FPPC. This includes, but is
11 not limited to:

12 (1) ~~Upon recommendation of the Budget & Personnel Committee, selecting, evaluating,~~
13 and, if necessary, disciplining or dismissing the Executive Director.

14 (2) ~~Upon recommendation of the Budget & Personnel Committee, having considered any~~
15 ~~employee input received, adopting or revising personnel or office policies proposed to the~~
16 Committee by the Executive Director.

17 (3) ~~Upon recommendation of the Law & Policy Committee, adopting or revising a~~
18 policy or regulation governing the review process to be followed by the FPPC General Counsel
19 ~~including criteria for determining when an advice request presents issues requiring a policy~~
20 ~~interpretation best made through a Commission or Regulation or is too broad or not factually~~
21 ~~specific enough to render formal or informal assistance, in determining whether advice requests~~
22 ~~are either overly broad or not factually specific enough to warrant advice rendered pursuant to~~
23 ~~section 83114 (b) but rather should be answered with a Commission opinion, pursuant to section~~
24 ~~83114 (a).~~

25 (4) Upon recommendation of the Law & Policy Committee, adopting or revising a
26 policy or regulation governing the:

27 (A) Proposing and prioritizing the use of the various penalty options to be employed by
28 the Chief of the Enforcement Division.

29 (B) Categorizing of and weighting the seriousness of the various types of violations of the
30 Act to be enforced.

Commented [A4]: Not sure what this provision is looking for. Under Bagley Keene, cannot be done outside of a noticed public meeting. With a 5-member commission, no reason not to just notice the discussion for the next Commission Meeting. Alternatively, the committee could schedule and hold a noticed meeting in same manner as a full Commission meeting.

Commented [A5]: We wouldn't issue a Commission Opinion because the advice request is too broad or not factually specific. Advice requests that are too broad or not factually specific are either declined or answered generally as informal assistance. Opinions are for policy determinations best left to the Commission. (See e.g. Regulation 18329(b)(7) and (b)(8)(E).)

1 (C) Setting enforcement priorities and procedures for the effective operation of the
2 Enforcement Division.

3 (5) Delegating execution of established Commission policy and strategic objectives to the
4 ~~Chair and Executive Director, or staff, and, upon written request of the Executive Director, may~~
5 ~~by resolution, authorize the re-delegation of specific duties to specified employees of the Fair~~
6 ~~Political Practices Commission, notwithstanding any provision of regulation 18361 to the~~
7 ~~contrary.~~

8 (6) Ensuring the integrity of the financial control and reporting system ~~by acting on~~
9 ~~recommendations of the Budget & Personnel Committee,~~ and the Commission's compliance
10 with all laws governing the Agency ~~by acting on the recommendations of the Law & Policy~~
11 ~~Committee.~~

12 (c) The Commission ensures the proper conduct and governance of the Agency. The
13 Commission strives to achieve a governing style that encourages effective operations, frank and
14 collegial discussions among members of the Commission, the staff and the public, and fairness to
15 persons whose compliance with the Act is called into question. To this end, each commissioner
16 shall:

17 (1) Comply with the statutory qualification requirements and the Statement of
18 Incompatible Activities adopted by the Commission.

19 (2) When communicating by email, use only his or her official Commission email
20 account for official business.

21 (3) Thoroughly prepare for and attend Commission meetings and committee meetings of
22 which a Commissioner is a member.

23 (4) Between meetings, communicate with staff through the Executive Director or ~~any~~
24 ~~Division Chiefs~~ ~~member of the executive staff,~~ ~~Division Chiefs who~~ shall report the information
25 or advice given, that is not subject to attorney-client privilege, to the Executive Director. ~~The~~
26 ~~Executive Director, who~~ shall ensure that all Commissioners receive the benefit of information
27 and advice provided to any individual Commissioner.

28 (5) Maintain the confidentiality of all confidential information acquired during the
29 Commission's work.

Commented [A6]: By the statute, the Commission can delegate to the Chair or Executive Director. To the extent that this language attempts to limit delegation to the Executive Director the language conflicts with the statute and the statute controls.

Commented [A7]: This could be read to mean that 18361 and any contrary regulation does not apply? If contrary regulations do not apply, the contrary regulations should be repealed. If the other Regulations still apply, we just need to specify that redelegation is permitted as stated by any regulation. And just side notes, 18319 probably needs to be repealed and does the Commission really want to consider every delegation of authority?

Commented [A8]: "Executive Staff" is not clear.

1 (6) Consult with General Counsel about any relationship or interest that the
2 Commissioner may be concerned creates a possible conflict of interest, regarding the
3 Commission's work.

4 (7) Set exemplary ethical standards that reflect positively on the Commission, while
5 refraining from engaging in biased or partisan activities that may reflect poorly on the
6 Commission.

7 (d) The Commission ensures enhanced oversight of Agency administration. In order to
8 provide thorough oversight of its delegated duties and responsibilities, the Commission ~~creates a~~
9 ~~system of Standing Committees, as follows:~~

10 ~~— (1) The Commission establishes the following two member standing committees: the~~
11 ~~Budget Committee, the Legislative Committee, the Personnel Committee, and the Law and~~
12 ~~Policy Committee.~~

13 (1) The Chair nominates an advisory committee member, for each of the four
14 committees, from among the other Commissioners. The Commission shall appoint the advisory
15 committee member for each of the four committees by majority vote. [OPTIONAL: The
16 committee member selected for the Law and Policy Committee must be from a different political
17 party than the Chair.] Each committee selects its own chair, and Except in the event of a
18 vacancy on the Commission, no Commissioner may hold more than one committee appointment.

19 (2) The Budget Committee consists of the Executive Director and one advisory
20 commissioner, other than the Chair. The Executive Director and advisory commissioner shall
21 jointly recommend budgetary priorities to the Commission for its review and consideration.

22 (3) The Legislative Committee consists of the Chair and one advisory commissioner. The
23 Chair and advisory commissioner shall jointly recommend legislative priorities to the
24 Commission for its review and consideration.

25 (4) The Personnel Committee consists of the Executive Director and one advisory
26 commissioner, other than the Chair. The Executive Director and advisory commissioner shall
27 jointly recommend personnel priorities to the Commission for its review and consideration.

28 (5) The Law and Policy Committee consists of the Chair and one advisory commissioner.
29 The Chair and advisory commissioner shall jointly recommend law and policy priorities to the
30 Commission for its review and consideration.

31 ~~(A) The Budget & Personnel Committee; and~~

1 ~~(B) The Law & Policy Committee.~~
2 ~~(2) The Chair nominates the committee members from among the other Commissioners,~~
3 ~~who in turn, modify or approve the makeup of each committee, provided however, that each~~
4 ~~committee makeup is in partisan balance.~~
5 ~~(A) Each committee selects its own Chair.~~
6 ~~(B) Each committee meets at the call of its Chair.~~
7 ~~(C) Committee actions are by consensus recommendation to the Commission. If a~~
8 ~~consensus is not reached on an issue, each committee member may present an alternative~~
9 ~~recommendation to the Commission.~~
10 ~~(D) In the event that a vacancy occurs on either standing committee, the remaining~~
11 ~~member shall be considered as meeting the quorum requirements to meet and vote on issues~~
12 ~~before the committee.~~

Commented [A9]: There isn't really a vote occurring, just a recommendation by the member. If language is retained, staff recommends, "In the event that a vacancy occurs on either standing committee, the remaining member may solely make any recommendation to the Commission."

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1 Adopt 2 Cal. Code Regs., Section 18308.2 to read:

2 **§ 18308.2 Authority of the Chair.**

3 The Chair, appointed by the Governor, is a voting member of, and the presiding officer of
4 the Commission.

5 (a) The Chair provides policy guidance to the Executive Director regarding all aspects of
6 Commission established policy.

7 (b) Subject to the limitations of Commission established policy, the Chair acts on behalf
8 of and in the name of the Commission between meetings of the Commission, including
9 certifying actions taken by the Commission. The Chair may not establish or revise policies,
10 promulgate or amend rules or regulations, issue or revise Commission opinions, approve or
11 revise positions on legislation, take any personnel action, or approve any personnel action
12 recommended by the Executive Director.

13 (c) Pursuant to Commission established policy, the Chair exercises oversight over
14 Commission staff with respect to their official duties to communicate with the public, the press,
15 and government institutions to ensure that those communications are forthright, accurate, and do
16 not disparage any Commissioner or staff member.

17 (d) The Chair provides oversight of the actions of the Executive Director to manage the
18 Agency and reports any adverse findings to the Commission.

19 (e) The Chair reports in writing each month to the Commission on actions taken on
20 behalf of the Commission for its review and approval.

21 (f) After seeking input from Commissioners and staff, the Chair submits a tentative
22 Commission agenda to the other Commissioners for their review and approval as to an item
23 description or placement, but not as to the merits of any item, prioritizing and scheduling agenda
24 items in conformance with Commission established policy, however any item proposed for a
25 Commission agenda by two or more Commissioners shall be placed on that agenda in the form
26 requested.

27 (g) Except as otherwise required by any provision of Article 9 of Chapter 1 of Part 1 of
28 Division 3 of Title 2 of the Government Code to the contrary, the Chair conducts Commission
29 meetings with reference to Robert's Rules of Order and other rules adopted by the Commission.

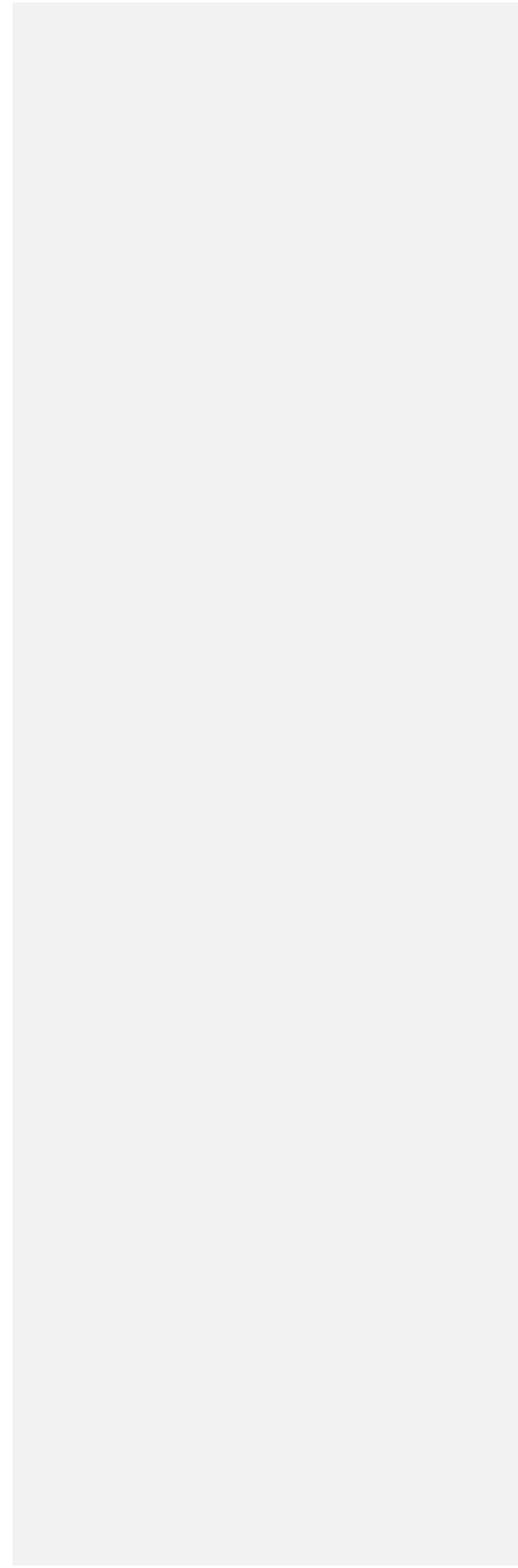
Commented [A10]: Chair's oversight over the Executive Director is questionable if the Executive Director is communicating with two person advisory committees. Communication between Executive Director and Chair or Communications between the Executive Director and committees will be substantially restricted due to the Bagley Keene Act.

1 (h) Pursuant to Commission established policy, the Chair ensures that the information
2 provided to the Commission is comprehensive, timely, impartial and not unduly burdensome.

3 (i) The Chair oversees the implementation of the short term and long-term goals and
4 priorities of the Commission by the Executive Director.

5 (j) The Chair reports to the Commission in writing on achievement of its goals and
6 priorities.

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1 Adopt 2 Cal. Code Regs., Section 18308.3 to read:

2 **§ 18308.3 Authority of the Executive Director.**

3 The Commission delegates to the Executive Director responsibility for the operations and
4 management of the Agency in conformance with Commission established policy. The Executive
5 Director is responsible for ensuring that the Commission is fully informed regarding the
6 operations and management of the Agency.

7 (a) The Executive Director acts as the CEO of the Agency.

8 (1) The Executive Director, in consultation with the advisory commissioner of the
9 Personnel Committee, recommends the selection, submits annual evaluations and, when
10 necessary, recommends the discipline or dismissal of the Division Chiefs, Legislative Director,
11 and Communications Director to the Budget & Personnel Committee for review and
12 recommendation to the Commission.

13 (2) Except as otherwise required by applicable statute, the Executive Director, in
14 consultation with the Division Chiefs, hires, promotes and, when necessary, disciplines or
15 dismisses other staff pursuant to Commission policies and procedures, recommended by the
16 Budget & Personnel Committee.

17 (3) The Executive Director, in consultation with the advisory commissioner of the
18 Personnel Committee, prepares and submits to the Budget & Personnel Committee for review
19 and recommendation to the Commission, all office policies and procedures, not in conflict with
20 any statute, regulation, or applicable state employee collective bargaining contract.

21 (4) After consulting with the Chair, the Executive Director proposes to the Law & Policy
22 Committee, for recommendation to the Commission for approval, the short term and long-term
23 goals and priorities of the Commission.

24 (5) The Executive Director receives and coordinates requests from commissioners
25 regarding staff work and, in consultation with the Division Chiefs, prioritizes such requests, in
26 accordance with Commission Policy recommended by the Budget & Personnel Committee.

27 (b) The Executive Director acts as the chief budgetary and administrative officer of the
28 Agency.

29 (1) ~~In consultation with the executive staff,~~ The Executive Director, in consultation with
30 the executive staff and the advisory commissioner of the Budget Committee, prepares and
31 submits an initial budget proposal, and any budget change proposals, to the Budget & Personnel

Commented [A11]: If 2-member committee is retained, ED is not likely to make personnel decisions to hire or discipline without some initial discussions with the Chair. Thus, the ED could not make recommendation to subcommittee without creating illegal serial meeting.

Commented [A12]: This reads as though the committee is making recommendations to the ED. If the Committee is making "recommendations" to a subordinate employee, it is highly questionable whether the "recommendations" are really just "recommendations." If the Commission wants to change personnel policies, The Committee should be recommending the policy to the Commission for Commission adoption.

Commented [A13]: Again if 2-member committee is retained, ED is not likely to change office policies and procedures without some initial discussions with the Chair. Thus, the ED could not make recommendation to subcommittee without creating illegal serial meeting.

Commented [A14]: This is a serial meeting and Bagley Keene violation. The ED cannot first consult with the chair, on the Commission's goals, and then make a recommendation on those goals to a 2-member subcommittee.

Commented [A15]: Reads as though Committee makes recommend policy to ED as opposed to Commission adopting the policy.

1 ~~Committee~~ for recommendation to the Commission, subject to the criteria adopted pursuant to
2 section 18308.1 (a)(8).

3 ~~(2) Subject to the criteria adopted pursuant to section 18308.1 (a)(8), the Executive~~
4 ~~Director submits recommendations to the Budget & Personnel Committee at each stage of the~~
5 ~~budgetary process, including prior to the Agency's proposal to the Department of Finance~~
6 ~~(DOF), the DOF proposal to the Governor, and the Governor's proposed annual budget to the~~
7 ~~Legislature.~~

8 (23) The Executive Director, ~~in consultation with the executive staff and the advisory~~
9 ~~commissioner of the Budget Committee,~~ regularly reports in writing to the ~~Budget & Personnel~~
10 ~~Committee and~~ Commission on the status of Commission finances.

11 (34) The Executive Director prepares, ~~in consultation with the executive staff and the~~
12 ~~advisory commissioner of the Budget Committee,~~ and ~~after review by the Budget & Personnel~~
13 ~~Committee,~~ submits budget change proposals, requests for deficit funding and other budgetary
14 documents to the Department of Finance.

15 (5) ~~Prior to giving final approval, +~~The Executive Director, ~~in consultation with the~~
16 ~~executive staff and the advisory commissioner of the Budget Committee,~~ ~~approve~~ submits to the
17 ~~Budget & Personnel Committee for review,~~ all fiscal analyses prepared at the request of the
18 Legislature, Legislative Analyst or Department of Finance.

19 (6) The Executive Director retains final approval for all budgeted expenditures.

20 (7) In accordance with Commission approved guidelines ~~recommended by the Budget~~
21 ~~Committee,~~ the Executive Director authorizes unbudgeted expenditures, when deemed
22 appropriate up to \$25,000.

23 (8) Reviews and approves Commissioner compensation and reimbursement requests in
24 accordance with the policy on compensation and reimbursement of Commissioners.

25 (c) The Executive Director acts in the name of the Commission with respect to the
26 following statutory duties:

27 (1) Reviews and approves conflict of interest codes other than the code of the

28 Commission;

29 (2) Reviews, approves, and signs subpoenas;

30 (3) Executes oaths and affirmations.

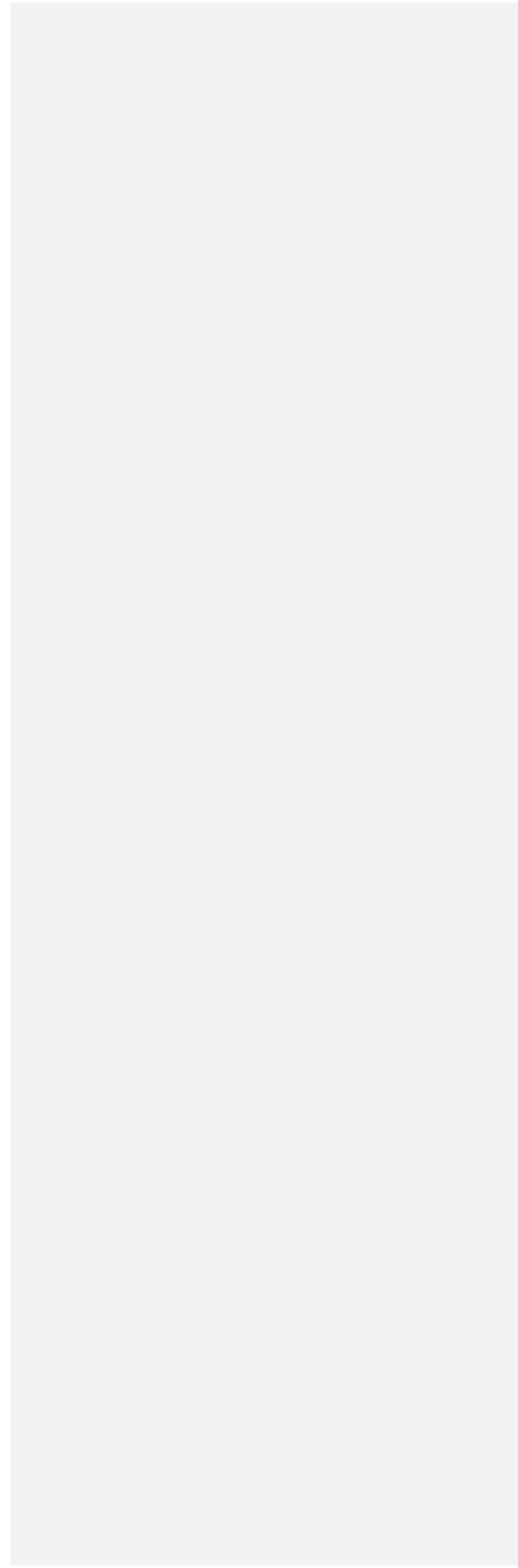
Commented [A16]: Seems duplicative of whatever criteria is adopted. Also, there is an issue to the extent that the committee is giving a "recommendation" to a subordinate.

Commented [A17]: Rather questionable that committee is advisory if committee is reviewing and recommending action to the ED, a subordinate.

Commented [A18]: Again, questionable that committee is advisory if committee is reviewing and recommending action to ED, a subordinate, prior to ED approval. (Even more questionable as the ED has authority to approve after "recommendation" without Commission consideration.)

Commented [A19]: Unnecessary, if the budget committee wants to make a recommendation it may do so, but the policy must be adopted by the Commission.

1 Note: Authority Cited: Section 83112, Government Code. Reference: Sections 83108, 83111,
2 and 83117, Government Code.
3



1 Adopt 2 Cal. Code Regs., Section 18308 to read:

2 **§ 18308. Commission Governance**

3 To ensure that the accountability and authority for governance and management of the
4 Fair Political Practices Commission (FPPC or Agency) is clearly stated, the Commission has set
5 forth regulations to specify the roles of the Commission, and its delegation of powers and duties
6 to the Chair or the Executive Director.

7 All authority granted by statute to the Commission is retained, except as specifically
8 delegated herein or by other regulation. The Commission’s statutory duty is to ensure that the
9 Political Reform Act is impartially and effectively administered and implemented.

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1 Adopt 2 Cal Code Regs., Section 18308.1 to read

2 **§ 18308.1. Authority of the Commission**

3 (a) The Commission proposes, adopts, codifies, and monitors policies for the FPPC. This
4 includes, but is not limited to:

5 (1) Approving or revising annual policy goals and objectives and evaluating efforts made
6 to meet those goals and objectives.

7 (2) Approving or revising the annual FPPC budget.

8 (3) Interpreting the Act, through regulations, opinions and such other means as the
9 Commission deems appropriate and lawful.

10 (4) Enforcing the Act, by initiating or hearing administrative actions, authorizing civil
11 actions, approving stipulations and such other means as the Commission deems appropriate and
12 lawful.

13 (5) Authorizing or initiating actions taken to defend the Commission's interpretations of
14 the Act in the courts.

15 (6) Taking positions on efforts to amend the Political Reform Act.

16 (7) Taking positions on legislation fiscally impacting the operations of the FPPC and
17 establishing criteria for Chair and Executive Director review of legislation between Commission
18 Meetings.

19 (8) Reviewing and approving budget and budget change proposals and establishing
20 criteria for the submission of the budget and budget change proposals to the Commission by the
21 Executive Director.

22 (9) Adopting or revising a schema for the codification of the various rules, policies and
23 resolutions of the Commission.

24 (10) Adopting or revising a policy and procedures manual.

25 (11) Authorizing issuance of forms and manuals used to comply with the Act.

26 (b) The Commission ensures the proper management of the FPPC. This includes, but is
27 not limited to:

28 (1) Selecting, evaluating, and, if necessary, disciplining or dismissing the Executive
29 Director.

30 (2) Adopting or revising personnel or office policies proposed to the Committee by the
31 Executive Director.

1 (3) Adopting or revising a policy or regulation governing the review process to be
2 followed by the FPPC General Counsel including criteria for determining when an advice request
3 presents issues requiring a policy interpretation best made through a Commission or Regulation
4 or is too broad or not factually specific enough to render formal or informal assistance.

5 (4) Adopting or revising a policy or regulation governing the:

6 (A) Proposing and prioritizing the use of the various penalty options to be employed by
7 the Chief of the Enforcement Division.

8 (B) Categorizing of and weighting the seriousness of the various types of violations of the
9 Act to be enforced.

10 (C) Setting enforcement priorities and procedures for the effective operation of the
11 Enforcement Division.

12 (5) Delegating execution of established Commission policy and strategic objectives to the
13 Chair and Executive Director, or staff.

14 (6) Ensuring the integrity of the financial control and reporting system and the
15 Commission's compliance with all laws governing the Agency.

16 (c) The Commission ensures the proper conduct and governance of the Agency. The
17 Commission strives to achieve a governing style that encourages effective operations, frank and
18 collegial discussions among members of the Commission, the staff and the public, and fairness to
19 persons whose compliance with the Act is called into question. To this end, each commissioner
20 shall:

21 (1) Comply with the statutory qualification requirements and the Statement of
22 Incompatible Activities adopted by the Commission.

23 (2) When communicating by email, use only his or her official Commission email
24 account for official business.

25 (3) Thoroughly prepare for and attend Commission meetings and committee meetings of
26 which a Commissioner is a member.

27 (4) Between meetings, communicate with staff through the Executive Director or
28 Division Chiefs. Division Chiefs shall report the information or advice given, that is not subject
29 to attorney-client privilege, to the Executive Director. The Executive Director shall ensure that
30 all Commissioners receive the benefit of information and advice provided to any individual
31 Commissioner.

1 (5) Maintain the confidentiality of all confidential information acquired during the
2 Commission's work.

3 (6) Consult with General Counsel about any relationship or interest that the
4 Commissioner may be concerned creates a possible conflict of interest, regarding the
5 Commission's work.

6 (7) Set exemplary ethical standards that reflect positively on the Commission, while
7 refraining from engaging in biased or partisan activities that may reflect poorly on the
8 Commission.

9 (d) The Commission ensures enhanced oversight of Agency administration. In order to
10 provide thorough oversight of its delegated duties and responsibilities, the Commission
11 establishes the following committees: the Budget Committee, the Legislative Committee, the
12 Personnel Committee, and the Law and Policy Committee.

13 (1) The Chair nominates an advisory committee member, for each of the four
14 committees, from among the other Commissioners. The Commission shall appoint the advisory
15 committee member for each of the four committees by majority vote. [OPTIONAL: The
16 committee member selected for the Law and Policy Committee must be from a different political
17 party than the Chair.] Each committee selects its own chair, and Except in the event of a
18 vacancy on the Commission, no Commissioner may hold more than one committee appointment.

19 (2) The Budget Committee consists of the Executive Director and one advisory
20 commissioner, other than the Chair. The Executive Director and advisory commissioner shall
21 jointly recommend budgetary priorities to the Commission for its review and consideration.

22 (3) The Legislative Committee consists of the Chair and one advisory commissioner. The
23 Chair and advisory commissioner shall jointly recommend legislative priorities to the
24 Commission for its review and consideration.

25 (4) The Personnel Committee consists of the Executive Director and one advisory
26 commissioner, other than the Chair. The Executive Director and advisory commissioner shall
27 jointly recommend personnel priorities to the Commission for its review and consideration.

28 (5) The Law and Policy Committee consists of the Chair and one advisory commissioner.
29 The Chair and advisory commissioner shall jointly recommend law and policy priorities to the
30 Commission for its review and consideration.

1 Adopt 2 Cal. Code Regs., Section 18308.2 to read:

2 **§ 18308.2 Authority of the Chair.**

3 The Chair, appointed by the Governor, is a voting member of, and the presiding officer of
4 the Commission.

5 (a) The Chair provides policy guidance to the Executive Director regarding all aspects of
6 Commission established policy.

7 (b) Subject to the limitations of Commission established policy, the Chair acts on behalf
8 of and in the name of the Commission between meetings of the Commission, including
9 certifying actions taken by the Commission. The Chair may not establish or revise policies,
10 promulgate or amend rules or regulations, issue or revise Commission opinions, approve or
11 revise positions on legislation, take any personnel action, or approve any personnel action
12 recommended by the Executive Director.

13 (c) Pursuant to Commission established policy, the Chair exercises oversight over
14 Commission staff with respect to their official duties to communicate with the public, the press,
15 and government institutions to ensure that those communications are forthright, accurate, and do
16 not disparage any Commissioner or staff member.

17 (d) The Chair provides oversight of the actions of the Executive Director to manage the
18 Agency and reports any adverse findings to the Commission.

19 (e) The Chair reports in writing each month to the Commission on actions taken on
20 behalf of the Commission for its review and approval.

21 (f) After seeking input from Commissioners and staff, the Chair submits a tentative
22 Commission agenda to the other Commissioners for their review and approval as to an item
23 description or placement, but not as to the merits of any item, prioritizing and scheduling agenda
24 items in conformance with Commission established policy, however any item proposed for a
25 Commission agenda by two or more Commissioners shall be placed on that agenda in the form
26 requested.

27 (g) Except as otherwise required by any provision of Article 9 of Chapter 1 of Part 1 of
28 Division 3 of Title 2 of the Government Code to the contrary, the Chair conducts Commission
29 meetings with reference to Robert's Rules of Order and other rules adopted by the Commission.

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1 (h) Pursuant to Commission established policy, the Chair ensures that the information
2 provided to the Commission is comprehensive, timely, impartial and not unduly burdensome.

3 (i) The Chair oversees the implementation of the short term and long-term goals and
4 priorities of the Commission by the Executive Director.

5 (j) The Chair reports to the Commission in writing on achievement of its goals and
6 priorities.

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1 Adopt 2 Cal. Code Regs., Section 18308.3 to read:

2 **§ 18308.3 Authority of the Executive Director.**

3 The Commission delegates to the Executive Director responsibility for the operations and
4 management of the Agency in conformance with Commission established policy. The Executive
5 Director is responsible for ensuring that the Commission is fully informed regarding the
6 operations and management of the Agency.

7 (a) The Executive Director acts as the CEO of the Agency.

8 (1) The Executive Director, in consultation with the advisory commissioner of the
9 Personnel Committee, recommends the selection, submits annual evaluations and, when
10 necessary, recommends the discipline or dismissal of the Division Chiefs, Legislative Director,
11 and Communications Director for review and recommendation to the Commission.

12 (2) Except as otherwise required by applicable statute, the Executive Director, in
13 consultation with the Division Chiefs, hires, promotes and, when necessary, disciplines or
14 dismisses other staff pursuant to Commission policies and procedures.

15 (3) The Executive Director, in consultation with the advisory commissioner of the
16 Personnel Committee, prepares and submits to for review and recommendation to the
17 Commission, all office policies and procedures, not in conflict with any statute, regulation, or
18 applicable state employee collective bargaining contract.

19 (4) After consulting with the Chair, the Executive Director proposes to the Commission
20 for approval, the short term and long-term goals and priorities of the Commission.

21 (5) The Executive Director receives and coordinates requests from commissioners
22 regarding staff work and, in consultation with the Division Chiefs, prioritizes such requests, in
23 accordance with Commission Policy.

24 (b) The Executive Director acts as the chief budgetary and administrative officer of the
25 Agency.

26 (1) The Executive Director, in consultation with the executive staff and the advisory
27 commissioner of the Budget Committee, prepares and submits an initial budget proposal, and
28 any budget change proposals, for recommendation to the Commission, subject to the criteria
29 adopted pursuant to section 18308.1 (a)(8).

1 (2) The Executive Director, in consultation with the executive staff and the advisory
2 commissioner of the Budget Committee, regularly reports in writing to the d Commission on the
3 status of Commission finances.

4 (3) The Executive Director prepares, in consultation with the executive staff and the
5 advisory commissioner of the Budget Committee, and submits budget change proposals, requests
6 for deficit funding and other budgetary documents to the Department of Finance.

7 (5) The Executive Director, in consultation with the executive staff and the advisory
8 commissioner of the Budget Committee, approves all fiscal analyses prepared at the request of
9 the Legislature, Legislative Analyst or Department of Finance.

10 (6) The Executive Director retains final approval for all budgeted expenditures.

11 (7) In accordance with Commission approved guidelines, the Executive Director
12 authorizes unbudgeted expenditures, when deemed appropriate up to \$25,000.

13 (8) Reviews and approves Commissioner compensation and reimbursement requests in
14 accordance with the policy on compensation and reimbursement of Commissioners.

15 (c) The Executive Director acts in the name of the Commission with respect to the
16 following statutory duties:

17 (1) Reviews and approves conflict of interest codes other than the code of the
18 Commission;

19 (2) Reviews, approves, and signs subpoenas;

20 (3) Executes oaths and affirmations.

21 Note: Authority Cited: Section 83112, Government Code. Reference: Sections 83108, 83111,
22 and 83117, Government Code.