



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

From: Phillip Ung, Director, Legislative and External Affairs

Subject: Summary of Legislative Development 2020

Date: January 3, 2020

Background

In December 2019, the Commission directed staff to move forward with the development of several legislative recommendations. This memorandum summarizes the Commission's actions. Commission staff has submitted requests to the Office of Legislative Counsel to have bill drafts prepared.

Ongoing Legislation from 2019

Use of Public Funds in Campaigns

Assembly Member Cristina Garcia authored Assembly Bill 1306 that was held under submission in the Assembly Appropriations Committee Suspense File in May. Assembly Member Garcia has expressed her intent to reintroduce legislation related to the use of public funds by public agencies in campaigns.

Staff has reviewed the most recent proposal from the Assembly Member's office. The current proposal meets two of the three requests of the Commission: 1) create a clear standard of appropriate use of public funds and 2) provide the FPPC with the authority to pursue administrative penalties for violations of the standard. Staff plans to engage with the Assembly Member's office regarding the third request: imposing personal liability on an official for violating the standard. The Assembly Member has requested the Commission vote on whether the agency wishes to sponsor the bill in 2020.

Bank Accounts and Bank Account Number Confidentiality

Additionally, Commission-sponsored Senate Bill 423 (Umberg) related to campaign bank accounts is pending in the Assembly Elections Committee. The bill will be set for a policy committee hearing conditioned upon ongoing discussion between the Commission and external stakeholders. Staff plans on continuing those policy discussions in the new year.



Campaign Finance Legislation Proposals

Number	Legislative Goal	Underlying Internal Reason	Analysis of Proposal/Options	January Update
CF-1	Clarify whether the \$150 penalty in Section 84101.5 is the exclusive penalty for violations of the committee annual registration fee and transfer collection authority to the Franchise Tax Board.	The Commission has expressed an interest in providing clarity to the regulated community regarding the penalties for failure to pay the \$50 annual registration fee. The statute is unclear as to whether the \$150 penalty is exclusive or if the Commission may pursue additional penalties for a violation of the Act.	The legislative history is not clear as to whether the \$150 penalty is the only penalty permitted under the Act or if the Commission can pursue additional administrative remedies. This confusion was identified by Commissioner Hayward in 2017. Commission staff attempted to address the problem administratively but concluded that statutory change was needed.	Staff submitted a bill request to Legislative Counsel. Staff has also reached out to the legislative office of the Franchise Tax Board to discuss the following proposals: a) collection of \$150 penalties, b) access to tax returns in conflict of interest cases, and c) lobbyist audits.
CF-2	Clean up DISCLOSE Act provisions related to disclosures on electronic media advertisements when the committee discloses top funders rather than use “who funded this ad?”	Since the adoption of AB 249 (2017), the Commission staff and regulated community continue to identify issues within the DISCLOSE Act that require further interpretation and clean up in statute in order to promote compliance and enforcement.	A committee should not be found in violation of the Act if it chooses to use the “Paid for by” disclosure followed by top funders on electronic media ads rather than the prescribed “who funded this ad?” hyperlink.	As directed by the Commission, staff submitted a bill request for a combined proposal that includes CF-2, 3, and 4.

CF-3	Require "Paid for by" disclosure on all candidate and political party committee advertisements	Disclosure requirements are not the same for every committee. Many complaints received by enforcement and AdWatch are for signs and flyers where no candidate committee disclosure is required.	Currently, the "Candidate Ad Chart" instructs committees that "Paid for by" is recommended but not legally required for electronic media, billboards, signs, faxes, business cards, door hangers, flyers, and posters.	As directed by the Commission, staff submitted a bill request for a combined proposal that includes CF-2, 3, and 4.
CF-4	Require checkbox on all written solicitations: "The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution," and "I am a United States citizen or permanent resident alien."	Money laundering is considered one of the most serious violations of the Act. The current law does little to inform potential contributors, potential intermediaries, and less sophisticated individuals about laundering laws.	Require simple check box on all contribution solicitations (e.g. webpages, mailings, hand-outs, door hangers, contributor cards/forms, fundraising invites.). This may not prevent all money laundering, but it may help to educate individuals at all levels, so such schemes would not develop, or enforcement agencies may be alerted early in the schemes.	As directed by the Commission, staff submitted a bill request for a combined proposal that includes CF-2, 3, and 4.
CF-5	Change the cost of living adjustment for contributions limits from every two years to every four years.	Changing the contribution limits every two years causes "mid-cycle" limit changes for state candidates who run for office every four years.	This recommendation was made by prior Political Reform Act reports and studies of bipartisan committees to prevent mid-cycle changes.	Staff submitted a bill request to Legislative Counsel.

Statement of Economic Interests/Conflicts Legislation Proposals

Number	Legislative Goal	Underlying Internal Reason	Analysis of Proposal/Options	January Update
SEI-1	Require E-filing with the FPPC for most 87200 filers	The FPPC has successfully launched online filing for Form 700s. However, there is no specific requirement that candidates and elected officials listed in 87200 file electronically with the Commission.	Mandating e-filing for most 87200 filers would increase efficiency and cost savings for the Commission as staff would no longer have to administer with paper filings and scanning records.	Staff submitted a bill request to Legislative Counsel.
SEI-2	Clean up SEI provisions to improve interpretation, compliance, and enforcement.	The use of electronic filing for Form 700s has highlighted outdated provisions within the Act that should be updated.	Staff has developed a list of technical and minor changes to the Act that can assist with the continued rollout of the e-filing system.	Staff believes these clean up provisions could be combined with SEI-1 and thus included them in the substantive proposal above.
SEI-3	Cap Statutory Gift Limit at \$500 and eliminate the COLA for gifts	In 2020, the Commission is expected to raise the gift limit to more than \$500 which will then exceed the "Income" disclosure threshold.	There are reasonably foreseeable situations that would produce absurd legal results if the gift limit is allowed to exceed the income disclosure threshold.	In December, the Commission directed staff to provide policy options for addressing this issue. Staff has requested three separate bill drafts from Legislative Counsel: 1) setting the statutory gift limit at \$500 and removing the automatic cost-of-living adjustment; 2) tying the income disclosure threshold to the same cost-of-living adjustment as the gift limit, and; 3) making a one-time cost-of-living adjustment to the income disclosure threshold.

Enforcement Legislation Proposals

Number	Legislative Goal	Underlying Internal Reason	Analysis of Proposal/Options	January Update
E-1	Make personal use of campaign funds a misdemeanor if payments are intentional and aggregate more than \$10,000	Section 89520 prevents Chapter 11 (criminal) remedies for violations of Chapter 9.5, which includes personal use of campaign funds.	Authority to bring charges is with a district attorney or the Attorney General.	
E-2	Modifying the maximum administrative and civil penalties for personal use of campaign funds.	The Commission’s administrative fine authority is capped at \$5,000 per violation. The Commission has expressed a desire to see an increased penalty for personal use of campaign funds in order to adopt a stronger disincentive for these specific violations.	Increase the maximum administrative or civil penalty to the greater of \$10,000 or three times the amount the person unlawfully misused campaign funds that resulted in direct personal benefit if the misuse aggregates to \$10,000 or more.	In December, the Commission directed staff to combine E-1 and a modified E-2 into a single proposal. Staff submitted a bill request to Legislative Counsel.
E-3	When necessary, permit the FPPC to access tax records in SEI and conflict of interest cases	Currently, the FPPC cannot access tax records of respondents in order to fully investigate SEI conflict cases and must rely on records provided by officials which may differ from those reported to tax agencies.	Requires an amendment to the Revenue and Taxation Code to permit the executive director and enforcement chief to inspect state income tax returns under limited circumstances.	Staff submitted a bill request to Legislative Counsel. Staff has also reached out to the legislative office of the Franchise Tax Board to discuss the following proposals: a) collection of \$150 penalties, b) access to tax returns in conflict of interest cases, and c) lobbyist audits.

E-4	Authorize the FPPC to conduct audits of lobbyists	Section 90000(a) authorizes FTB to conduct lobbyist audits but, due to staffing and budget, FTB has been unable to timely complete the audits. Identifying the FPPC as an auditor of lobbyists would convert this workload to the FPPC's audit division.	Amend Section 90000 to specifically identify FPPC as the auditor of lobbyists would authorize the FPPC to conduct mandatory audits.	Staff submitted a bill request to Legislative Counsel. Staff has also reached out to the legislative office of the Franchise Tax Board to discuss the following proposals: a) collection of \$150 penalties, b) access to tax returns in conflict of interest cases, and c) lobbyist audits.
E-5	Allow FPPC (or civil action) to pursue individuals for misspending public money on campaign activity	As discussed at Commission meetings, currently there is no individual deterrent with respect to the expenditure of public funds on campaigns other than the aiding and abetting statute.	This change to the statute would allow the FPPC to pursue individuals who decide to use public funds, which could be a significant deterrent.	The Commission directed staff to include this enforcement authority with other misuse of public funds proposals being developed by Asm. Garcia's office. Staff has reached out to the Member's staff to begin discussions.
E-6	Allow the Attorney General, district attorney, or city attorney to seek restitution of money from respondents in conflict of interest cases through civil recoupment.	In conflict of interest cases, the Commission has expressed concern that the limited penalty authority of the FPPC is an insufficient disincentive (e.g., Perea). Recoupment of any financial advantage would provide additional disincentive.	Allows recovery of restitution in conflict of interest cases.	Staff submitted a bill request to Legislative Counsel, modeling the proposal after other states who have adopted the same authority.

<p>E-7</p>	<p>Permit a limited number of FPPC investigators to have access to the same databases as peace officers.</p>	<p>Commission investigators are at times tasked with collecting evidence in dangerous or in volatile situations. Support from other peace officers are not always available. Additionally, peace officers can carry official identification and credentials, access criminal databases, access databases to locate witnesses and respondents, and access information from other state agencies.</p>	<p>Permits a limited number of investigators to access throughout the state following a feasibility study from the Commission on Peace Officer Standards and Training.</p>	<p>The Commission authorized staff to initiate discussions and make a request to the Commission on Peace Officer Standards and Training (POST) for a feasibility study to be conducted.</p> <p>Until such time that feasibility study has concluded, this recommendation will be removed from the legislative development list.</p>
<p>E-8</p>	<p>Require disclosure of direct and indirect ownership of limited liability companies.</p>	<p>The use of limited liability companies to make contributions and expenditures in California elections has caused a pervasive challenge to discovering the true source of funds due to the structure of the corporate entities.</p>	<p>The proposal, modeled after the State of New York's LLC disclosure law, would require disclosure of direct and indirect ownership of limited liability companies to the Commission or Secretary of State within four months of a contribution or expenditure over a specific dollar amount.</p>	<p>In December, the Commission directed staff to combine these recommendations into a single proposal. Staff submitted a bill request to Legislative Counsel.</p>
<p>E-9</p>	<p>Adopt a long-arm statute for FPPC administrative subpoenas in order to serve subpoenas outside state boundaries</p>	<p>Contributions and expenditures into California state and local elections come from across the country. The enforcement of the Commission's subpoenas are challenging outside of state boundaries.</p>	<p>Proposal is modeled after Connecticut's long-arm statute.</p>	