



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

From: Jay Wierenga, Director of Communications
Lindsey Nakano, Legislative Counsel

Subject: Legislation Report – September 2020

Date: September 4, 2020

Commission-sponsored Legislation

Senate Bill 423 (Umberg), related to committee bank accounts and bank account information, was used as a vehicle for eventual urgency legislation regarding conduct of the November General Election. FPPC voted to remove sponsor position.

Legislative Development

Staff will work with legislative partners to prepare for next legislative session to develop three Commission priorities: 1) use of public funds in campaigns, 2) e-filing of Form 700s, and 3) statutory fix to the income/gift threshold.

General Update

There were 11 active Political Reform Act bills pending in the 2020 Session. Only one, AB2151, moved forward and has passed the legislature and moved to the Governor's desk. Due to COVID-19 and related budget issues, no other legislation moved forward.

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

Sponsored Bills (#1-2)

1. [AB 2407](#) (Berman): Limited Liability Companies

FPPC Position: *Sponsor*

Status: Assembly Elections Committee

Introduced: February 18, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/24/20)

Summary:

This bill would require a committee to include within a campaign statement the name of each individual who owns or controls, or controls the contributions or expenditures of, a limited liability company or foreign limited liability company from which the committee received a campaign contribution.

Staff Comments:

The Commission has prioritized the increased regulation of limited liability companies under the Act. Assembly Bill 2407 is the legislative vehicle for the Commission's new disclosure requirements for LLCs. Staff continues to develop additional provisions to further align AB 2407 with the intent of the Commissioners. Commission voted to adopt sponsor position at the April Commission meeting.

2. [AB 2505](#) (Berman): Personal Use of Campaign Funds; enhanced penalties

FPPC Position: *Sponsor*

Status: Assembly Elections Committee

Introduced: February 27, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/27/20)

Summary:

A violation of the Act's provisions, with certain exceptions, is punishable as a misdemeanor. The Act prohibits the use of campaign funds for certain purposes, including expenditures that confer substantial personal benefit that are not directly related to a political, legislative, or governmental purpose. These prohibitions are not subject to certain penalties, including the misdemeanor penalty described above.

This bill would subject a person who misuses campaign funds in violation of these requirements resulting in an unlawful direct personal benefit with a monetary value of \$10,000 or more to that misdemeanor penalty and an administrative penalty collected by the Commission of up \$10,000 for each violation or three times the amount of the unlawful direct personal benefit.

Staff Comments:

The Commission has prioritized the enhancement of penalties for illegal personal use of campaign funds. Assembly Bill 2505 would allow for increased administrative penalties and potential criminal penalties for egregious misuse of campaign funds resulting in unlawful direct personal benefit. Commission voted to adopt sponsor position at the April Commission meeting.

Active Bills (#3-10)

3. [SB 423](#) (Umberg): Committee Bank Accounts

FPPC Position: *None*

Status: Assembly Elections Committee, May 30, 2020

Amended: May 5, 2020

Last Action: From committee with author's amendments. Read second time and amended.

Re-referred to Committee on E & R. Bill to change from its original language to be used as emergency legislation relating to the November election and voting centers.

Summary:

This bill would declare the intent of the Legislature to enact legislation to require county elections officials to establish and maintain a minimum number of polling places and vote centers for the statewide general election to be held on November 3, 2020.

Staff Comments:

The bill, as amended, does not concern matters within the jurisdiction of the Commission. Staff recommended and the Commission voted to remove its position of “sponsor”

4. [AB 2151](#) (Gallagher): Local Campaign Filings; online filing and disclosure systems

FPPC Position: Support if Amended

Fiscal Estimate: \$381,600 first year, \$360,000 ongoing

Status: Enrolled

Introduced: February 5, 2020

Last Action: Passed Senate on Consent, Aug. 28, 2020

Summary:

Would require a local government agency to post on its internet website a copy of any specified statement, report, or other document filed with that agency in paper format within 72 hours of receiving the statement, report, or other document. This bill would require that the statement, report, or other document be made available for four years from the date of the election associated with the filing. By imposing a new duty on local government agencies, this bill would impose a state-mandated local program.

Staff Comments:

Earlier this year, Assembly Bill 322 died because it missed key legislative procedural deadlines. Assembly Bill 2151 is the re-introduction of AB 322. In 2019, the Commission adopted a “support if amended” position with a simple request to extend the proposed retention period from four years to ten years. The ten-year retention period would align the bill with the electronic document retention timeline under paragraph (i) of Section 84615. Commission voted to adopt a “support if amended” position at its April Commission meeting to ensure continuity in the Act’s retention policies. Fiscal analysis asked by and provided to Finance Department finds the FPPC would require 3 new positions with a one-time cost of \$381,600 and ongoing costs of \$360,000.

5. [AB 2467](#) (Levine): **Misuse of funds**

FPPC Position:

Status:

Introduced: May 5, 2020

Last Action: Introduced, referred to

Summary: This bill would prohibit a state or local government agency from expending public money for a public communication that clearly identifies a candidate or ballot measure, except as provided.

The new legislation aims to address two issues with current state of the law: (1) Permit the FPPC to enforce the underlying prohibition against the use of public funds for campaign activity due to the lack of enforcement by law enforcement, and (2) clarify the distinction between permissible educational materials and impermissible campaign activity by public agencies..

Update: The author's office informed Commission staff they would not be pursuing the legislation this session but intend to introduce the legislation next year.

6. [AB 2889](#) (Mullin): **Default Local Contribution Limits**

FPPC Position: Support

Status: Assembly Elections Committee, hearing postponed (03/16/20)

Introduced: February 21, 2020

Last Action: AE hearing postponed (03/16/20)

Summary:

For a candidate for elective state office other than a candidate for statewide elective office, the limitation on contributions is \$3,000 per election, as that amount is adjusted by the Fair Political Practices Commission in January of every odd-numbered year. The act, beginning January 1, 2021, subjects a candidate for city or county office to this contribution limit. However, this contribution limit and related provisions of the act do not apply in a jurisdiction in which the county or city imposes a limit on contributions.

This bill would clarify that the contribution limitation and related provisions of the act would not be applicable to a candidate for elective county or city office that is subject to a mandatory limit on contributions adopted by the city or county.

Staff Comments:

In 2019, Assembly Bill 571 (Mullin) was chaptered and, starting January 1, 2021, would require city and county elections to be subject to a state default contribution limit. A jurisdiction may avoid the default limit if it adopts a limit different than the state's limit for state legislative offices. Assembly Member Mullin introduced Assembly Bill 2889 at the request of Commission staff to address two significant issues with AB 571: 1) whether default contribution limits should apply to jurisdictions with voluntary contribution limits and 2) how default contribution limits would apply to jurisdictions where only some offices had limits under local ordinances and other offices do not.

This bill would provide the policy “clean up” necessary to administer the local default contribution limits in 2021. Commission voted to adopt a “support” position at its April Commission meeting.

Update: Author’s office informed Commission staff they will not pursue this legislation this session but plan to address next year.

7. [AB 1217](#) (Mullin): DISCLOSE Act – Issue and Electioneering Ads

FPPC Position: *Support if Amended*

Fiscal Estimate: \$1,026,259 for first year and \$977,259 for ongoing

Status: Assembly Appropriations Committee – Suspense File

Amended: April 29, 2019

Last Action: Referred to Assembly Appropriations Committee Suspense File (05/08/19)

Summary:

This bill does the following:

1. Amends the definition of “advertisement” in the PRA to include “electioneering communication,” “issue advocacy advertisement,” and “major advertiser.” The bill designates “top contributors” established under the Disclose Act as “top funders.” Also, defines “nondonor funds,” “small donor funds,” and “lobbying donor.”
2. Adds definition of “lobbying-available donation” to mean payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, except if full and adequate consideration is received (or if it is clearly not made for lobbying purposes). Describes what is and is not a “lobbying-available donation.”
3. Would adopt disclaimer requirements of “major advertisers” and “top funders” of an issue advocacy ad totaling \$50,000 or more in a calendar year and require disclosure of three highest lobbying-available donations of \$10,000 or more, as specified.

Staff Comments

Assembly Bill 1217 would adopt disclaimer requirements for ads defined as “electioneering” and “issue advertisements.” This ambitious bill suffers from structural deficiencies that would make interpretation, administration, and enforcement difficult. Some of the deficiencies include:

1. The provisions of these non-campaign related communications are being added to the Chapter and Article of the Act previously exclusive to campaign ads. Inserting unrelated, non-campaign terms and requirements into the campaign advertising sections will severely complicate portions of the Act already filled with complexity.
2. Enforcing the provisions of this bill would require resource-heavy investigations of issue and electioneering ads because there would be no corresponding disclosures filed with filing officers disclosing “lobbying-available donations” and payments for communicating.

3. Establishes pre-election timing thresholds (60 days before a general or special election, 30 days before a primary election) that are substantively different than current electioneering requirements under Section 85310 (within 45 days of any election).

In addition to potential policy and structural issues, FPPC staff believes this bill could lead to legal challenges over its constitutionality.

In August 2019, Assembly Member Mullin decided to make AB 1217 a two-year bill in order to work with the FPPC and other stakeholders on address ongoing issues with the bill. There have been no follow-up stakeholder meetings since August 2019.

Update: Author's office has indicated to Commission staff that they do not intend to pursue this legislation this year.

8. [AB 2079](#) (Kiley): Contribution Prohibition on Investor Owned Utilities

Status: Assembly Elections Committee

Introduced: February 5, 2020

Last Action: In Assembly Elections Committee, hearing postponed (03/16/20)

Summary:

This bill would prohibit an investor-owned utility from contributing to a candidate for elective state office. The bill would also prohibit a candidate for elective state office from accepting a contribution from an investor-owned utility.

Staff Comments:

There are three major investor-owned utilities (IOU) operating within California: Pacific Gas & Electric, Southern California Edison, and San Diego Gas and Electric. The constitutionality of such a provision is not clear. The courts have upheld contribution restrictions where the law is "closely drawn to avoid unnecessary abridgment of associational freedoms." Courts have upheld bans on campaign contributions by corporations, lobbyists, and government contractors. With the current legislation, the rationale for a complete ban on contributions by IOUs has not been articulated making it difficult to assess the constitutionality at this point.

9. [AB 3078](#) (Garcia): Behested Payments

Status: Assembly Elections Committee

Introduced: February 5, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/20/20)

Summary:

This bill would provide that an elected officer or member of the Public Utilities Commission is not required to report payments made in response to an invitation to an event hosted by a nonprofit organization unless the elected officer or member of the Public Utilities Commission, or an agent thereof, makes a direct written or verbal request for a payment for a legislative, governmental, or charitable purpose. The bill would specify that an elected officer or member of

the Public Utilities Commission is not considered to have made a direct written request solely because the name, signature, photograph, or similar identifying information of the elected officer or member of the Public Utilities Commission is included in the invitation to the event.

Staff Comments:

Staff met with Author's staff and expressed concerns that the current language may significantly reduce the amount of activity that would be subject to public disclosure under the behested payment rules. Author's staff responded the intent was a very narrow expansion and agreed to work with Staff to determine the need and to help develop language if needed.

Update: Author's office has indicated to Commission staff that they do not intend to pursue this legislation this year.

10. [SB 300](#) (Umberg): Political Reform Act; Foreign Contributions

FPPC Position: *Support*

Status: Assembly Elections Committee

Amended: March 20, 2019

Last Action: Referred to the Assembly Elections Committee. No hearing set. (5/30/19)

Summary:

This bill would expand prohibitions against foreign influence in campaigns to include contributions, expenditures, or independent expenditures in connection with the qualification or support, or opposition to, a state or local candidate. The act would change the fine to an amount up to the greater of \$10,000 or 3 times the amount contributed or expended.

Staff Comments:

In 2016, the FPPC supported near-identical legislation ([AB 2250 – Ridley-Thomas](#)) to address a potential gap in the PRA related to foreign contributions to state and local candidates. Federal law generally prohibits foreign nationals from spending money in *any* U.S. election. The federal law is one of the issues before the U.S. Supreme Court in [United States v. Ravneet Singh](#). SB 300 may provide a backstop in California if the Court rules against the federal government.

11. [SB 1014](#) (Allen): Recall Elections; contribution limits

Status: Senate Elections Committee

Introduced: February 14, 2020

Last Action: March 31 hearing postponed by Elections Committee (03/17/20)

Summary:

This bill would require an elected state officer to comply with the contribution limits for contributions to oppose a recall. The bill would only become operative if Senate Constitutional Amendment 2 of the 2019—20 Regular Session is approved by the voters.

Staff Comments:

Senate Bill 1014 is only operative if Senate Constitutional Amendment 2 is approved by the voters. SCA 2 would change how a state officer is listed on the ballot in a recall. Under the proposed recall process, recall elections featuring a state elected office would no longer be

considered ballot measures, thus a limit on contributions may be appropriate under court precedent. Senator Allen plans on placing SCA 2 on the November 2020 ballot.

Spot Bills (#11-12)

1. **[AB 2599](#) (Rivas): Political Reform Act; Commission**
Status: Dead
Introduced: February 20, 2020
Last Action: Failed deadline (06/05/20)

2. **[SB 1436](#) (Grove): Political Reform Act; post government employment**
Status: Introduced
Introduced: February 21, 2020
Last Action: Referred to Senate Rules Committee (03/12/20)