



(Approved April 10, 2025)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, March 20, 2025
10:00 a.m.

Present: Chair Silver, Commissioner Ortiz, Commissioner Wilson and Commissioner Brandt

Executive Staff Present:

Galena West, Executive Director
Dave Bainbridge, General Counsel
Angela J. Brereton & Christopher B. Burton, Assistant Chiefs of Enforcement
Shrdha Shah, Chief of Audits and Assistance
Jue Wang, PhD, Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Shery Yang, Communications Director

Call to Order.

Chair Silver called the meeting to order at 10:05 a.m.

1. Public Comments for items not on the agenda.

A commentor gave comments on a closed FPPC case and investigative activities related to public officials in the City of Dixon.

Chair Silver and Commissioner Wilson emphasized their confidence in the Enforcement Division.

2. Approval of Commission Meeting Minutes.

MOTION: To approve the November 2024 meeting minutes. Moved by Commissioner Ortiz, seconded by Chair Silver. The motion passed 4-0.

Consent Calendar.

3. In the Matter of Lucia Gutierrez. FPPC No. 21/024.

Commissioner Wilson emphasized the severity of the allegations and conclusions reached by the Enforcement Division. He asked if the respondent needed to file a Form 700. Assistant Chief of Enforcement Angela J. Brereton responded that typically, a person in the respondent's office would file Form 700s, this respondent did not. However, the issue would not have been disclosable on a Form 700.

Chair Silver agreed with Commissioner Wilson and noted the violation's severity.

MOTION: To approve the item. Moved by Chair Silver, seconded by Commissioner Wilson. The motion passed 4-0.

4. Adoption of Proposed Regulation 18720; Annual Statements of Economic Interests; 2025 Filing Date Extension.

Commission Counsel Simon Russell presented the item.

Chair Silver complemented the Legal Division on their quick action drafting and proposing this regulation in response to the Los Angeles wildfires.

Chair Silver reiterated a request to the Legislature that criteria for future filing extensions be adopted through the legislative process.

MOTION: To approve denial of the motion to vacate. Moved by Commissioner Brandt, seconded by Commissioner Wilson. The motion passed 4-0.

5. Adoption of Proposed Repeal and Amendment of Levine Act (Section 84308) Regulations and Related Regulations (Amend 18360.1, 18438, 18438.2, 18438.4-18438.8, 18705; Repeal 18438.3).

Senior Commission Counsel Kevin Cornwall and Commission Counsel Toren Lewis presented the item.

Regulation 18438.2

Commissioner Brandt asked whether the Legal Division had considered legislative intent in relation to changes made to the law through regulation. Mr. Cornwall responded that various definitions of ‘competitively bid’ were used in formulating the regulatory change, including legislative materials. Mr. Cornwall stated that SB 1181 had been drafted to clarify issues in prior FPPC regulations relating to definitions of ‘competitively bid,’ but was later made more general.

Commissioner Brant raised a concern submitted by California Common Cause that this language did not allow for actors to use discretion and preference in choosing a bid that was not lowest submitted proposal. He asked if current FPPC regulations are inconsistent with statutory language. Mr. Cornwall stated that the language is technically inconsistent.

Commissioner Brandt asked if the language bars the FPPC from restricting the regulatory language to the ‘lowest’ or ‘highest’ bid. Mr. Cornwall responded that the language and legislative history restricts the FPPC from specifying lowest and highest bids in regulations. He elaborated that he did not believe the scenarios raised by California Common Cause are relevant because they are addressed in statute.

Commissioner Brandt asked if the scenarios identified by California Common Cause meet the requirements for exemption. Mr. Cornwall stated that they do not because the jurisdiction is not required by law or policy to be awarded pursuant to a competitive process.

Commissioner Ortiz asked how agencies will choose bidders if they are no longer required to accept the lowest offer presented. Mr. Cornwall responded that the legislative intent indicates a wider amount of discretion for agencies in choosing bidders within a competitive process.

Commissioner Ortiz asked if agencies need to establish criteria for identifying a competitive process. Mr. Cornwall responded that this varies based on the situation, some state laws provide definitions for activities such as public works contracts or education. Competitive processes have been established but may vary from the current definitions.

Commissioner Brandt confirmed that staff will continue to read exemptions narrowly.

General Counsel Dave Bainbridge confirmed.

Chair Silver summarized that the regulated community and good governance groups are seeking clarity to help advise public officials. He noted that legislative history states a desire to make the law ‘workable’ and clear, which leaving Regulation 18438.2 arguably does. However, Chair Silver emphasized that despite that, the language in Regulation 18438.2 defining what is a ‘competitively bid contract’ conflicts with the relevant statute and thus should be repealed. The Chair encouraged stakeholders, including California Cities, California Common Cause, and the County of Los Angeles, and others, to continue providing feedback. He recommended following counsel’s recommendation to remove the definition of ‘competitively bid contract’ currently in regulation and identify additional situations which may require unique regulations. Mr. Cornwall added that stakeholders should help the FPPC identify discrepancies between their processes and regulations.

Commissioner Wilson agreed and asked that city attorneys be educated on the issue.

Commissioner Ortiz added that agencies should be educated.

PUBLIC COMMENT: Sean McMorris of California Common Cause stated that the definitions of ‘competitively bid’ and ‘competitive process’ are not adequately defined in the law.

Chair Silver and Commissioner Brandt thanked Mr. McMorris for his comments.

Commissioner Brandt encouraged California Common Cause to continue working with the FPPC.

Regulation 18438.6

Commissioner Ortiz clarified that the regulation applies specifically to officials who accept contributions while running for election to central committees. Mr. Lewis confirmed.

Regulation 18360.1

Chair Silver stated that he thought it was best to reexamine the qualifications for assigning a case to streamline enforcement once there were five members on the Commission.

Commissioner Ortiz asked for clarification on how cases are assigned to enforcement processes and how public harm is measured. She also asked how much discretion enforcement officers have. Executive Director Galena West responded that an overview of the enforcement process was being prepared for the Commissioners.

Chair Silver clarified that the motion is to adopt the regulatory changes as proposed and separately ask staff to continue to solicit comment from the regulated community regarding a definition of ‘competitively bid contract’ or ‘competitive process’ that would provide greater clarity to those attempting to advise on and comply with Section 84308.

MOTION: To adopt the amendments as proposed. Moved by Chair Silver, seconded by Commissioner Ortiz. The motion passed 4-0.

6. Regulation Projects and Schedule for 2025.

General Counsel Dave Bainbridge presented the item.

Commissioner Brandt asked how regulations are developed before they are presented to the Commission. Mr. Bainbridge responded that topics are assigned to attorneys, who research the regulatory history, meet with the group to discuss goals and draft the regulation. Then the Executive Director and Chair review the regulation before it is added to the Commission agenda for prenotice. The Commission provides comment, public comment is taken, changes are made, and the regulation is presented to the Commission for adoption two months later.

Commissioner Brandt asked whether issues from stipulations are considered in regulations. Mr. Bainbridge responded that issues from stipulations occasionally inspire regulations because cases may not be prosecuted because of issues in the law, which lead to additional regulation. More often they arise from issues brought to our attention from advice letters.

Commissioner Wilson asked how often legislative intent is considered. Mr. Bainbridge responded that legislative intent is very influential on regulations and staff attorneys spend significant amounts of time researching legislative history.

MOTION: To approve the item. Moved by Chair Silver, seconded by Commissioner Ortiz. The motion passed 4-0.

7. Legislative Update.

Senior FPPC Legislative Counsel Lindsey Nakano presented the item.

Ab 775 (Fong) Behested Payment Reporting

Chair Silver stated that he is passionate about supporting this bill and its potential to secure greater meaningful transparency for the public and increase scrutiny over behested payments.

He thanked the author for pursuing this legislation.

AB 808 (Addis) Consistency with the Cal Access Replacement System

Commissioner Wilson asked Ms. Nakano to explain spot bills. Ms. Nakano explained that these bills make non-substantive changes to the law, which can be used as placeholders to make substantive changes later.

Ms. Nakano asked for the Commission to support and sponsor the eight Commission-sponsored bills –

AB 359 (Ramos) – Extension of Local Contracting Authority

AB 775 (Fong) – Behested Payment Reporting

AB 808 (Addis) – Spot bill: Cal-Access Replacement System Clean-Up Bill

AB 953 (Pacheco) – Spot bill: Foreign Interference in CA Elections

AB 1029 (Valencia) – Disclosure of Cryptocurrency

AB 1286 (Boerner) – Intent Bill: Disclosure of Prospective Employment

SB 280 (Cervantes) – Contributions in State and Local Offices and Buildings

SB 852 (Committee on Elections and Constitutional Amendments) – PRA Bill Notifications

MOTION: To support and sponsor the eight Commission-sponsored bills. Moved by Chair Silver, seconded by Commissioner Brandt. The motion passed 4-0.

AB 1370 (Patterson) Nondisclosure Agreements

Commissioner Brandt asked what inspired the bill. Ms. Nakano responded that she was not aware of specific instances of NDA use in the legislature but believed that it was preventative to ensure all discussions of legislation were public record.

Chair Silver stated that he contacted the author's office over concerns that this was not appropriate to include in the Political Reform Act.

Commissioner Wilson asked that clear examples be outlined before the FPPC takes a position on the bill.

8. Executive Staff Reports.

Assistant Chief of Enforcement Christopher B. Burton and Ms. Brereton submitted the Enforcement Division Report.

Chief of Audits and Assistance Division Shrdha Shah submitted the Audits and Assistance Division report.

Commissioner Brandt asked how audits originate. Ms. Shah explained that there are mandatory audits and discretionary audits. Discretionary audits are done at the behest of the Commission or issues brought to the attention of the division. The most recent discretionary audit was inspired by a newspaper article. Executive Director Galena West elaborated that the Administration and Technology Division is responsible for evaluating staff and organizational performance in response to Commissioner Brandt's question regarding audit scope.

Mr. Bainbridge presented the Legal Division Report and noted a new fact sheet on behested payment reporting.

Chief of Administration and Technology Dr. Jue Wang submitted the Administration and Technology Division Report and noted that this is the first year of mandatory e-filing. This year's on time filing rate has increased by five percent and the number of non-filers has decreased by five percent. Chair Silver congratulated the Division on their accomplishments and thanked them for their work.

Ms. West stated that 2024 Annual Report is now available. Chair Silver noted that in the past year, the FPPC prosecuted over 1,000 cases resulting in over \$800,000 in administrative fines, expanded the Political Reform Education Program and secured legislative victories expanding digital transparency. Chair Silver also thanked the prior Chair and Commissioners on their roles in the success of the agency in 2024.

9. Commissioner Comments and Proposed Future Agenda Items.

Chair Silver noted some ex parte communications regarding legislation.

MOTION: To adjourn the meeting. Moved by Chair Silver, seconded by Commissioner Ortiz. The motion passed 4-0.

The meeting adjourned at 11:52 a.m.

Respectfully Submitted,
Eva Hartman
Executive Fellow
Approved April 10, 2025

Adam E. Silver, Chair
Fair Political Practices Commission