

Meeting Minutes
(Unapproved and Subject to Change)
Fair Political Practices Commission
Law and Policy Committee Meetingⁱ
April 13, 2021 1:00 p.m.

The Law and Policy Committee will hold a committee meeting on April 13, 2021, at 1:00 p.m. The committee will meet to discuss and determine recommendations to make to the full Commission and the public can both listen and participate in the committee proceedings. To submit public comment prior to the meeting, email commasst@fppc.ca.gov. To participate in real time, visit <http://mediasite.fppc.ca.gov/> or call into the phone number listed at the bottom of this notice.

1. Public Comment for items not on the agenda.

2. Approval of March 15, 2021 minutes.

MOTION: To approve March 15, 2021 Committee minutes. Moved by Commissioner Baker, seconded by Chair Miadich. The motion was approved 2-0.

3. Legislative Update. Staff: Lindsey Nakano, Legislative Counsel. The Committee will receive an update on the progress of PRA related legislation and future legislation approved by the Commission.

Linsey Nakano, Legislative Counsel, gave an update on current legislation relating to the PRA. SB 686, a commission sponsored bill by Senator Glazer relating to LLC disclosure returned in the senate elections committee yesterday, and the bill passed in the committee 4-1 with Senator Nelson voting no. The bill has support from the League of Women Voters of California, and the California Chamber of Commerce submitted a letter in opposition. The goal of SB 686 and AB 236, the identical bill on the Assembly side, is to shed light on the true source of funds used by LLCs in elections in the State. The regulations only get at the responsible officer and this disclosure does not tell the public where those expenditures came from or who the source of the funds came from. The goals of the two bills are separate and different from the goals of the new regulation. The regulation became effective at the end of August of last year, and the Commission has received several questions about them. There have been no advice letters or indication of compliance difficulties.

AB 236, by Assembly Member Burman, is a commission sponsored bill relating to LLC disclosure and currently identical to SB 686. The bill will be heard in the committee on Thursday, April 15th.

AB 1367, by Assemblymember Low, is also being conferred in the committee on Thursday, April 15th.

Per the author's office, the bill will be amended to remove the one bank account provision and only retain the increased penalty for egregious personal use of campaign funds. There were some questions and concerns from stakeholders and the one bank account provision may be added back later.

Commissioner Baker asked for more information on the concerns about the one bank account rule and if there is a possibility to add it to this legislative cycle if the issues are resolved. Ms. Nakano stated that staff are getting details about the concerns, but the concerns were enough for the author's office to remove at this point.

AB 1590, introduced on March 18th, a bill by the Assembly Election Committee, contains two sections, one which makes a non-substantive correction to existing law and one that would transfer the duty to collect the penalty for failure to pay the annual committee fee from the FPPC to the SOS who are currently responsible for collecting the original fee. The FPPC would no longer be involved in enforcement of the provision. The section was included in the bill at the request of staff and the Commission voted to pursue the proposal last year. Staff recommend that commission adopt a support position for AB 1590 for those reasons.

AB 319 by Assemblymember Valladares, will prohibit a foreign government or principle from making contributions, expenditures, or independent expenditures in connection to an election of a candidate, state, or local office. It would prohibit the solicitation or acceptance of those contributions. Existing state laws currently prohibit these foreign contributions and expenditures if they are made in connection with a state or local ballot measure. The prohibition added by this bill currently exists at the federal level, federal law prohibits foreign nationals from making and persons from soliciting or accepting contributions to federal, state, or local elections. Federal law applies to foreign nationals and state law applies to foreign governments or principles. Under the definitions for those terms, state law does not

apply to individuals who are legally present in the USA. According to the author's office, AB 319 is needed because the FEC is extremely backlogged and deadlocked and is not enforcing the federal prohibition. AB 319 would allow the FPPC to enforce the prohibition when the FEC does not. The proposal originated with the commission's enforcement division in 2016 and has appeared in former legislation. AB 319 has support from Common Cause and the Election Integrity Project of CA.

Assemblymember Vallederez's staff inquired if the Commission would support the bill.

SB 459 by Senator Allen can be separated into two categories: lobbyist reports and lobbying advertisements. There are three main elements for the lobbyist reports. The first is that the bill adds to what needs to be reported by lobbying firms and employers, specifically that they must include the names or number of each bill or administrative action lobby for each client and the publicly communicated client position. Second, the bill increases the frequency of reporting from quarterly to monthly for those that meet certain monetary thresholds. Third, the bill requires an additional report during the 60 days before the legislative deadline to pass bills. Lobbyist Employers will be required to file a report within 72 hours of retaining a lobbying firm and the report would include amount paid or will be paid. The lobbying advertisement element of the bill will require lobbyist employers to file an additional report following a calendar quarter in which they spend \$5,000 or more on issuing lobbying advertisement. The bill defines issue lobbying advertisement as a communication that refers to a pending legislative or administrative action that urges a particular result. The bill will also require the advertisement to also include a disclosure that states the lobbyist employer that paid for the ad and that a copy of ad to be provided to the officials who were identified in the ad. The provisions would take effect January 1st, 2023. Commission staff has been communicating with the author's office and they have asked for Commission support if they add monthly reporting in the third quarter.

AB 975 by Assemblymember Luz Rivas, requires electronic filing of statements of economic interests for whom the Commission is the filing officer and extends the time for gifts to be returned, reimbursed, or donated within 30 days of the calendar quarter in which it was received. Commission staff have

recommended amendments regarding the e-filing and capping the gift limit to \$500. The author's office has not indicated amendments regarding the e-filing but have indicated no interest with the monetary gift limit.

MOTION: To recommend a support position for AB 1590. Moved by Chair Miadich, seconded by Commissioner Baker. The motion was approved 2-0.

Commissioner Baker reported an ex parte communication with the author's office of AB 319.

MOTION: To recommend a support position for AB 319. Moved by Chair Miadich, seconded by Commissioner Baker. The motion was approved 2-0.

Chair Miadich stated he has a concern adding disclaimer requirements to issue ads and asked if there is a severability clause or clarifying language for SB 459 if someone challenged the provision. Ms. Nakano stated that there is no severability clause, but it is something that staff can recommend to the author.

Chair Miadich asked if there was feedback from the author's office or stakeholders on administrative or costly burdens if switched to monthly filings. Ms. Nakano stated that she did not have any current information, but it is triggered by the monetary payments the firms have received.

Chair Miadich asked about the fiscal impact and potential spike in the workload caused by the disclaimers. Ms. Nakano stated that they were still assessing the fiscal impact and workload, but it would cause a notable effect.

Trent Lange, California Clean Money Campaign, stated that they are strong supporters of SB 459. Mr. Lange stated that they were unable to determine the amount of issue ads and how much money were spent on them due to the lack of required reporting. Mr. Lange said that he would like to discourage the Commission from requesting or requiring the author to amend the bill to require monthly filing for all lobbyist employer entities due to the possible financial impact for smaller lobbying firms.

Commissioner Baker commented about the AB 975 gift reporting time period and stated that the time period should not be extended.

Chair Miadich asked Ms. Nakano what was animating the author's proposed change on the time for returning or reimbursing the gifts. Ms. Nakano stated that if the gift is from a lobbyist, they don't report the gift until

the end of the calendar quarter which, according to the author's office, does not give the person who attended the event enough time to return or reimburse the gift.

Chair Miadich asked if the lobbying firm had an estimated cost per guest for an event, is there anything to prevent the host from informing their guest the evaluated cost upfront so the guest may act accordingly to report the gift's value. Mr. Bainbridge stated that nothing would prohibit the lobbyist employer from providing that information prior to the event. Chair Miadich then asked if the individual accepting the gift reports the estimate, could they then amend their report if the price tag changed. Mr. Bainbridge responded that the 30 days is the period to pay down or pay back the gift, so it is no longer considered a gift and not required to be reported.

Chair Miadich asked about SB 752 regarding campaign advertisements. Ms. Nakano stated that the bill is related to changing the rules for advertisements relating to the disclose act. The bill has been referred to a committee but has not set for hearing yet. Chair Miadich asked if there has been a fiscal impact study conducted due to the potential costs to the agency. Ms. Nakano stated that it makes several changes to the content and form of disclaimers on advertisements, which could create additional questions, advice letters, and enforcement issues leading to potential additional cost for enforcement and advice but that a fiscal estimate has not been finalized.

Trent Lange, California Clean Money Campaign, stated that the level of prescriptiveness has worked very well in creating transparency, and that is the goal of the bill.

Chair Miadich asked Mr. Lange if their group has considered setting a standard in statutes and then allowing the Commission through the regulatory process to set out the factors of the guidelines for what is acceptable and what is not in order to keep up with the changing of technologies. Mr. Lange stated that in their experiences and reports of using terms such as "easily readable" is that they have been severely abused. He stated that broad, non-prescriptive terminology has been abused frequently. Mr. Lange did welcome a conversation with staff to further discuss.

4. Discussion of disclosure on electronic media advertisements. Staff: Sukhi Brar, Assistant General Counsel and Toren Lewis, Commission Counsel.

Mr. Lewis summarized the areas of proposed regulatory changes. The first area of proposed changed would be some amendments to regulation 18421.5, the blogger regulation, to include social media influencer advertisements, op-ed or article advertisements, and harmonization between the regulations and the Act. Mr. Lewis stated that the next area of proposed regulatory changes were new regulations regarding disclosure required on electronic advertisements. Chair Miadich asked for more clarification on Mr. Lewis's memo about the various recommended disclosures. Mr. Lewis stated that the regulation 18421.5 requires heightened reporting in the case of a third party being paid to post advertisements but it may be met under the current regulation by insuring the post discloses that they are an advertisement, however that requirement is not harmonized with the disclosure requirement of the act.

Trent Lange, California Clean Money Campaign, states that he agrees with the disclaimer decision for videos.

5. Discussion of items for May 2021 Committee meeting. Committee members and staff will discuss proposed agenda items for the May 2021 committee meeting.

Chair Miadich stated there will be a legislative update, continued dialogue on the electronic media advertisement regulations, and that Commissioner Baker has expressed interest in behest payments. Commissioner Baker stated that during the behest payment conversation, that they should discuss how nonprofits are used and the nonprofits that candidates may be connected to for July to reflect any updates from May.

MOTION: To adjourn the meeting. Moved by Chair Miadich, seconded by Commissioner Baker.

The meeting concluded at 2:36 p.m.
