

Recent Changes to the Political Reform Act

Below are summaries of the legislative and regulatory changes made to the Political Reform Act (Act) in 2018. All of the legislative provisions except for AB 2188 and SB 1239 take effect January 1, 2019. To view the full text of the bills, visit: <http://leginfo.legislature.ca.gov/>. To view the full text of the FPPC regulations, visit: <http://www.fppc.ca.gov/the-law/fppc-regulations.html>.

Legislative

Advertising disclosure rules: This bill cleans up the advertisement disclaimer rules that went into effect in 2018. The bill excludes additional types of communications from the definition of advertisement and makes various amendments to formatting requirements for advertisements. For committee advertisements that support or oppose a candidate, the new rules exclude certain nonprofit entities and persons who have prohibited the use of their contributions to support or oppose candidates from the determination of top contributors. The bill also prohibits the Commission from interpreting or construing specific provisions in the Act, such as allowing the Commission to establish any threshold in quantity or amount that are not specified in those provisions. (AB 2155 (Mullin) – Chapter 777, Statutes 2018)

Commission contract with local jurisdictions: The Commission is now authorized to have primary responsibility for the impartial, effective administration, implementation, and enforcement of local campaign finance and governmental ethics laws for any local jurisdiction upon the adoption of an agreement between the jurisdiction and the Commission. Jurisdictions with populations greater than three million are not authorized to contract with the Commission. The Commission must provide a report to the Legislature about the agreement by January 1, 2025. (AB 2880 (Harper) – Chapter 394, Statutes 2018)

Social media disclosure rules: This bill modifies the disclaimers required for electronic media advertisements. Changes include requiring disclosures on a committee's profile, landing page, or similar location to be on the cover or header photo when the page is viewed by commonly used electronic devices. Committees that disseminate advertisements on an online platform will be required to expressly notify the platform of specific information required by this bill. The bill requires online platforms to maintain a public record of any advertisement disseminated on the online platform by a committee that purchased \$500 or more in advertisements during the preceding 12 months. (AB 2188 (Mullin) – Chapter 754, Statutes 2018; Effective January 1, 2020)

Comprehensive changes for Secretary of State's new electronic filing system: Certain provisions related to the filing and processing of campaign reports and statements are recast to provide for the filing, verification, delivery, amendment, retention, and inspection of those documents online and electronically. The bill also repeals various obsolete or extraneous provisions of the Act and other technical, non-substantive changes. The bill changes the deadline for payment of the annual fee (\$50) required to be paid by each committee to April 30. The bill requires the Secretary of State to post public funding details listing the top contributors on the Secretary's website. This bill does not become operative until the Secretary of State certifies the new Cal-Access System. (SB 1239 (Hertzberg) – Chapter 662, Statutes 2018)

Regulatory

AB 249/The Disclose Act

Regulation 18247.5 – Primarily Formed Committees: Amended to remove language that interpreted Sections 84503 and 84504 of the Act, which were repealed and replaced by AB 249.

Regulation 18401 – Required Recordkeeping: Existing Section 84104 requires each candidate, treasurer, principal officer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that they were properly filed and to otherwise comply with the Act. Regulation 18401 further clarified these recordkeeping requirements regarding electronic mass mailings and earmarked funds.

Regulation 18402 – Committee Names: Regulation 18402(c) sets forth the Act's rules governing committee names and 18402 was amended to conform with new naming conventions. Additionally, changes were made to remove or correct cross-references to amended or repealed sections of the Act and regulations.

Regulation 18420 – Reporting of Campaign Contributions and Expenditures of State or Local Government Agencies: Defines when a payment made by a state or local government agency is a contribution or expenditure under the Act and included a reference to Regulation 18225, which further defines the term "expenditure" under the Act. However, Regulation 18225 was repealed. Regulation 18420 was amended to replace a reference to Regulation 18225 with a reference to new Section 82025.

Regulation 18420.1 – Payments by State or Local Agencies for a Campaign Related Communication: Amended to replace a reference to Regulation 18225 with a reference to Section 82025 because AB 249 moved the provisions found in Regulation 18225 into Section 82025.

Regulation 18423 – Payments for Personal Services as Contributions and Expenditures: This regulation defines when payments made by an employer to an employee for services performed by the employee for political purposes become a contribution under the Act and included a reference to Regulation 18225. However, Regulation 18225 was repealed. Regulation 18423 was amended to replace a reference to Regulation 18225 with a reference to new Section 82025.

Regulation 18432.5 – Intermediary: Section 84302 prohibits any person from making a contribution on behalf of another person, or from acting as an intermediary or agent of another, without providing to the recipient of the contribution the full name, address, occupation and employer of the true source of the contribution as well as his or her own name, address, occupation and employer. The recipient of such a contribution must disclose both the intermediary and the true source of the contribution. AB 249 amended Section 85704 to incorporate intermediary disclosure requirements of Section 84302 for earmarked contributions. The Commission amended Regulation 18432.5 to incorporate this change.

Regulation 18435 – Definition of Mass Mailing: AB 249 amended Section 84305 to incorporate definitions of the terms “sender” and “pay for,” which were previously contained in Regulation 18435, as well as sender identification requirements for electronic mail, into Section 84305(e). The Commission adopted amendments to Regulation 18435 removing the language from the regulation that is now included in Section 84305.

Regulation 18440 – Telephone Advocacy: The prior version of Section 84310 prohibited a “candidate, committee, or slate mailer organization” from expending campaign funds to pay for telephone calls that are similar in nature and aggregate 500 or more in number if those calls advocate support of, or opposition to, a candidate, ballot measure, or both, unless the organization that authorized or paid for the call is disclosed to the recipient of the call. AB 249 amended Section 84310 so that the prohibition applies to a “candidate, candidate controlled committee established for an elective office for the controlling candidate, political party committee, or slate mailer organization” rather than a “candidate, committee, or slate mailer organization.” AB 249 also amended Section 84310 by adding new subdivision (d) to that section, which provides that “[t]his section does not apply to a telephone call that is paid for by an independent expenditure.” The Commission amended Regulation 18440 to incorporate these changes.

Regulation 18450.1 – Definitions. Advertisement Disclosure: Amended to remove duplicative language, update language regarding electronic communications, propose nonsubstantive clarifying language regarding the burden of proof for a claim of nondisclosure on electronic media communications due to impracticability, and relocate “aggregation rules” language for top contributors from another regulation.

Regulation 18450.5 – Amended Advertising Disclosure: Amended to eliminate language that was replaced by language added to Sections 84503, 84504 and 84509 by AB 249.

Regulation 18521.5 – Ballot Measure Committees Controlled by Candidates for Elective State Office: Amended to remove references to Section 84504, which was repealed and replaced by AB 249, and Regulation 18450.3, which was repealed.

Regulation 18531.10 – Communications Identifying State Candidates: Section 85310 requires any person who makes a payment of \$50,000 or more for a communication disseminated within 45 days of an election that clearly identifies a candidate for elective state office, but does not expressly advocate for the election or defeat of the candidate to file a report with the Secretary of State within 48 hours. Regulation 18531.10 defines terms used in Section 85310 and includes a reference to previously repealed Regulation 18225, which defined the term “expenditure” under the Act. The Commission amended Regulation 18531.10 to correct a reference to Regulation 18225 with a reference to Section 82025, which now contains the substance of former Regulation 18225.

Regulation 18533 – Contributions from Joint Checking Accounts: Regulation 18533 specifies the person or persons to whom a specific contribution is attributed when the contribution is made from a joint bank account. AB 249 set forth specific statutory disclosure requirements when a contribution is earmarked. The Commission amended Regulation 18533

to incorporate a reference to AB 249's earmarking provisions as they relate to contributions made from joint checking accounts.

Regulation 18901.1 – Campaign Related Mailings Sent at Public Expense: Amended to replace a reference to Regulation 18225 with a reference to Section 82025 because AB 249 moved the provisions found in Regulation 18225 into Section 82025. Also, deleted a reference to Regulation 18901 and replaced with a reference to Section 89002 because Senate Bill 45 moved the provisions in found in Regulation 18901 into Section 89002.

Commission Governance

Regulation 18308 – Commission Governance: States that the Commission has set forth regulations to specify the roles of the Commission, and its delegation of powers and duties to the Chair or the Executive Director, and establishes two standing committees consisting of two commissioners, from separate parties, other than the Chair.

Regulation 18308.1 – Authority of the Commission: Specifies the role of the Commission, including setting policy goals, approving the agency budget, interpreting and enforcing the Act, authorizing actions in court, sponsoring legislation, and adopting criteria to be followed by the Law & Policy Committee, Personnel Committee, and Executive Director. It also established the operational procedures and duties of the Law & Policy Committee and Personnel Committee, and specified the delegation of powers and duties to the Chair or the Executive Director.

Regulation 18308.2 – Authority of the Chair: Outlines duties of the Chair, including those for setting the agenda and conducting Commission meetings.

Regulation 18308.3 – Authority of the Executive Director: Includes a detailed accounting of the duties of the Executive Director.

Revolving Door Provisions

Regulation 18746.1 – Revolving Door; State One-Year Ban: Extended the one-year ban for members of the Legislature who resign, thereby bringing the regulation into conformity with Section 87406 as amended by AB 1620. The amendment specifies that the ban commences upon the effective date of the legislator's resignation and concludes one year after the adjournment sine die of the session in which the resignation occurred. The amendment also clarifies that "adjournment sine die" means the final termination of the legislative session.

Regulation 18746.3 – Revolving Door; Local Officials: Amended to bring Regulation 18746.3 into conformity with Government Code section 87406.3 as amended by AB 551. This amendment removed redundant language, harmonized new statutory language, and improved readability.

Regulation 18746.4 – Revolving Door; Permanently Left and Leave of Absence: The prior version of Regulation 18746.4(b) defined “the date on which an official permanently leaves office or employment” for purposes of Regulations 18746.1 and 18746.3 as the date on which the official is no longer authorized to perform the duties of the office or employment and stops performing those duties. The amendment of Regulation 18746.4 amended subdivision (b) of that regulation so that the effective date of a member of the Legislature’s resignation from office is the date that that member permanently leaves office, bringing the regulation into conformity with Section 87406 as amended by AB 1620.

Other Regulations

Regulation 18215.4 – Cryptocurrency Contributions: Prohibits all cryptocurrency (e.g. “Bitcoin”) contributions.

Regulation 18535 – Restrictions on Contributions Between State Candidates: Amended to expressly permit unlimited contributions from a state candidate to another state candidate’s legal defense fund or candidate controlled ballot measure committee.

Regulation 18700.2 – Parent, Subsidiary, Otherwise Related Business Entity – Defined: Amended to better clarify when an official’s interest in a business entity is also an interest in that business entity’s parent, subsidiary or otherwise related business entity for purposes of the Act’s conflicts of interest provisions. Also, provided an exception to when an official has an interest in a parent or subsidiary of a business entity when the subsidiary has not been listed on reports filed by the parent corporation with the SEC or on an annual report and the official has stock ownership below a certain threshold.