



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **June 15, 2023**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **June 13, 2023**.

BACKGROUND/OVERVIEW:

Governing Statutes. The Commission has “primary responsibility for the impartial, effective administration and implementation of [the Act].” (Section 83111.) The Commission has authority to initiate investigations of possible violations of the Act under Section 83115, which states: “Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action....”

In conducting investigations, the Commission has the statutory power to compel the production of documents or the attendance of witnesses by administrative subpoena under Section 83118, which provides: “The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission’s duties or exercise of its powers.”

In addition to the specific provisions of the Act, the Government Code provides general authority for all state agencies to investigate matters under their jurisdiction. (Sections 11180-11191.) These provisions apply to subpoenas issued under both the general investigative power of a state agency (Section 11181) and statutes specific to the Commission. (See *People ex rel. Franchise Tax Bd. v. Sup.Ct.* (1985) 164 Cal.App.3d 526, 536-540 [subpoena issued by FTB enforced under statutes relating to FTB investigations] (disapproved on other grounds by *Dana Point Safe Harbor Collective v. Sup.Ct.* (2010) 51 Cal.4th 1, 11.)

The Commission has the general investigative power to issue subpoenas in connection with any investigation under Section 11181(e), which provides:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

In connection with any investigation or action authorized by this article, the department head may . . . [i]ssue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing as defined by Section 250 of the Evidence Code, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

Neither the Act nor the Government Code provide a requirement to seek voluntary disclosure of information before issuing an administrative subpoena.

Amendments to Regulation 18702.2. Staff proposes and the Commission may consider amending Regulation 18361.1 to address the procedure that staff must follow when issuing a subpoena. The scope of the regulatory proposal may include any and all aspects of Regulation 18702.2 including, but not limited to, proposed language to establish a specific definition of “reasonable efforts to obtain information voluntarily” by requiring that Commission staff seek to obtain information requested in an administrative subpoena on a voluntary basis by imposing a 21-day period before which an administrative subpoena may be served on a prospective recipient. The 21 days begins when staff communicates in writing to the prospective recipient requesting voluntary disclosure of information prior to the issuance of an administrative subpoena.

These proposed amendments will replace the existing subjective requirement, that staff make “reasonable efforts” to obtain voluntary disclosure, with a clear, objective definition of what constitutes “reasonable efforts.” This objective requirement: eliminates any confusion and undue delay caused by attempts to comply with an undefined subjective requirement; makes it easier for potential subpoena recipients and their counsel to understand and follow; and provides a clearly defined time frame that would promote and facilitate compliance with staff’s efforts to obtain voluntary disclosure.

REGULATORY ACTION: Amend 2 Cal. Code Regs. Section 18361.1 – Administrative Subpoenas.

SCOPE: The Commission may adopt the language noticed herein or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY: Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: Sections 83115, 83115.5 and 83116, Government Code.

CONTACT: Any inquiries should be made to John M. Feser Jr., Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. The language of the proposed amendment of Regulation 18361.1 can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.