STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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MEMORANDUM

To: Chair Remke and Commissioners Casher, Eskovitz, Wasserman and Wynne

From: Sukhi K. Brar, Senior Commission Counsel and Legislative Coordinator

Subject: Legislative Update

Date: September 4, 2015

The Legislature began the 2015-2016 Legislative session on December 1, 2014. This report includes a summary of the bills currently pending before the Legislature that would impact the Political Reform Act (the Act). Staff is also recommending the Commission take an oppose position on AB 1544.

AB 1544 (Cooley)

Introduced: July 15, 2015
Amended: August 20, 2015

Existing Law

A payment made by a person, organization or outside entity at the request of a candidate or a member of the Public Utilities Commission (PUC) that is made principally for legislative, governmental, or charitable purposes is presumed to be unrelated to a candidate's candidacy and therefore not subject to contribution limits or considered a campaign contribution under the Act. However, the Act does require candidates who are elected officers and PUC members to report such payments to their respective agencies as "behested payments" when they total $5,000 or more from a single source in a calendar year. The same type of payments requested by candidates who are elected officers or PUC members that are made by a state, local or federal government agency are also unlimited and not considered to be campaign contributions, but must be reported as behested payments, with limited exceptions. For purposes of the Act, an elected officer retains his or her status as a candidate for that office until the officer has terminated all of his or her committees and no longer holds the office.

In 2013, the FPPC was asked to provide advice on whether a member of the Legislature would have reporting requirements under the behested payment rules if the legislator contacted a local, state, or federal government agency to express his or her support for a payment to be made to a local government agency within the legislator's district. In our response (*Harrison* Advice Letter, No. I-13-106), the Legal Division concluded that such payments were *not* required to be reported as behested payments under a reporting exception found in Regulation 18215.3(c), which provides:

> "(c) A payment is not "made at the behest" of an elected officer under Section 82015(b)(2)(B)(iii) or PUC member under Section 82015(b)(3) and is not subject to reporting if the elected officer or PUC member makes a request for a payment 1) from a local, state, or federal governmental agency and 2) that payment will be used in the regular course of official agency business of the elected officer or PUC member's agency."

In reaching its conclusion, the Legal Division noted that legislators "have traditionally been expected to assist local agencies within their legislative districts in obtaining government funding for local government agency projects," and as such, "when a legislator acts to achieve this purpose, he or she is acting in the regular course of legislative business and bringing benefits, through the affected local government agency, to the state citizens whom he or she represents as constituents." However, the letter provided the caveat that "not all payments an elected officer 'behests' from a government agency" would be exempt from reporting, mentioning specifically that "a payment from a government agency to a private individual or entity, such as through a government grant or contract," could have benefits to specific, identified private persons, and thus may not be exempt from reporting.

Earlier this year, in response to a request for advice from the Executive Officer of the California State Coastal Conservancy (SCC) (*Schuchat* Advice Letter, No. A-15-070), the Legal Division cited the *Harrison* Advice Letter in concluding that "[a]n elected official has a 'behested payment' reporting obligation when he or she provides a letter to the [SCC] expressing support for a grant of funds to be made by the SCC to a nonprofit 501(c)(3) organization to carry out a specific project." The Legal Division concluded that grants made by the SCC to private nonprofit entities would "not be used in the regular course of official agency business of the elected officer" and therefore are subject to behested payment reporting.

Proposed Law

This bill is in response to and would overturn the *Schuchat* Advice Letter. The bill allows a payment made at the behest of a candidate who is an elected officer to be exempt from the behested payments reporting requirement *if* the payment is made by a state, local, or federal government agency and is principally for legislative or governmental purposes. The payment would be exempt from reporting requirements regardless of who received the payment, meaning the government agency could make the payment to another government agency, a nonprofit or a private third party and it would not have to be reported as a behested payment. This bill also contains an urgency clause which would make it effective immediately upon passage.

While staff recognizes that payments made by government entities could generally be for purposes related to the public good, staff is concerned this bill is not furthering the purposes behind the Act's behested payment reporting provisions because the entities receiving such payments could have ties to the officials requesting the payments.

Last year over $15 million in behested payments made by government agencies to outside entities were reported to the Commission by state elected officers and legislators alone - this total

does not include local elected officers who are also required to report behested payments. Those payments include a $10,000 payment by the California State University to the California Legislative Black Caucus, almost $6 million in technology grants from the California Energy Commission to Transportation Power, Inc., an $800,000 payment from the California Coastal Commission to the Maritime Museum of San Diego, and a number of large payments from the Governor's Office of Business & Economic Development to several private business entities for the California Competes Tax Credit program. Under this bill none of these behested payments would have to have been reported.

The purpose of the behested payment reporting rule is to inform the public of payments solicited by or made in coordination with state and local elected officers and PUC members that are not contributions, income or gifts, but in which the public would have an interest because of the actual or perceived influence such a payment would have on the official. The bill is also poorly drafted and further complicates an already complicated area of the law. Therefore, this bill eliminates disclosure and goes far beyond the narrow exception to behested payment reporting the Commission has carved out in its regulation; staff recommends that the Commission oppose this bill.

Status: Assembly Floor
Cost Estimate: Minor and absorbable
Staff Recommended Position: Oppose

Commission Supported Bills

AB 594 (Gordon)

Introduced: February 24, 2015
Amended: June 29, 2015

Existing Law

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures and imposing other reporting and recordkeeping requirements on campaign committees.

Currently, committees generally file two semi-annual statements every year covering all campaign activity for a period of six months. In election years, committees also file two pre-election reports as it gets closer to the election that provide an overall picture of that activity for each committee that is involved in the upcoming election. In addition to these reports, committees that make or receive contributions of $1,000 or more or make independent expenditures of $1,000 or more in the last 90 days before the election must file an additional report within 24 hours of such activity. Before 2013, this 24-hour reporting period covered only the last 16 days before an election but was expanded to the last 90 days in 2013.

Supplemental preelection reports are also required to be filed at specific times when a candidate or committee makes contributions of $10,000 or more in connection with an election. In reality, such activity has already been disclosed on the 24-hour reports making the filing of these supplemental preelection reports redundant and therefore unnecessary. Also, contribution limits were imposed after this filing requirement and due to those limits, this report is rarely triggered. Additionally, supplemental independent expenditure reports also are required to be filed when a candidate or committee has made independent expenditures of $1,000 or more in a calendar year. Again, the majority of this activity will have already been captured on a 24-hour report, making this report duplicative. By eliminating redundancy, clarifying obligations and providing consistency in reporting, the bill fosters better compliance, which in turn results in greater disclosure.

Proposed Law

The bill proposes the following changes to the Act:

1. Eliminates duplicative reports. The current filing schedules are difficult to understand. This bill eliminates reports that are duplicative in order to streamline the filing requirements without sacrificing disclosure. Specifically, the bill eliminates the requirement to file supplemental preelection reports and supplemental independent expenditure reports. As explained above, the need for supplemental preelection statements and supplemental independent expenditure reports have been eliminated because with the implementation of contribution limits and the extension of the 24-hour reporting period from 16 days to 90 days a few years ago, these statements have become almost entirely duplicative and unnecessary.

2. Clarifies that the 90-day 24-hour reporting period includes the election date itself, in addition to the 90 days before the election, making those provisions consistent throughout the Act.

3. Clarifies requirements for who has to file preelection statements and provides uniform timelines. Currently, the Act's preelection reporting requirements are very complicated and difficult to understand. This bill clarifies which candidates and committees must file these reports before the election, while still maintaining relevant and timely disclosure. The new provisions create a filing timeline for these reports that is uniform in both odd and even years.

4. Raises the recipient committee qualification threshold from $1,000 to $2,000 and makes conforming adjustments. This amount has not been changed since 1987. When adjusted for inflation this threshold would be over $2,000 today. The increased threshold will encourage qualified individuals who plan to engage in the political process and who have very low levels of activity to run for office. This increase in threshold is supported by the Special Districts Association, an organization that works with many of those running in smaller races. The bill is also supported by California Forward an organization dedicated to focusing government agencies on improving results and restoring public trust.

At its April 2015 meeting, the Commission voted to support this bill (4-1).

Status: To Governor
Cost Estimate: Minor and absorbable
Commission Position: Support

Active Bills Pending in the Legislature Amending the Political Reform Act

SB 21 (Hill)

Introduced: December 1, 2014
Amended: August 26, 2015

Existing Law

The Act prohibits public officials from receiving gifts in excess of $460 from a single source in a calendar year, with exceptions. One exception to this gift limit is for payments made to public officials for travel reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy and paid for by a 501(c)(3) nonprofit organization.

Public officials are required to report travel payments from nonprofits on their Statements of Economic Interests (Form 700). If a donor uses a nonprofit as an intermediary (as defined in Regulation 18945) to make payments to public officials for travel, the donor to the nonprofit is considered to be the true source of the travel gift. In these cases, the public official is required to report the *donor* to the nonprofit and the *nonprofit* on his or her Form 700. The travel gift is also subject to the Act's $460 gift limit. The true source of the travel payments and the public official are subject to violations for failing to comply with the requirements of this gift limit exception.

Proposed Law

This bill requires a nonprofit organization that makes travel payments of $5,000 or more for one elected state or local officeholder or $10,000 or more a year for elected state or local elected officeholders, and whose expenses for such travel payments total 1/3 or more of the organization's total expenses in a year as reflected on the organization's Internal Revenue Service Form 990, to disclose to the Commission the names of donors who donated $1,000 or more and also went on the trips. The bill also requires a person who receives a gift of a travel payment from any source to report the travel destination on his or her Form 700.

While this disclosure could be useful, because of the 1/3 of total expenses reporting threshold in this bill, it would apply to only a few nonprofits (some estimate as few as two). In addition, the Enforcement Division is concerned that the "1/3 of total expenses" requirement would be difficult to prove in light of the reporting and language variations used by nonprofits on the Form 990, as well as the difficulty in establishing that the expenses reported were related to elected officers. Staff believes this bill would be more effective and enforceable if the 1/3 threshold was removed or the nonprofit travel exception was eliminated altogether.

Status: Assembly Floor
Cost Estimate: $178,778

AB 10 (Gatto)

Introduced: December 1, 2014
Amended: August 27, 2015

Existing Law

The Act prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the public official knows or has reason to know that he or she has a financial interest. A public official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on a business entity in which the official has a direct or indirect investment worth $2,000 or more, real property in which the public official has a direct or indirect interest worth $2,000 or more, and sources of income aggregating $500 or more in value within 12 months prior to the time when the decision is made. The Act requires certain public officials to file a Statement of Economic Interests (Form 700) disclosing investments, real property interests, and income within specified periods of assuming or leaving office, and annually while holding office. The Act requires the disclosures to include information indicating, within a specified reporting range, the fair market value of the specified financial interests the public official is reporting.

The Act requires public officials to recuse themselves from making, participating or attempting to influence governmental decisions in which they have conflicts of interest. Certain high level officials are also required to announce a conflict at the public meeting at which the decision is being made prior to recusal and the vote on the item.

Proposed Law

This bill increases the thresholds at which a public official has a disqualifying financial interest in sources of income from $500 to $1,000, investments in business entities from $2,000 to $5,000, and in interests in real property from $2,000 to $10,000. The bill also makes conforming adjustments to the thresholds at which income, investments, and interests in real property must be disclosed on the official's Form 700. The bill revises the dollar amounts associated with the reporting ranges for each of the financial interests to include more ranges up to $2,000,000. Additionally, this bill requires certain public officials to disclose information on the official's Form 700 relating to governmental decisions for which the public official had a disqualifying financial interest.

This bill requires certain high level officials who recuse themselves from governmental decisions due to a conflict of interest to disclose each instance of recusal on their Form 700.

As for revising the Form 700 reporting ranges for investments, real property and income to include additional dollar amount ranges, staff believes that the current reporting ranges provide

enough information to public officials and the public as to when a public official may have a conflict of interest.

As for requiring public officials to report each instance of recusal due to conflicts on the Form 700, in most cases, this additional reporting will happen many months after the recusal occurs as the form is not due until March or April of the following year. The purpose of the Form 700 is to alert public officials and the public to potential conflicts of interest that *may* occur by disclosing financial interests a public official holds now. To reach this goal, under current law when a public official is required to announce a conflict and recuse him or herself from a governmental decision, this information is recorded in the public meeting minutes of the body the official represents. The existing requirement of reporting the recusal in real time and in public meeting minutes soon after the recusal seems to be timely and sufficient disclosure of this information.

Status: Senate Floor
Cost Estimate: $260,166 one time, $130,083 ongoing

AB 990 (Bonilla)

Introduced: July 2, 2015 (Gut and Amend)
Amended: August 20, 2015

Existing Law:

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures and imposing other reporting and recordkeeping requirements on campaign committees. The Act additionally imposes various disclosure statement requirements with respect to advertisements supporting or opposing a candidate or ballot measure, including a requirement that the disclosure statements be printed clearly and legibly in no less than 10-point type and in a conspicuous manner. The Act also requires that an advertisement supporting or opposing a candidate that is paid for by an independent expenditure include a statement that it was not authorized by a candidate or a committee controlled by a candidate.

Proposed Law:

This bill requires that campaign advertisement disclosure statements be printed in no less than 14-point, bold, sans serif type font. The bill requires that an advertisement supporting or opposing a candidate that is paid for by an independent expenditure include a disclosure statement with specific content, and if the advertisement is mailed, requires that the disclosure statement be located within a quarter of an inch of the recipient's name and address and be contained within a box that meets prescribed criteria for line width and include a contrasting color background to the rest of the mailer. This bill contains an urgency clause, which would make the bill effective immediately upon passage.

While the goals of this bill are laudable, the bill is further complicating the already complicated disclosure rules included in the Act by having different disclosure placement rules and font size

for independent expenditure ads than all other disclaimers already required under Act. Staff would recommend that the author take a more comprehensive look at the advertisement disclaimer rules to make them more uniform and easier to understand.

Status: Senate Floor
Cost Estimate: Minor and Absorbable

AB 1083 (Eggman)

Introduced February 27, 2015

Existing Law

Existing law allows the Commission to contract with the County of San Bernardino to provide advice and enforcement of its local campaign rules.

Proposed Law

This bill would allow the Commission to contract with the City of Stockton to provide advice and enforcement of local campaign rules.

The Commission's San Bernardino advice and enforcement program is working well. While staff recognizes the Commission may not be able to take on the task of advising upon or enforcing every city and county's campaign finance ordinances, special cases like that of the City of Stockton may require outside assistance such as that of the Commission with these tasks.

Status: Signed into Law.
Cost Estimate: Minor and absorbable.

AB 1200 (Gordon)

Introduced: February 27, 2015
Amended: August 26, 2015

Existing Law

Existing provisions of the Act regulate the activities of lobbyists, lobbying firms, and lobbyist employers in connection with attempts to influence legislative and administrative action and require reporting of such activity. “Administrative action” is defined in the Act to include the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi legislative proceeding.

Proposed Law

This bill would include within the definition of lobbyist any individual who receives two thousand dollars or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents on behalf of any person other than his or her employer with any elective state officials, agency official, or legislative official for the purpose of influencing administrative action that is governmental procurement.

This bill defines government procurement as any of the following with respect to influencing a state procurement contract for which the total estimated cost exceeds $250,000:

(1) Preparing the terms, specifications, bid documents, request for proposals, or evaluating criteria for a procurement contract.
(2) Soliciting for a procurement contract.
(3) Evaluating a procurement contract.
(4) Scoring criteria for the procurement contract.
(5) Awarding, approving, denying, or disapproving a procurement contract.

Staff has concerns with the implementation and interpretation of this bill as currently drafted. The overall concern is that a specific problem under current law has not been articulated. Some of the examples that have been reported (e.g., tracking early meetings), would not be addressed by this bill. Other basic concerns include: the term "procurement contract" in the bill is not clearly defined or widely used in state contracting law; the bill creates different reporting obligations for in-house and contract lobbyist; the scope may be too broad as the Department of General Services reports that the bill could apply to over 5,600 contracts in the state; and there is no easy way to accurately track the impact of the bill under the current limitations with Cal-Access. Although staff has contacted the author's office, and the bill has been amended four times, these concerns remain. Staff believes more thorough analysis is necessary on the subject in order to identify the problem and develop a workable proposal.

Status: Senate Floor
Cost Estimate: $872,000 first two years, and $760,000 ongoing

Government Code Section 1090 Bills Pending in the Legislature

SB 330 (Mendoza)

Introduced: February 23, 2015
Amended: July 7, 2015

Existing Law

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract made by them in

their official capacity or by any body or board of which they are members, subject to specified exceptions. Existing law identifies certain remote interests that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract, including, among others, that of a parent in the earnings of his or her minor child for personal services.

Proposed Law

The bill will delete interests of a parent in the earnings of his or her minor children for personal services from the list of remote interests and instead this bill will include within the definition of remote interests that of a public officer who is an elected member of any state or local body, board, or commission, if that public officer's spouse, child, parent, sibling, or the spouse of the child, parent, or sibling, has a financial interest in any contract made by that public officer in his or her official capacity, or by any body, board, or commission of which that public officer is a member.

Staff has been informed by the author's office that further amendments to this bill concerning a knowledge requirement are pending.

Status: Assembly Appropriations- Held Under Submission
Cost Estimate: $210, 934

SB 704 (Gaines)

Introduced on February 27, 2015
Amended: July 8, 2015

Existing Law

Existing law prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law identifies certain remote interests that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract.

Proposed Law

This bill would establish an additional situation in which an official is not financially interested in a contract as applied to an owner or partner of a firm serving as an appointed member of an unelected board or commission to the contracting agency, if the owner or partner recuses himself or herself from providing any advice regarding a project and from all participation in reviewing a project that results from a contract between the firm and the contracting agency. The bill would also include in the definition of "remote interest" the interest of a planner employed by a consulting engineering, architectural, or planning firm.

Status: Assembly Floor
Cost Estimate: Minor and absorbable.

Two-Year Bills Pending in the Legislature Amending the Political Reform Act

SB 283 (Nielsen)

Introduced: February 19, 2015
Amended: March 26, 2015

Existing Law

The Act requires the Attorney General to prepare a ballot label, title and summary for each statewide ballot measure and to include this summary in the ballot pamphlet.

Proposed Law

This bill would require the Legislative Analyst, instead of the Attorney General prepare the ballot label, title and summary for all measures submitted to voters.

Status: In Senate Elections Committee (2-year bill)

AB 700 (Gomez)
Introduced: February 25, 2015
Amended May 21, 2015

Existing Law

The Act imposes a disclosure requirement with respect to advertisements supporting or opposing a ballot measure when a committee pays an individual $5,000 or more to appear in the advertisement or when the advertisement states or suggests an individual appearing in the advertisement is of a certain occupation. The disclosure statement on such ads must be shown continuously on printed advertisements and televised advertisements. It must be read in a clearly audible format if the advertisement is a radio or telephone message.

Proposed Law

This bill extends the current spokesperson disclosure statement requirements to television or video advertisements, meaning they would apply to internet or other electronic forms of communication.

After speaking with the author's office, staff anticipates significant amendments to this bill.

Status: In Assembly Appropriations (2-year bill)
Cost Estimate: $153,892

AB 834 (Salas)

Introduced: February 26, 2015
Amended March 26, 2015

Existing Law

The Act prohibits an incumbent from sending a newsletter or other mass mailing at public expense.

Proposed Law

This bill would define a "public advertisement" as an advertisement that is paid for from the funds of a state or local public entity. This bill would prohibit a person or entity from disseminating, broadcasting, or otherwise publishing a public advertisement, within 90 days of an election if the advertisement features, a candidate who will appear on the ballot at that election.

Status: In Assembly Elections Committee (2-year bill)

AB 910 (Harper)

Introduced: February 26, 2015
Amended: March 19, 2015

Existing Law

Existing law allows the Commission to contract with the County of San Bernardino to provide advice and enforcement of its local campaign rules.

Proposed Law

This bill would allow the Commission to contract with any city or county to provide advice and enforcement of local campaign rules.

Status: In Assembly Elections Committee (2-year bill)

AB 1494 (Levine)

Introduced: February 27, 2015
Amended: April 22, 2015

Existing Law

The Act requires a committee that makes an independent expenditure of $1,000 or more during the 90-day election cycle in connection with a candidate for elective state office or a state ballot measure to disclose that expenditure by filing a report online or electronically with the Secretary of State.

Proposed Law

This bill requires a committee subject to the Act's independent expenditure disclosure requirements to pay a fee dependent on the amount of independent expenditures the committee plans to make in a two-year period. The bill requires the Secretary of State to establish a fund with fee revenues and allocate those funds to the Fair Political Practices Commission and local elections offices for the purpose of increasing transparency in political campaigns and voter registration and turnout.

Status: In Assembly Elections Committee (2-year bill)