



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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EXECUTIVE STAFF REPORTS

April 20, 2017 Commission Hearing

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I. ENFORCEMENT DIVISION

STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of March 3, 2017 through April 6, 2017, the Enforcement Division received 55 complaints, opened 12 for investigation, and rejected 22. The Enforcement Division received 337 non-filer referrals during this time and rejected 55.

Also during this time, the Enforcement Division closed a total of 140 cases including:

- 40 warning letters,
- 26 no action letters,
- 35 resulting from the approval of stipulations and defaults at the March Commission meeting, and
- 39 committees were administratively terminated.

The Division had 996 cases in various stages of resolution at the time of the March Monthly Report and currently has approximately 998 cases in various stages of resolution, including the 38 cases before the Commission as listed in the April 2017 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 198 have been resolved with fines and 129 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 73 have been resolved with fines and 181 are currently being worked. As for the remaining referrals, they were rejected, the committees were terminated locally without notice to Secretary of State, the committees were administratively terminated or are slated for administrative termination, or the committee received no violation or warning letters.

II. LEGAL DIVISION

STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

A. Pending Litigation

Howard Jarvis Taxpayers Association v. Edmund Brown, et al.

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107, which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act¹ because it does not “further the purposes of the Act,” an express requirement in the law for a legislative amendment. The Attorney General’s Office is representing both Governor Brown and the Commission in this litigation. The hearing is currently scheduled for August 4, 2017. The briefing schedule is as follows: Petitioners’ opening brief is due May 15; Respondents’ opposition brief is due June 28; and Petitioner’s reply is due July 20.

Frank J. Burgess v. Fair Political Practices Commission.

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission’s decision and order in *In re Frank J. Burgess*, Case No. 12/516.

Mr. Burgess’s case was first heard by an Administrative Law Judge (ALJ), and then Mr. Burgess challenged the ALJ’s decision to the Commission. On March 19, 2015, the Commission rejected the ALJ’s decision and decided the case based on the record and the parties’ supplemental briefing. Ultimately, the Commission found that Mr. Burgess had violated Section 87100 of the Act and imposed a \$5,000 fine on July 7, 2015.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to this 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, and all regulatory references are to this source.

Mr. Burgess challenged the decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On September 15, 2016, the superior court issued its judgment granting the petition on due process grounds. The court further ordered the Commission to file a Return to the Writ on or before November 7, 2016.

After a closed session discussion at the Commission meeting on October 20, 2016, the Commission voted to let the superior court's judgment stand, and to vacate and set aside its Decision and Order in the underlying matter. The Commission dismissed the administrative proceedings against Mr. Burgess and timely filed a Return to the Writ.

On November 14, 2016, Burgess filed a Motion for Attorney's Fees under Code of Civil Procedure section 1021.5 ("private attorney general"). The FPPC in conjunction with the Attorney General's office prepared an opposition to this motion, which was filed on January 25, 2017. The fee motion was heard on April 3, 2017, and the superior court took the matter under submission after argument by the parties.

B. Outreach and Training

- March 17-18, 2017: Senior Commission Counsel Sukhi K. Brar participated as a member of the Council on Governmental Ethics Laws (COGEL) program committee in Toronto, Ontario, Canada. COGEL is the premier organization on governmental ethics in North America, including representatives of ethics organizations from across the United States and Canada. The purpose of the program committee is to share information and plan the sessions offered at COGEL's annual conference. The conference sessions address timely issues facing ethics agencies and facilitate the development of reform measures in governmental ethics.
- March 23, 2017: Political Reform Consultants Cynthia Fisher and Alex Castillo conducted a webinar for state agency staff who administer amendments to their conflict of interest codes. Topics included which positions should be designated in a code and what level of disclosure to assign to those positions. They also provided information about filing the codes with the Office of Administrative Law.

C. Advice

In March 2017, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and Attorneys collectively responded to more than 1,432 email and telephone requests for advice.
- **Advice Letters:** The Legal Division received 25 advice letter requests and issued 21 advice letters.
- **Section 1090 Letters:** Legal Division received five new advice letter requests concerning Section 1090 and issued four. To date, this year we have received 16 requests regarding Section 1090.

D. Advice Letter Summaries

Campaign

Janet C. Kern**I-17-006**

An official who is employed by a labor union may not participate in decisions before the city council involving the union if the decision will result in a measurable financial effect on the union, or will result in a reasonably foreseeable material financial effect on real property in which the union has an interest.

Jonathan Mintzer**I-17-017**

A law firm requested advice on various provisions of the campaign advertising sections of the Act; including disclaimers on mailings, social media, online advertisements, and oversized print media.

John Henry Beyer**A-17-033**

It is permissible for a treasurer to use either his or her street address or that of a principal officer in completing the Statement of Organization, Form 410, where the committee does not have a designated street address.

Conflict of Interest

Andrew Morris**A-17-021**

A councilmember leases a residence near the Mammoth Creek Park from her spouse's family trust. The councilmember does not have an ownership interest in the real property, despite being a beneficiary of the trust, because her husband does not receive trust income and does not have an irrevocable future right to receive trust income or principal. The councilmember may take part in decisions relating to the proposed development of the western portion of Mammoth Creek Park, including the potential construction of a multi-use facility because the decisions would not have a reasonably foreseeable material effect on the councilmember's leasehold.

Douglas L. White**A-17-029**

The Act prohibits the Mayor of Dixon from taking part in decisions relating to a conditional use permit for a proposed automotive repair and restoration business at a site within 1,500 to 2,000 feet of the Mayor's automotive repair and vehicle emissions business. The decisions' effect on the Mayor's business would be material because they would contribute to a change in its value by increasing the amount of competition in its field if the City approves the conditional use permit for the proposed business.

Andrew Morris**A-17-032**

A Truckee Town Councilmember is employed JMA Ventures, LLC, as a project manager. JMA submitted an application for a project to the Town. The Councilmember is prohibited from making, participating in making or influencing a decision relating to JMA's application because JMA is a source of income. This prohibition applies to contacting Town staff who are under the authority or budgetary control of the Town Council for the purpose of affecting a decision.

Todd O. Litfin**A-17-040**

Despite owning and operating the business Luxe Aesthetics Center in proximity to (1) the Town Center commercial development project and (2) the new site for the city library, the Yorba Linda City Councilmember does not have a conflict of interest in the decisions. Based on the nature of the Councilmember's skin care, aesthetics and wellness business as a "destination" business that customers frequent regardless of the nature of surrounding amenities, the facts suggest that the decisions will not have a financial effect on the value of her business. Moreover, the decisions will not impact her lease of the real property on which the business is located.

Rebecca L. Moon**A-17-042**

The City of Sunnyvale is considering a proposed specific plan that will refine and guide the future development of Sunnyvale's El Camino Real corridor. Multiple city officials own homes and reside in proximity to the boundaries of the specific plan area. However, since none of the properties are in the plan area, and with respect to each of the officials in question there exist buffers of developed property and/or neighborhoods between their property and the specific plan area, none of the officials' will be foreseeably and materially affected by the plan decision.

Larissa Seto**A-17-048**

The Act does not prohibit a City of Pleasanton planning commissioner from taking part in the decision on whether the GHC Lund Ranch II Project's tentative map complies with the planned unit development plan zoning for the project. The decision would not have a reasonably foreseeable material financial effect on the commissioner's source of income's residential real property parcel nearby the projects.

Jennifer Chmura**I-17-051**

An attorney for DHCS will have a financial conflict of interest due to her ownership of 650 class B shares of Berkshire Hathaway stock in her IRA, if she makes or participates in making or otherwise acts to influence a government decision, and it is reasonably foreseeable that the decision will have a material financial effect on the shares of stock. No decision was at issue and this was an informational letter.

Josh Fryday**A-17-057**

The Councilmember does not have a conflict of interest in decisions regarding a 31-unit residential condominium project approximately 2,400 feet from property he owns. The proposed project cannot be viewed from his property as there are numerous intervening developments that block the view of the subject property and proposed project. Additionally, the initial study/mitigated negative declaration has been completed and shows all potentially significant impacts can be mitigated to a less than significant level, including impacts relating to hazardous materials, traffic, noise, and aesthetics. Thus, the decisions would not have a reasonably foreseeable material financial effect on his property.

James R. Williams**A-17-060**

A county supervisor does not have a conflict of interest in a decision on the sale of county property to the local Housing Authority, despite owning residential property within 900 feet from

the property to be sold. This is because there would be no reasonably foreseeable financial effect on her financial interests from the sale decision.

Michael Torres**A-17-061**

Regulation 18702.2(c) provides an exception for a decision that solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities. Thus, so long as the repair or replacement of the Balboa Island sea walls, the dredging of the Grand Canal and the sand replenishment on Balboa Island's beaches is limited to repairs, replacement or maintenance of existing facilities, the councilmember may participate in the decision despite owning property on Balboa Island. If the decisions should change to ones that involve "new and improved services" rather than the repair, replacement and maintenance of the existing facilities, the councilmember would need to seek new advice.

Richard E. Nosky, Jr.**A-17-068**

A city council member does not have a conflict of interest in the following decisions concerning a park across the street from the councilmember's home: (1) upgrading the kitchen in the park facilities and (2) discontinuing the contract permitting use of park facilities as a preschool. Despite owning real property within 500 feet of the park, there would be no reasonably foreseeable financial effect on her financial interests from these decisions.

Roxanne Diaz, Esq.**A-17-069**

The councilmember may make, participate in making, and influence decisions to approve the installation of an Electric Vehicle Charging Station in the Norwalk Civic Center Parking within 500 feet of her condominium because (1) the condominium is situated within a condominium complex and is buffered from the charging station by a four-lane street, heavy landscaped trees and shrubbery and other buildings and (2) the charging station will be a small addition to the existing Civic Center parking structure, it is not foreseeable that there will be a financial effect on the value of the councilmember's property.

Pat Eklund**A-17-079**

The City Council will be considering a proposed PG&E project to be located on City-owned property. The councilmember owns property within 708 feet of the subject property. However, PG&E's proposed use of the parcel as a pipeline testing facility would not foreseeably and materially affect the value of the councilmember's property because: the Councilmember's property is 708 feet from the subject property and is separated from the subject property by a street, an additional townhome complex, and trees and other landscaping and the subject property cannot be seen from the townhome; PG&E intends to landscape the subject property on its boundaries for visual screening; and PG&E reports that as a testing site the property will be used sparingly.

Conflict of Interest Code**Diane Patterson****I-17-012**

Marin County Supervisors requested whether a county "special district," "miscellaneous district," and a joint powers authority entity meets the definition of a "local government agency" under the Act and is therefore required to submit a Conflict of Interest Code to the County Board

of Supervisors for review. These entities meet the definition of a “local government agency” set forth in Section 82041, and those entities wholly within Marin County must submit a Conflict of Interest Code for review by the County Board of Supervisors.

Tara L. Taguchi**I-17-062**

City Attorneys ethics training materials for local public officials were developed pursuant to Assembly Bill 1234. Staff reviewed the training and provided feedback with respect to provisions under the Act and Section 1090.

Gifts**Alan Seem****A-17-058**

The China Silicon Valley Business Development (“CSV”) nonprofit organization coordinates trips to China for Silicon Valley mayors, councilmembers, and local business members, so that they may meet with local Chinese government officials, potential investors, and representatives of high tech companies. This trip is similar in purpose to previous CSV organized Silicon Valley Mayors’ China trips conducted in 2014, 2015, and 2016. Because a local Chinese government authority (the Luzhou Municipal People’s Government) will pay for the Mayor’s travel, lodging, and meal and the travel was for the governmental purpose of economic trade and business development with the region, the tour payments would be reportable gifts, subject to the conflict of interest provisions, but not subject to the gift limits.

Blanca E. Castro**A-17-063**

Under Section 89521, both a donor and recipient can be liable for making a gift in excess of the gift limits. Generally, travel and lodging payments are considered a gift, however, where AARP pays for the transportation and lodging of a Mayor as a keynote speaker at its conference on “Age Friendly Communities and what different local jurisdictions are doing across the state to prepare for a growing aging population,” the exception in Section 89506 would apply and the payments would be exempt from the gift limits.

Revolving Door Restrictions**Doug Sale****I-16-225**

Nothing in the Act prohibits a state Workforce Development Board employee from pursuing a professional opportunity with a local workforce development board. However, the Act’s post-employment restrictions place limits on specific types of activities in which the employee may engage.

Jim Lombard**I-16-234**

The Act’s permanent ban prohibits former state official from consulting or advising a contractor on a state payroll system or vendor under FI\$Cal only if the consulting work is determined to be the same proceeding the official participated in as a former state official. Accordingly, while the former official may be prohibited from proceedings continuing work on the payroll project the official participated in, the former official is not prohibited if the subsequent payroll project begins anew. Additionally, the former official is not prohibited from providing consulting

services to a vendor under FI\$Cal if the official was not previously involved in the vendor's contract.

Jeffrey Ginsburg**A-17-043**

As a former member of the Redondo Beach City Council, Jeffrey Ginsburg may serve on the Riviera Business Improvement District board (RV-BID) and make appearances before the City Council on behalf of the RV-BID board within the first year after he left the City Council. Generally, the Act's one-year ban on former local officials communicating with their former agencies relates to appearances for compensation and in representation of another person for the purpose of influencing a government decision. The RV-BID is a local government agency under the Act, thus the appearance would be in representation of this local government agency, and therefore exempted pursuant to Section 87406.3(b).

Charles Lester**A-17-047**

As the former Executive Director of the California Coastal Commission, Mr. Lester is subject to the one-year ban prohibiting his appearance before the Commission for compensation for the purpose of influencing the Commission on behalf of a contract consultant to the City of Imperial Beach or Pacific Grove. He may provide policy review and advice, so long as he is not identified with these efforts and he is not otherwise prohibited under the "permanent ban." The permanent ban does not apply to Mr. Lester in the LCP amendment or certification proceedings for the two cities, so long as he did not directly supervise the review, recommendation or award of the LCP update grant to the City of Imperial Beach or the City of Pacific Grove; and to the extent that any other involvement on his part in each city's LCP proceedings was the "mere administrative oversight of programs."

Section 1090**Mark D. Hensley****A-16-254**

A city councilmember was advised that he may not participate in a governmental decision to amend a contract because of his interest in the contracting party (a marketing company). The city councilmember owns an LLC and hired the marketing company and paid the marketing company with "membership units." This agreement was akin to the marketing company making a loan to the Councilmember's LLC and therefore the councilmember had a financial interest in the marketing company as a source of income. Because the same marketing company is seeking a contract with the city, the marketing company is explicitly involved in the governmental decision and there will be a reasonably foreseeable material financial effect on the source of income. Therefore, the councilmember is prohibited from participating in the decision.

Rosann Gallien**A-16-263**

A San Diego County Water Authority Board member would have a conflict of interest prohibiting him from participation in Water Authority contract decisions relating to San Diego Gas & Electric ("SDG&E"), if he accepts employment with Sempra Services Corporation, an independent marketing division of SDG&E. Moreover, under Section 1090, the Water Authority would also be barred from renewing or creating new contracts with SDG&E, due to their board member's financial interest.

Douglas L. White**A-17-015**

The Act does not prohibit a member of the San Miguel Community Service District Board of Directors from taking part in decisions relating to collective bargaining agreements covering the District's employees, even if his wife is one of those employees, so long as the decisions apply equally to all District employees in the same bargaining unit or representative group as the member's wife. Section 1090 does not apply.

Nellie Ancel**A-17-020**

A city was advised that Section 1090 did not prohibit a contract with a consultant the city had previously contracted with to provide a scoping report. The scoping report provided cost estimates for a new site plan for an BART station. After receiving the cost estimates, the city then issued an RFP for a consultant to develop a site plan for the BART station. Section 1090 did not prohibit the contract because: (1) the consultant hired to carry out the subsequent agreement is not required to use or build on information contained in the scoping report, the consultant is to start with a clean slate to develop the station site plan and alternatives; and (2) while there is some overlap between the tasks required for the scoping report and the RFP, one does not necessarily determine the other.

Todd O. Litfin**A-17-026**

For a city councilmember who is also employed by the county, the Act's conflict of interest provisions and Section 1090 do not prohibit the councilmember from taking part in discussions or recommendations to the county regarding a development project within the county and adjacent to the city. However, if a contract with the county or project developer regarding the annexation of the property into the city is considered, the councilmember is required under Section 1091.5(a)(9) to disclose her interest in the county at the time the contract is considered and the interest must be noted in the City's official records.

Michael Torres**A-17-028**

A city councilmember does not have a conflict of interest under either Section 1090 or the Act in a decision on a roadway revitalization plan, despite receiving income from a community college adjacent to the project area. Because the decision does not involve a contract, there would not be a Section 1090 issue. Based on the "government salary" exception, there would be no reasonably foreseeable financial effect on the councilmember's financial interests.

E. Miscellaneous Decisions

None to report.

F. Upcoming Regulations

May - June, 2017: None scheduled.

July 20, 2017: Conflict of Interest Regulations. Having advised on the new conflict of interest rules for over a year, staff will propose refinements of the conflict of interest regulations enacted in 2014 and 2015 to clarify obligations and requirements.

G. Conflict of Interest Codes

Adoptions and Amendments

State Agency Conflict of Interest Codes:

- Air Resources Board
- California Children and Families Commission

Multi-County Agency Conflict of Interest Codes:

- Association of Bay Area Governments PLAN
- Association of Monterey Bay Area Governments
- East Bay Municipal Utility District
- Elsinore Valley Municipal Water District
- Hartnell Community College District
- Kaweah Delta Water Conservation District
- Rocketship Education, Inc.
- State Water Project Contractors' Authority

Exemptions and Extensions

Exemptions:

- None

Extensions:

- None

H. Probable Cause Decisions

Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.

The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.

- 1. In the Matter of Gil Navarro Legal Defense Fund, Navarro for 4th Assembly 2014, and Gilbert "Gil" Navarro, FPPC No. 16/137.** On February 27, 2017, probable cause was found to believe that the named Respondents committed seventeen violations of the Political Reform Act as follows:

COUNT 1: The Defense Committee and Navarro failed to timely file the semi-annual campaign statement due January 31, 2014, in violation of Section 84200.

COUNT 2: The Defense Committee and Navarro failed to timely file the semi-annual campaign statement due July 31, 2014, in violation of Section 84200.

COUNT 3: The Defense Committee and Navarro failed to timely file the semi-annual campaign statement due February 2, 2015, in violation of Section 84200.

COUNT 4: The Defense Committee and Navarro failed to timely file the semi-annual campaign statement due July 31, 2015, in violation of Section 84200.

- COUNT 5: The Defense Committee and Navarro failed to timely file the semi-annual campaign statement due February 1, 2016, in violation of Section 84200.
- COUNT 6: The Defense Committee and Navarro failed to timely file the semi-annual campaign statement due August 1, 2016, in violation of Section 84200.
- COUNT 7: The Defense Committee and Navarro failed to pay the 2013 annual fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the fee in violation of Section 84101.5, subdivisions (c) and (d).
- COUNT 8: The Defense Committee and Navarro failed to pay the 2014 annual fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the fee in violation of Section 84101.5, subdivisions (c) and (d).
- COUNT 9: The Defense Committee and Navarro failed to pay the 2015 annual fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the fee in violation of Section 84101.5, subdivisions (c) and (d).
- COUNT 10: The Defense Committee and Navarro failed to pay the 2016 annual fee by the January 15, 2016 due date and failed to pay a penalty of \$150 for failing to timely pay the fee, in violation of Section 84101.5, subdivisions (c) and (d).
- COUNT 11: The Assembly Committee and Navarro failed to timely file the pre-election campaign statement due October 6, 2014, in violation of Section 84200.7, subdivision (b).
- COUNT 12: The Assembly Committee and Navarro failed to timely file the pre-election campaign statement due October 23, 2014, in violation of Section 84200.7, subdivision (b).
- COUNT 13: The Assembly Committee and Navarro failed to timely file the semi-annual campaign statement due February 2, 2015, in violation of Section 84200.
- COUNT 14: The Assembly Committee and Navarro failed to timely file the semi-annual campaign statement due July 31, 2015, in violation of Section 84200.
- COUNT 15: The Assembly Committee and Navarro failed to timely file the semi-annual campaign statement due February 1, 2016, in violation of Section 84200.
- COUNT 16: The Assembly Committee and Navarro failed to timely file the semi-annual campaign statement due August 1, 2016, in violation of Section 84200.
- COUNT 17: The Assembly Committee and Navarro failed to pay the 2016 annual fee by the January 15, 2016 due date and failed to pay a penalty of \$150 for failing to timely pay the fee, in violation of Section 84101.5, subdivisions (c) and (d).

2. In the Matter of Murga 4 Pico Water District 2013 and Raul Murga, Case No. 15/2193.²

On March 15, 2017, probable cause was found to believe Respondents committed the following violations of the Act:

COUNT 1: The Committee and Murga failed to timely file a pre-election statement for the period of July 1, 2015 through September 19, 2015, in violation of Section 84200.8.

COUNT 2: The Committee and Murga failed to timely file a pre-election statement for the period of September 20, 2015 through October 17, 2015, in violation of Section 84200.8.

² Respondent requested a probable cause hearing, but then failed to respond to multiple attempts to schedule the hearing so no hearing was held.

III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

STAFF: TARA STOCK, MANAGER

Phone Advice Requests

In March, the External Affairs and Education Division responded to 1,355 requests for advice via phone. March is always an extremely busy month due to the April 1 annual deadline for filing Statements of Economic Interests (Form 700).

Training Presentations

Division staff produced and posted two new training videos – one for state agency officials who perform the administrative duties regarding Form 700s, and one for local agency officials who perform similar duties. These two videos have already been viewed almost 200 times. In addition to the videos for Form 700 filing officers, there are training videos available for campaign filing officers, conflict of interest code reviewers, and local candidates and committee treasurers. In total, the five videos have been viewed almost 2,500 times and have received very positive reviews. Staff is currently working on producing training video modules to assist Form 700 filers.

Political Reform Consultant Deborah Hanephin spoke about her work at the FPPC to her daughter's middle school on Career Day. Approximately 100 students attended and were active participants in the discussions about transparency. Some of the feedback Deborah received from the students included: "I think your presentation has made me want to pursue a political career even more than I had previously;" and "teaching people the law is very important, especially for politics."

Filing Schedules

Staff created six filing schedules for local jurisdictions holding special elections in 2017. In addition, staff created and posted on our website a filing schedule for candidates who are running for an elective board member position on the California Public Employees' Retirement System (CalPERS) Board of Administration in the fall.

IV. LEGISLATIVE UPDATE

STAFF: PHILLIP UNG, DIRECTOR, LEGISLATIVE AND EXTERNAL AFFAIRS

There are 22 bills affecting the Political Reform Act. Since the March Report, two new bills were added: AB 1620 and SB 679. The Legislature's policy and fiscal committees are actively evaluating and amending the bills listed below, so please visit the Commission's Pending Legislation page to view updated versions and descriptions. Staff is not recommending any positions this month.

Legislation currently being tracked by Commission staff and other related documents can be found on the [Commission's Pending Legislation](#) page.

Political Reform Act or Related Bills (#1-20)

1. **AB 14 (Gomez): Advertisement Disclosure and Earmarking of Funds**

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduced: December 5, 2016

Last Action: Referred to Assembly Elections and Redistricting Committee

Summary:

The Act provides comprehensive regulations for campaign finance disclosure requiring committees that support or oppose ballot measures to use the name or phrase that clearly identifies the economic or other special interest of its donors of \$50,000 or more. If major donors share a common employer, then the employer is disclosed. The Act prohibits any person from making any contribution to a committee on the condition or with the agreement that it will be contributed to a particular candidate (i.e., earmarked) unless the true source of the contribution is fully discussed.

The bill would redefine and recast the Act's advertisement disclaimer provisions. The bill prescribes the disclosure statements, location, and format criteria required for television, radio, telephone, and internet advertisements with some exemptions. The bill would require on-advertisement disclosure of the top three contributors. Certain committees would be exempt from the top contributor disclosure, including major donors and individuals and entities making independent expenditures.

The bill also explicitly exempts from the definition of "advertisement" a communication paid for by a political party or a candidate controlled election committee. It should be noted that there is a potential risk for litigation resulting from the provision in the bill that would expand the advertisement rules to general purpose committees.

There are several concerns regarding the earmarking provisions of the bill. First, the bill would narrow the circumstances of when contributions are considered illegally earmarked. It also would allow up to \$4,400 in contributions from a single source per calendar year to flow through elections without disclosure of the true source of that money - an exemption that could be particularly detrimental in local races. Lastly, the bill prohibits the Commission from using “timing” as the sole basis for finding violations related to earmarking. Staff has flagged these issues with the author’s office and sponsor.

2. AB 187 (Gloria): Local Ballot Measure Expenditure Reporting

FPPC Position: *None currently*

Status: Assembly Floor

Fiscal Estimate: Minor and absorbable

Last Amended: March 23, 2017

Last Action: Approved by Assembly Appropriations, referred to Assembly Floor (04/05/17)

Summary:

The Act subjects a committee that receives contributions totaling \$2,000 or more in a calendar year to specified reporting requirement, that committee is required to file online or electronically each time it makes contributions of independent expenditures of at least \$5,000 to support or oppose the qualification or passage of a single state ballot measure. Existing law requires that the filing occur within 10 business days of the contribution or independent expenditure and that it contain detailed information relating to the committee, ballot initiative, and contribution or independent expenditure.

This bill additionally requires a committee to file a report each time it makes contributions totaling \$5,000 or more or independent expenditures aggregating \$5,000 or more to support or oppose the qualification of a single local ballot measure. The report will be filed with the local filing officer within 10 business days of reaching the aggregated amount.

3. AB 551 (Levine): Post-Governmental Employment; Exemptions

FPPC Position: *None currently*

Status: Assembly Appropriations Committee

Fiscal Estimate: In Process

Last Amended: Committee Amendments in Process

Last Action: Approved with amendments by Assembly Elections and Redistricting Committee; referred to Assembly Appropriations Committee (04/05/17)

Summary:

The Act prohibits a local official from receiving compensation to communicate with or appear before their former agency to influence legislative action. This prohibition lasts for one year after leaving office. The Act excludes from the prohibition government-to-government communications.

This bill repeals the government-to-government communication exemption.

Staff Update:

The Assembly Elections and Redistricting Committee amendments narrow the government-to-government exemption to in-house employees. Under the amendments, contractors for or on behalf of public agencies who communicate or appear before their former agency would be included in the one year revolving door prohibition.

4. AB 664 (Steinorth): Campaign Expenditures

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 14, 2017

Last Action: Referred to Assembly Elections and Redistricting Committee (03/02/17)

Summary:

The Act requires that contributions deposited into a campaign account for a candidate for elective office be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. The Act imposes limitations on certain expenditures as political, legislative, or government purposes. Government Code 84307.5 prohibits compensation from campaign funds to a candidate's spouse or domestic partner in exchange for services rendered.

This bill would prohibit payment, in exchange for services rendered, to a parent, spouse or domestic partner, grandparent, sibling, child, or grandchild of that officer or candidate.

5. AB 774 (Harper): Foreign Contributions

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 15, 2017

Last Action: Referred to Elections and Redistricting Committee (03/02/17)

Summary:

The Political Reform Act prohibits a foreign government or principal, as defined, from making a contribution or expenditure in connection with a ballot measure, and prohibits a person or committee from soliciting or accepting a contribution from a foreign government or principal for this purpose. (Section 85320.)

This bill would expand the scope of the law by also prohibiting a foreign government, principal, or foreign national from making a contribution or expenditure, and a person or committee from soliciting or accepting this type of contribution, in connection with any election in California (not just ballot measures). While this activity is currently prohibited under federal law, this bill expands the Commission's authority to enforce incidents of foreign contributions or expenditures

into California campaigns should the Federal Election Commission (FEC) not act. There is a risk for potential litigation because the bill expands the current law prohibition to foreign nationals.

6. AB 867 (Cooley): Behested Payments

FPPC Position: *None currently*

Status: Assembly Appropriations Committee

Fiscal Estimate: Pending

Last Amended: Committee Amendments in Process

Last Action: Approved with amendments by Assembly Elections and Redistricting Committee; referred to Assembly Appropriations Committee. (04/05/17)

Summary:

The Act defines “contribution” as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. The Act further describes types of payments that are expressly included or excluded from the definition, including specified payments made at the behest of a committee, elected officer, or member of the Public Utilities Commission. The Act requires that certain behested payments that are made principally for legislative, governmental, or charitable purposes be reported, as specified.

This bill (02/16/17 version) revises the definition of “contribution” for purposes of the Act and creates sections for the definitions of “behested payments,” “election-related activities,” and “made at the behest of.” The bill also appears to narrow the circumstances under which behested payments must be reported and therefore disclosed to the public.

Staff Update:

The Assembly Elections and Redistricting Committee amendments address the Commission staff’s concern that the bill would narrow the circumstances under which payments are reported and disclosed.

7. AB 895 (Quirk): Campaign Statements; Electronic Filing

FPPC Position: *None currently*

Status: Assembly Appropriations Committee

Fiscal Estimate: Pending

Last Amended: Committee Amendments in Process

Last Action: Approved with amendments by Assembly Elections and Redistricting Committee; referred to Assembly Appropriations Committee. (04/05/17)

Summary:

The Act requires certain individuals and entities to file campaign statements with the Secretary of State including requiring some to file online and others to file online voluntarily. The Act requires paper filers to continue to file in paper format until the Secretary of State determines

online filing is secure and effective. The Act also requires paper filing be considered the official filing for audits and other legal purposes.

This bill (02/16/17 version) would eliminate the requirement of certain filers to file in the paper format if they file online.

Staff Update:

The Assembly Elections and Redistricting Committee amendments would delay the implementation of the bill's provisions until certification of the new Cal-ACCESS system.

8. AB 1089 (Mullin): Local Contribution Limits

FPPC Position: *None currently*

Status: Assembly Appropriations Committee – Suspense File

Fiscal Estimate: \$1,091,973 (first year), \$1,035,973 (ongoing)

Introduction: February 17, 2017

Last Action: Referred to Assembly Appropriations Suspense File (04/05/17)

Summary:

The Act contains contribution limits and other restrictions related to contribution limits for state office and statewide offices. The Act specifies nothing in the law prevents the Legislature or local agency from adopting additional requirements, and nothing nullifies contribution limitations or prohibitions in local jurisdictions. All ordinances or other provisions adopted by local governments must be filed with the Commission.

The bill would establish a state-mandated contribution limit on local and special jurisdictions, which the Commission would be required to regulate and enforce. The state-mandated contribution limit is equal to the limits of state legislative candidates and would be adjusted for cost-of-living. Jurisdictions that adopt their own limit or have already established a limit would not be subject to the state limit established by AB 1089.

9. AB 1234 (Levine): Contribution Limits; Political Parties

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Referred to Assembly Elections and Redistricting Committee (03/09/17)

Summary:

The Act contains contribution limits on state offices, statewide offices, the Governor and small contributor committees. The Act exempts a political party committee from these contribution limits.

This bill would eliminate the exemption and make political party committees subject to contribution limits.

10. AB 1333 (Dababneh): Local Government Agency Notices

FPPC Position: *None currently*

Status: Assembly Local Government Committee

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Approved by Assembly Elections and Redistricting Committee; referred to Assembly Local Government Committee (04/05/17)

Summary:

Whenever an ordinance is submitted to voters of a county, city, or district at an election, election officials must print the ordinance and requires a copy of the ordinance to be made available to any voters who requests a copy.

This bill adds a new chapter to the Act to require every local government agency that maintains a website to post notice of any upcoming election in which voters will vote on a tax or bond measure of the agency. The bill also requires every local government agency that publishes an electronic newsletter to include the notice in the newsletter.

11. AB 1458 (Friedman) Candidate websites; Cal-Access

FPPC Position: *None currently*

Status: Assembly Appropriations Committee

Fiscal Estimate: Pending

Last Amended: Committee Amendments in Process

Last Action: Approved with amendments by Assembly Elections and Redistricting Committee; referred to Assembly Appropriations Committee. (04/05/17)

Summary:

The Act requires candidate and committees to file periodic campaign statements with the Secretary of State or local filing officer. Secretary of State is required to disclose certain information from campaign statements in a user-friendly, easily understandable format.

This bill (02/17/17 version) would require a candidate for elective office to include and conspicuously display on their campaign homepage a hyperlink to the Secretary of State's online disclosure website that displays the candidate's campaign finance information.

Staff Update:

The Assembly Elections and Redistricting Committee amendments would narrow the bill's requirement to only state candidates and clarify that the provisions of the bill do not apply to social media webpages.

12. AB 1524 (Brough): Mass Mailing Prohibition

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Referred to Assembly Elections and Redistricting Committee (03/16/17)

Summary:

Commission regulations defines criteria for mass mailings at public expense and specify certain forms of mass mailing that are not subject to the Political Reform Act's prohibition against mass mailings.

This bill would prohibit a mass mailing that complies with the Commission's regulatory criteria from being sent within the 90 days preceding an election by or on behalf of a candidate, state or local, whose name will appear on the ballot or on behalf of an agency, if a measure on the ballot will have a direct financial impact on the agency. The bill exempts school districts or community college districts who provide impartial and informative information regarding a bond issue or other measure. The bill does not apply to mass mailings required by law.

13. AB 1620 (Dababneh): Post-Governmental Employment

FPPC Position: *None currently*

Status: Assembly Elections and Redistricting Committee

Fiscal Estimate: None requested

Last Amended: March 28, 2017

Last Action: Amended with author's amendments; re-referred to Assembly Elections and Redistricting Committee (03/28/17)

Summary:

The Act prohibits a former Member of the Legislature from receiving compensation to communicate to or appear before the Legislature to influence legislative action. This prohibition lasts for one year after leaving office.

This bill would add the Governor and governor's staff to the list of prohibited entities. The bill would extend the prohibition for a Member of the Legislature who resigns from office prior to the completion of a term. For these individuals, the prohibition begins the day of resignation and ends one year after the final date of the term which the officer was elected to serve.

14. SB 24 (Portantino): Statement of Economic Interests

FPPC Position: *None currently*

Status: Senate Floor – Third Reading File

Fiscal Estimate: Minor and absorbable.

Introduction: December 5, 2016

Last Action: Referred to Senate Floor by Senate Appropriations Committee, Rule 28.8 (04/03/17)

Summary:

The Act requires the disclosures to include a statement indicating, within a specified value range, the fair market value of investments or interests in real property and the aggregate value of income received from each reportable source.

This bill would revise the dollar amounts associated with these ranges to provide for 8 total ranges of fair market value of investments and real property interests and 10 total ranges of aggregate value of income.

15. SB 45 (Mendoza): Mass Mailing Prohibition

FPPC Position: *None currently*

Status: Senate Elections and Constitutional Amendment Committee

Fiscal Estimate: None requested

Last Amended: April 6, 2017

Last Action: Set for Committee Hearing – April 18, 2017

Summary:

Existing law provides that no newsletter or other mass mailing shall be sent at public expense. The Commission's regulation defines criteria for mass mailings at public expense, and lists certain forms of mass mailings that will be permitted despite the Act's prohibition, including announcements of specified meetings or events sent by elected officials.

This bill would adopt the Commission's regulation in its entirety, including the list of exceptions from the prohibition. The bill also would provide that despite the exceptions, a mass mailing shall not be sent within the 90 days preceding an election by or on behalf of a candidate, state or local, whose name will appear on the ballot, except as otherwise required by law.

16. SB 226 (Hertzberg): Slate Mailers

FPPC Position: *None currently*

Status: Senate Elections and Constitutional Amendment Committee

Fiscal Estimate: None requested

Last Amended: April 4, 2017

Last Action: Set for Committee Hearing – April 18, 2017

Summary:

The Act regulates slate mailer organizations and prescribes specific disclosures on slate mailers and mass mailings. There are slate mailer organizations that identify themselves as representing non-governmental organizations including organizations composed of or affiliated with public safety-related occupations. The Act specifies additional disclosures for mailers that imply association with public safety-related occupations.

Regarding public safety-related occupations, this bill would require the slate mailer organization to disclose on the mailing, in a specified format, the number of members of public

safety personnel the slate mailer organization represents, or a statement that the organization does not represent any public safety personnel.

17. SB 267 (Pan): City of Sacramento Enforcement

FPPC Position: *None currently*

Status: Senate Appropriations Committee

Fiscal Estimate: City of Sacramento to reimburse FPPC's costs

Last Amended: March 21, 2017

Last Action: Approved by Senate Elections and Constitutional Amendment Committee; referred to Senate Appropriations Committee. (04/05/17)

Summary:

The Act authorizes the Commission to contract with the County of San Bernardino and the City of Stockton to provide impartial, effective administration, implementation, and enforcement of local campaign finance ordinances.

This bill would authorize the Commission and the City of Sacramento to enter a similar agreement. The bill also requires the Commission provide a report to the Legislature no later than four years after contracting with the City of Sacramento.

18. SB 358 (Stern): Secretary of State; local disclosure websites

FPPC Position: *None currently*

Status: Senate Floor – Consent Calendar

Fiscal Estimate: None requested

Introduction: February 14, 2017

Last Action: Referred to Senate Floor by Senate Appropriations Committee (04/03/17)

Summary:

The Act requires candidates and committees to file periodic campaign statements with the Secretary of State or the local filing officer.

This bill would require the Secretary of State to post hyperlinks on his or her website of any local government agency that has publicly-disclosed campaign finance information and update the hyperlinks accordingly.

19. SB 529 (Nguyen): Inspection of Public Records

FPPC Position: *None currently*

Status: Senate Elections and Constitutional Amendment Committee

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Set for hearing – April 18 (04/04/17)

Summary:

The Act provides that every report and statement filed pursuant to the Act is a public record and open for public inspection and reproduction. The Act prohibits any conditions upon persons seeking to inspect reports and statements.

This bill specifies recipient committee campaign statements filed with local filing officers be furnished promptly and would clarify that a request to inspect does not need to be made pursuant to the California Public Records Act.

20. SB 679 (Morrell): Post-Governmental Employment

FPPC Position: *None currently*

Status: Senate Elections and Constitutional Amendment Committee

Fiscal Estimate: None requested

Last Amended: March 27, 2017

Last Action: Referred to Senate Elections and Constitutional Amendment Committee
(04/05/17)

Summary:

The Act prohibits a former Member of the Legislature from receiving compensation to communicate to or appear before the Legislature to influence legislative action. This prohibition lasts for one year after leaving office.

This bill would extend the prohibition to five years.

Spot Bills (#21-22)**21. AB 780 (Harper): Controlled Committees**

FPPC Position: *None currently*

Status: In Print

Fiscal Estimate: None requested

Introduction: February 15, 2017

Last Action: Introduced

Summary:

This bill is a spot bill that makes non-substantive, technical changes to the Act.

22. SB 738 (Fuller): Political Reform Act of 1974

FPPC Position: *None currently*

Status: In Print

Fiscal Estimate: None requested

Introduction: February 17, 2017

Last Action: Introduced

Summary:

This bill is a spot bill that makes non-substantive, technical changes to the Act.