



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward
From: Phillip Ung, Director, Legislative and External Affairs
Subject: Legislative Suggestions from Staff Survey
Date: November 7, 2018

Introduction

At the September 10 Commission meeting, the Commission adopted the Legislation Development Schedule for 2019-2020 Session. An essential part of the Development Schedule was an internal survey to gather potential legislative ideas or identify issues within the Act. The survey was available to staff from October 1 to October 10. During that time, staff submitted 49 suggestions to amend the Political Reform Act.

This memorandum encompasses staff's suggestions that were further researched and developed. The Law & Policy Committee convened on November 1, 2018 to discuss potential legislation with staff.

Suggestions from Staff Survey

Campaign

1. Annual Registration Fee Penalty Clarification

Problem: There are issues with the interpretation of the penalty provision related to failure to pay the \$50 registration fee. Is the \$150 penalty an exclusive penalty or subject to additional fines within the Act.

Proposed Solution: Get clarity from the Legislature on their intent on the penalty provision.

PRA Section Proposed to be Amended: 84101.5

2. Repeal Annual Filing Fee and Penalty

Problem: The state currently levies a \$50 annual registration fee on political committees and a \$150 penalty for failing to pay the fee. Which can be argued to be dubious constitutionality, and a burden on political activity.

Proposed Solution: Eliminate the annual registration fee on political committees and the penalty.

PRA Section Proposed to be Repealed: Section 84101.5

3. Legal Expenses Related to Sexual Harassment

Problem: In Mendoza advice (withdrawn), the FPPC allowed the legislator to pay expenses arising from sexual harassment allegation out of campaign account (89512(a)) and set up a legal defense fund (85304).

Proposed Solution: The Commission should disallow such expenses, so that the individual pays from his or her own resources.

PRA Section Proposed to be Amended: Sections 89512(a); 85304

4. DISCLOSE Act Clean Up

Problem: Chaptered in 2017, AB 249 DISCLOSE Act, made comprehensive changes to the Act's disclosure structure. After the passage of AB 249, staff has discovered issues within the new disclosure regime.

Proposed Solution: Staff has offered several suggestions to address issues throughout AB 249.

- a) Fix 30/60 second timing reference in 84504.5(b).
- b) Correct earmarking filing obligations "under this title" in 85704.
- c) Technical changes to mass mailing provision 84305.
- d) Address conflict in 84504.3 and 84504.5.
- e) Require street address and city requirement in 84504.2
- f) Clarify large print advertising disclaimer format in 84504.2
- g) Clarify 84310(b) consistent with 84310(a).
- h) Clarify 84511(d) to ensure "continuous showing" until AB 249 disclaimer is displayed.
- i) Require contributor employer and occupation in 84501.
- j) Repeal 85501 to reduce possible confusion as AB 249 presumes IE's from candidates.
- k) Clarify 5 percent height disclaimer rule in 84504.2(b) and 84504.5(c)(2).
- l) Add subdivision making it clear sponsored "look back" period is 12 months prior to advertisement.
- m) Amend 84504.3 to include text message/SMS as communications needing disclaimer.
- n) Permit disclaimers to be in all capitalization.

PRA Section Proposed to be Amended: 84305, 84310, 84501, 84504.2, 84504.3, 84504.5, 84511, 85501, 85704,

5. Long Committee Names

Problem: Some committees have extremely long names. Long committee names can negatively effect required disclosure.

Proposed Solution: Prioritize major funder disclosure over committee name disclosure and eliminate extraneous information in names.

PRA Section Proposed to be Amended: Various amendments to 84501 through 84511

6. Campaign Bank Account Number Public Record Exception

Problem: Currently only candidate-controlled committees are required to establish separate campaign bank accounts. Bank account numbers are publicly available leading to possible fraud and theft.

Proposed Solution: Prohibit bank account number from being publicly released as part of a CPRA or other public information requests. The bank account number should only be used for investigative or auditing purposes.

PRA Section Proposed to be Amended: Potential new section added

7. Bank Account Rule for All Committees

Problem: Under the Act, a candidate or officeholder must establish one controlled committee with one bank account for each election. All contributions must be deposited in and all expenditures must be made from the campaign bank account. Political party committees are also required to establish a bank account. All other committees are not required to establish a separate bank account making audits difficult and complex.

Proposed Solution: Require all committees to establish a separate bank account for all contributions and all expenditures. This will assist in audits and enforcement investigations.

PRA Section Proposed to be Added: New section added to apply generally to all committees

8. Require Candidate Ad Disclosure

Problem: Disclosure requirements are not the same for every committee. Many complaints and AdWatch referrals for ads are signs and flyers by the candidate with no violation. Enforcement must review each one and contact the candidate. See Candidate Ad Chart – “Billboards, signs (including yard signs), faxes, business cards, door hangers, flyers, and posters “Paid for by committee name” and committee ID number are recommended but not legally required.” Staff suggests it is not an efficient use of resources.

Proposed Solution: Require committee disclosure on all communications.

PRA Section Proposed to be Amended: Various sections.

9. Adjust Campaign Record Retention Policy

Problem: Section 81009 requires certain campaign statements to be retained indefinitely. Whereas Section 84615 requires the same statements to be maintained for 10 years. The two sections do not work well together. Some filing officers have requested changes to the indefinite retention policy.

Proposed Solution: Amend the Act to require the retention period be 10 years from the date the filer leaves office.

PRA Section Proposed to be Amended: Section 81009

10. Make Personal Use of Campaign Funds a Crime

Problem: Section 89520 prevents Chapter 11 remedies for violations of Chapter 9.5.

Proposed Solution: Allow for misdemeanor charge for payments of \$10,000 or more that were improperly used for personal purposes.

PRA Section Proposed to be Amended: Section 89520

11. Money Laundering Preventing Attestation

Problem: Money laundering is considered one of the most serious violations of the Act. The law does little to inform potential contributors, potential intermediaries, and less sophisticated individuals about laundering.

Proposed Solution: Require simple check box on all contribution solicitations (e.g. webpages, mailings, hand-outs, door hangers, contributor cards/forms, fundraising invites.). This may not prevent all

money laundering, but it may help to educate individuals at all levels so such schemes would not develop or enforcement agencies may be alerted early in the schemes.

PRA Section Proposed to be Added: Potential new section added.

12. Require Principal Officer Signature on Statement of Organization

Problem: Filing officers have encountered “strawman” Principal Officers identified on Statements of Organization in order to conceal the true identity of the Principal Officer. Other situations include individuals identified as Principal Officer without knowledge or consent.

Proposed Solution: Require a real, verifiable human being sign as the principal officer to avoid strawman issues.

PRA Section Proposed to be Amended: 81004(b)

13. Require Treasurer Attestation on Knowledge of Liability Form

Problem: Many volunteer treasurers are unaware of the responsibilities of a treasurer and their subsequent liability under the Act for violations related to the committee.

Proposed Solution: Create a form/addendum to a form and require a treasurer to sign that they understand the responsibilities of a treasurer and the liability involved with the position.

PRA Section Proposed to be Added: New section of the Act or amend Section 84100.

14. Occupation and Employer on Checks

Problem: Contributors are required to disclose occupation and employer. The Act can make such disclosures easier.

Proposed Solution: Require the contributor’s information to be on each check before it is deposited including employer and occupation. For contributions given online,

PRA Section Proposed to be Added: A new section may be required.

15. Joint Fundraising Committee

Problem: The FPPC’s guidance on joint fundraising operations/committees is not in statute or regulations. The guidance is in advice letters, specifically California Republican Leadership Fund (A-11-102) and Benton (A-98-116).

Proposed Solution: It may best serve the regulated community to have the joint fundraising procedures codified in the Act and interpreted by regulation.

PRA Section Proposed to be Added: Potential new section added.

16. Candidate Controlled Ballot Measure Committee

Problem: Candidate controlled ballot measure committees are only defined within commission regulations and is not within the Act itself.

Proposed Solution: Codify what is required of candidate controlled ballot measure committees and what are permissible uses of funds.

PRA Section Proposed to be Added: Potential new section added.

17. Make Cost of Living Adjustment for Contribution Limits Every Four Years

Problem: Changing contribution limits every two year causes mid-cycle contribution limit changes for state candidates who run for office every four years.

Proposed Solution: Prior Political Reform Act reports/studies recommend modifying the cost of living adjustment so contribution limits will be updated every four years.

PRA Section Proposed to be Amended: 83124

18. Raise Minimum Disclosure Threshold to \$200

Problem: Under Section 84211(c), a committee is required to disclose all contributions from persons who have given \$100 or more. The amount was set in 1978 and has not been raised.

Proposed Solution: Make a cost of living adjustment but keep the amount lower or the same amount than the federal disclosure threshold (\$200). Allow locals to stay at a lower amount if they choose.

PRA Section Proposed to be Amended: Section 84211

Enforcement

19. Eliminate Duplicative Fines

Problem: Secretary of State late fines accrue at \$10 a day, plus what the FPPC fines a filer. Secretary of State late fines should be supplanted by the Commission's so that the FPPC can craft appropriate penalties, especially in the streamline program.

Proposed Solution: Once an enforcement matter comes to the Commission, the Commission is the sole arbiter of fines, and can more fairly and appropriately resolve enforcement matters.

PRA Section Proposed to be Amended: Section 91013

20. Modifying the Maximum Civil Penalty

Problem: The impact of our civil penalties fall disproportionately on the smaller offenses. The civil penalties have little behavioral impact on larger infractions.

Proposed Solution: Propose legislation that make the maximum civil penalty \$5,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received.

PRA Section Proposed to be Amended: Section 91005.5

21. Out of State Nonprofit Records

Problem: Currently the FPPC and Franchise Tax Board has limited access to out of state records for nonprofits and multipurpose organizations.

Proposed Solution: Additional access to nonprofit/MPO records from out of state can assist in proving activity under 84222.

PRA Section Proposed to be Amended: Section 84222

22. Tax Records for SEI Investigations

Problem: The FPPC cannot access tax records of respondents in order to fully investigate SEI conflict cases.

Proposed Solution: Permit the FPPC to have access to relevant tax records.

PRA Section Proposed to be Added: New section may need to be added.

23. Adjust Penalties throughout Act for Cost of Living

Problem: Many penalty levels are frozen in time and have become weakened through inflation.

Proposed Solution: Adjust penalties within the Act for cost of living to ensure penalties do not remain weakened by time.

PRA Section Proposed to be Amended: Various enforcement/penalty sections

24. Peace Officer Status for Limited Number of Investigators

Problem: Commission investigators are at times tasks with collecting evidence in dangerous or in volatile situations. Support from other peace officers are not always available.

Proposed Solution: Permit a limited number of investigators to be designated peace officers like other investigators throughout the state.

PRA Section Proposed to be Added: New section of the Act

25. Removal from Office for Failure to File Form 700

Problem: The FPPC does not have the authority to remove an elected official or officer from office. There are some public officials who refuse or do not comply with the basic requirement to submit a Form 700.

Proposed Solution: Authorize the FPPC to remove an official from office when the public official intentionally refuses to file required Form 700.

PRA Section Proposed to be Added: New section of the Act

Conflict of Interest

26. Require E-Filing with FPPC

Problem: The FPPC has successfully launched online filing for Form 700s. However, there is no specific requirement that candidates and elected officials listed in 87200 file electronically with the Commission.

Proposed Solution: Update 87200 et. seq. to require electronic filing with the Commission to make filing more efficient, transparent, and eliminate paper filings.

PRA Section Proposed to be Amended: Section 87200 et. seq.

27. SEI Filing Clean Up

Problem: The use of electronic filing for Form 700s has highlighted outdated provisions within the Act that should be updated.

Proposed Solution: Under 87500, remove subdivision (h) as FPPC has never had a request for a copy filed with FPPC. Clarify the meaning of subdivision (k) means. Make Senate and Assembly filing officials under subdivision (m) by removing the part that allows each house to give this authority to the FPPC. This so both Senate and Assembly would have the responsibility to update the e-filing system with staffers as they come and go. The entire section refers to paper filings – suggest adding a new subdivision at the end that creates a standard modification to all subdivisions for e-filing.

PRA Section Proposed to be Amended: Section 87500

28. Require Street Address for Income

Problem: Section 87207 does not require a street address when reporting income (including a gift) but Section 87313 requires a street address for the intermediary and the source of a gift.

Proposed Solution: Update statute to bring law current with advice letters. Require a street address in Section 87207

PRA Section Proposed to be Amended: Section 87207

29. Align Elected State Officials Assuming Office Statements with Other Officials

Problem: Elected state officials file assuming office statements under 87202(b) which is not aligned with the filing schedule of other elected officials throughout the state.

Proposed Solution: Remove this section and instead have elected state officials file assuming office statements like all other elected officials. We would, however, be missing disclosure of investments and property from March through November and income from November through March.

PRA Section Proposed to be Repealed: Section 87202(b)

Lobbying

30. Remove Placement Agents from Lobbying Requirements

Problem: Under Section 82039, placement agents are considered lobbyists and are required to register with the Secretary of State and attend an ethics course through the Legislature. The addition of placement agents as lobbyists was in reaction to corruption at CalPERS since been resolved with additional regulations and restrictions at the retirement fund agencies.

Proposed Solution: Repeal the PRA provisions related to Placement Agents. The retirement systems have much stronger internal disclosure requirements and sanctions for violations.

PRA Section Proposed to be Repealed: Section 82039

Miscellaneous

31. Behested Payments Filing Process – E-Filing

Problem: Section 82004.5 requires that a Form 803 filer submit the form to their office which then forwards it to the FPPC. Currently, if officials were to use the FPPC e-filing system they could bypass their own agency which is a problem because their agency must retain a copy of the submitted form.

Proposed Solution: Amend Section 82004.5 to allow filers to submit the form to us electronically while also noting their obligation to provide a signed copy to their own agency.

PRA Section Proposed to be Amended: Section 82004.5

32. Eliminate Fees for Electronic Copies under the Act

Problem: Local filing officers charge copying and cost of processing fees for requests of electronic copies of Form 700's.

Proposed Solution: Repeal the copying and retrieval fee authority in 81008 as it relates to requests for electronic copies.

PRA Section Proposed to be Amended: Section 81008

33. Omnibus Non-Substantive Clean Up

Problem: There are many technical and clarifying changes that can be made all at once within the Act.

Proposed Solution: List of amendments and repeals that can occur without substantively amending policy. Commission staff has been maintaining an ongoing list. Many were also discovered through the Political Reform Act Revision Project.

- a) Repeal Sections
 - a. 81016,
 - b. 82009,
 - c. 83123,
 - d. 83123.5(f),
 - e. 84200.6,
 - f. 84202.7(b),
 - g. 84217,
 - h. 84252(b),
 - i. 84602(a)(1)(A) & (B) [date references],
 - j. 84602(a)(10) & (11),
 - k. 85306(b)-(c),
 - l. 85321,
 - m. 87405,
 - n. 87406(f),
 - o. 87500.2(c) & (h) [jurisdiction reference].
- b) Technical and clarifying non-substantive amendments to Sections:
 - a. 82025(c)(4)(A) & (B) to not apply to communications paid for by public agencies
 - b. 84200.5(c) to clarify reference “in connection with the statewide primary or general election...”

PRA Section Proposed to be Amended: Listed in Attachment I.

34. Codification of Specified Regulations

Problem: The Revision Project identified several FPPC regulations that were deemed by staff to be clarifying and non-substantive.

Proposed Solution: The proposed regulations to be codified and the respective sections of the Act can be found in Attachment II.

PRA Section Proposed to be Amended: Listed in Attachment II.