



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Cardenas, Hatch, and Wilson

From: Dave Bainbridge, General Counsel
Katelyn Greene, Commission Counsel

Subject: Pre-Notice Discussion of Proposed Amendment to Regulations 18404.1, 18421.4, 18421.8, 18521, 18521.5, 18523.1, 18530.2, 18530.8, 18531.2, 18531.5, 18531.61, 18535, 18536, 18537.1, 18545, and 18951; and Adoption of Regulations 18531.63 and 18531.64

Date: December 7, 2020

Requested Action and Summary of Proposal

Staff presents amendments to regulations noted above and adoption of two regulations noted above for prenotice discussion. The proposed amendments result from the enactment of Assembly Bill 571 (2019) (“AB 571”). AB 571 imposes a contribution limit on elective city and county offices in jurisdictions that do not have local laws enacting a contribution limit, and gives authority to the Commission to enforce that limit. Prior to AB 571, the Political Reform Act (the “Act”)¹ did not include contribution limits for local offices.² In addition to imposing a contribution limit on city and county elective offices, AB 571 makes changes to a number of sections of the Act that work in conjunction with the Act’s contribution limits to include elective city and county offices subject to AB 571 in those sections.

The Commission adopted the existing regulations to facilitate compliance with state candidate contribution limits put in place by the passage of Proposition 34 in 2000. The purpose of the proposed regulatory changes is to extend existing regulations governing contribution limits on state candidates to those local candidates subject to contribution limits under AB 571. Staff presents these proposed regulatory changes for Commission discussion and comment. Staff anticipates the consideration of the proposed language for adoption at the Commission’s February 2021 meeting.

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

² In 2021, the AB 571 contribution limit will be \$4,900

Proposed Amendments

Regulations for Amendment

Regulation 18404.1 Termination and Reopening of Committees

Regulation 18404.1 currently provides rules for terminating a controlled committee of a candidate for state office, including establishing specified time periods for terminating the committee, closing campaign accounts, and providing creditor's notice. It also addresses reopening of committees for elective state office and accepting refunds of committee payments. Applying the requirements set forth in this regulation to elective city and county offices subject to AB 571 would be consistent with the original justification for the regulation. When the Commission adopted the regulation for state committees as a result of contribution limits put into effect by Proposition 34, the Commission stated that a committee should be terminated so that it does not outlive its usefulness, and that with the implementation of Proposition 34's "last in, last out/first in, first out" method, it was possible that a candidate could be attributing transfers to very old contributors without a mandatory termination of the committee. The Commission noted requiring termination would facilitate enforcement of contribution limits. This same issue may arise now that elective city and county offices are subject to a contribution limit under the Act that is subject to enforcement by the Commission.

Regulation 18421.4 Reporting Cumulative Amounts for State Elections and State Recipient Committees

Regulation 18421.4 addresses the reporting of cumulative amounts of contributions for an election received and made by committees subject to the Act's state contribution limits. This regulation was originally adopted to ensure cumulative contributions from a source did not exceed the contribution limits placed on state offices by Proposition 34. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18421.8 Reporting an Expenditure by a Candidate Controlled General Purpose Ballot Measure Committee

Regulation 18421.8 details the reporting requirements of a candidate-controlled general purpose ballot measure committee for candidates for elective state office. The regulation requires candidate-controlled general purpose ballot measure committees to report detailed information for expenditures made of \$100 or more, including identification of each measure supported or opposed and the amount allocated to each measure. Limits on contributions to candidate election campaigns creates risk these campaigns will use resources not subject to limits, such as ballot measure committee funds, to supplement the candidate's campaign. Accordingly, the Commission adopted the current regulation's reporting requirements to help ensure funds contributed to candidate-controlled ballot measure committees are not used to influence candidate election campaigns. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18521 Establishment of Separate Controlled Committee for Each Campaign Account

Regulation 18521 addresses the use of a candidate-controlled committee and committee bank account for a future election of the same candidate, referred to as “redesignation.” Redesignation is permitted for local committees when the future election is for the same elective office. However, redesignation is not permitted for candidates for elective state office to help ensure compliance with contribution limits. The prohibition on redesignation at the state level facilitates tracking of campaign funds. This helps provide a clear picture of a candidate’s contributions to ensure compliance with the contribution limits. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18521.5 Ballot Measure Committees Controlled by Candidates for Elective State Office

Regulation 18521.5 provides guidelines for ballot measure committees controlled by state level candidates to ensure contributions to ballot measure committees are not instead used to support the controlling candidate. The proposed amendments would apply the same rules for ballot measure committees controlled by candidates for offices subject to AB 571.

Regulation 18523.1 Written Solicitation for Contributions

Regulation 18523.1(b) provides rules for language that must be included in a solicitation for contributions by candidates at the state level including identification of the particular committee for which the contribution is solicited and identification of the specific office. This regulation was adopted in light of the Proposition 34 limits being imposed on elective state offices to help ensure that funds that are allocated to a particular election for a specific office are noted as such and to ensure compliance with the Act’s “one bank account rule” found in Section 85201. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18530.2 Transfer of Funds Raised Prior to Proposition 34 Limits

Section 85306 addresses the transfer and attribution of campaign funds between a candidate’s own committees for elective state office before and after the enactment of Proposition 34 contribution limits. Regulation 18530.2 was adopted to provide guidance on the transfer of funds between committees raised prior to the limits imposed on elective state offices by Proposition 34 to help ensure compliance with contribution limits. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well because Section 85306 has been amended by AB 571 to include these offices.

Regulation 18530.8 Personal Loans

Section 85307 addresses a limit on personal loans a candidate for elective state office may make to his or her campaign. Regulation 18530.8 was adopted to include additional guidance on this rule. Section 85307 was amended by AB 571 to include elective city and county

offices subject to AB 571 in this limit. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18531.2 Refunding General Election Contributions

Regulation 18531.2, interpreting Section 85318 enacted under Proposition 34, addresses the pro rata refund of contributions raised for a general election or a special general election by a candidate for elective state office who is defeated in the primary or special primary election, or who withdraws from the general election or special general election. Section 85318 was amended by AB 571 to now include candidates for elective city and county offices subject to AB 571. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18531.5 Recall Elections

Section 85315 permits an elected state officer to establish a committee to oppose the qualification of a recall measure and the recall election and that this committee is not subject to the Act's contribution limits. Regulation 18531.2 provides additional guidance to elected state officers involved in recalls including guidance that contribution limits do not apply to elected state officers that are the target of a recall election, but they do apply to replacement candidates as they are treated as other candidates running for state office. AB 571 amended Section 85315 so that it now applies to elective city and county offices subject to the AB 571 limit. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18531.61 Treatment of Debts Outstanding After an Election – Prior to January 24, 2004

There are no substantive amendments proposed for this regulation. However, there is an incorrect cite in subdivision (d) that is proposed to be corrected.

Regulation 18535 Restrictions on Contributions Between Candidates

Section 85305 provides that a candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the applicable contribution limit. There are some exceptions to this general rule provided in other sections of the Act including for contributions made to a candidate that is the target of a recall election, contributions made to a candidate's legal defense fund and to candidate controlled ballot measure committees. Regulation 18535, interpreting Section 85305, provides guidance on these rules. AB 571 amended Sections 85305 to include elective city and county offices subject to the AB 571 limit. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18536 Transfer and Attribution of Contributions

Section 85306 addresses transfer and attribution of campaign funds between a candidate's own committees and the method by which this must be done to ensure compliance with contribution limits linking each contributor to the amount of funds contributed so as not to exceed contribution limits for a particular election using the "last in, first out" or "first in, first out" accounting method. Regulation 18536, interpreting Section 85306, addresses the attribution of contributions for candidates for elective state offices. AB 571 amended Section 85306 to include elective city and county offices subject to the AB 571 limit. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18537.1 Carry Over of Contributions

Section 85317 permits the transferring of campaign funds from a candidate-controlled committee to the same candidate's controlled committee established for a subsequent election to the same elective state office, referred to as "carry over." Section 85317 does not require attribution to specific contributors for the carry over. Regulation 18537.1 interprets Section 85317 providing further guidance on when these transfers are permitted. AB 571 amends Section 85317 to apply to elective city and county offices subject to the AB 571 limit. The proposed amendments would apply the rules in the regulation to those offices subject to AB 571 as well.

Regulation 18545 Contribution Limits and Voluntary Expenditure Ceiling Amounts

Regulation 18545 includes the Act's contribution limits and voluntary expenditure limits adjusted for inflation every odd numbered year. AB 571 now imposes a default contribution limit on elective city and county offices in jurisdictions that do not have a local ordinance addressing contribution limits in place. The proposed amendments add a section specifically for the AB 571 contribution limit, which will be updated biennially with all of the other contribution limits imposed by the Act.

Regulation 18951 Surplus Funds

Regulation 18951(d) currently provides that except as provided by Section 85315 regarding elected state officer recall committees, campaign funds raised by (1) a committee, other than a candidate controlled committee; or (2) a candidate controlled ballot measure committee are not considered surplus funds for purposes of the regulation. Section 85315 was amended to include committees subject to AB 571. The proposed amendments would apply the rules in subdivision (d) to those offices subject to AB 571 as well.

Regulations for Adoption

Regulation 18531.63 Transfer of Debts Outstanding After a City or County Election – Prior to January 1, 2021

Currently, Regulation 18531.6, interpreting Section 85316, addresses the treatment of debts outstanding for elective state offices prior to January 24, 2004 as well as those received

before January 1, 2001 due to the enactment of Section 85316 under Proposition 34 relating to post election fundraising. Regulation 18531.63 is proposed for adoption to include the same guidance provided in Regulation 18531.6 to the elective city and county offices that will be subject to the AB 571 limit and that may have accepted contributions prior to the effective date of AB 571, January 1, 2021. Section 85316, which currently addresses Post-Election fundraising for state officeholder accounts, was amended to now include committees subject to AB 571. The proposed regulation would apply the same rules to those offices subject to AB 571 as well.

Regulation 18531.64 Treatment of Debts Outstanding After a City or County Election

Regulation 18531.61, interpreting Section 85316, addresses the treatment of debts outstanding after a state election, specifically for contributions received on or after January 24, 2004. This regulation was enacted due to the passage of Proposition 34 and Section 85316 relating to post election fundraising. Proposed Regulation 18531.64 will provide the same guidance to elective city and county offices subject to the AB 571 limit that may receive contributions after January 1, 2021 because Section 85316 was amended to include these offices.

Summary

The proposed amendments to existing Regulations 18404.1, 18421.4, 18421.8, 18521, 18521.5, 18523.1, 18530.2, 18530.8, 18531.2, 18531.5, 18531.61, 18535, 18536, 18537.1, 18545, and 18951 and the proposed adoption of Regulations 18531.63 and 18531.64 will provide rules governing candidate contribution limits for candidates for elective city and county offices subject to AB 571 consistent with existing regulations applicable to state candidates.

Attachments: Proposed Regulations 18404.1, 18421.4, 18421.8, 18521, 18521.5, 18523.1, 18530.2, 18530.8, 18531.2, 18531.5, 18531.61, 18535, 18536, 18537.1, 18545, and 18951 for Amendment and Regulations 18531.63 and 18531.64 for adoption.