



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

From: Phillip Ung, Director, Legislative and External Affairs

Subject: Legislation Report – March 2020

Date: March 9, 2020

Commission-sponsored Legislation

Senate Bill 423 (Umberg), related to committee bank accounts and bank account information, will remain in the Assembly Elections Committee as Commission staff continues to work on resolving the concerns expressed by the regulated community.

Legislative Development

Staff continues to work with legislative partners to develop three Commission priorities: 1) use of public funds in campaigns, 2) e-filing of Form 700s, and 3) statutory fix to the income/gift threshold.

Recommendations

Staff recommends the Commission adopt positions on four bills introduced in the new legislative session. Staff recommends a “sponsor” position on two Commission-generated bills, a “support” position on essential clean-up legislation, and a “support if amended” position on legislation that was re-introduced in 2020.

General Update

There are currently 12 active Political Reform Act bills pending in the 2020 Session. Two of the bills are considered spot bills that make no substantive changes to the Act. The Legislative will hold policy committee hearings in March and April with April 24th as the deadline to refer all fiscal bills to respective Appropriations Committees.

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

Recommendations (#1-4)

1. [AB 2407 \(Berman\): Limited Liability Companies](#)

Staff Recommendation: Sponsor

Status: Assembly Elections Committee

Introduced: February 18, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/24/20)

Summary:

This bill would require a committee to include within a campaign statement the name of each individual who owns or controls, or controls the contributions or expenditures of, a limited liability company or foreign limited liability company from which the committee received a campaign contribution.

Staff Comments:

The Commission has prioritized the increased regulation of limited liability companies under the Act. Assembly Bill 2407 is the legislative vehicle for the Commission's new disclosure requirements for LLCs. Staff continues to develop additional provisions to further align AB 2407 with the intent of the Commissioners. Staff recommends the Commission formally adopt a "sponsor" position.

2. [AB 2505](#) (Berman): Personal Use of Campaign Funds; enhanced penalties

Staff Recommendation: Sponsor

Status: Assembly Elections Committee

Introduced: February 27, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/27/20)

Summary:

The Fair Political Practices Commission administers and enforces the act. A violation of the act's provisions, with certain exceptions, is punishable as a misdemeanor. The Act prohibits the use of campaign funds for certain purposes, including expenditures that confer substantial personal benefit that are not directly related to a political, legislative, or governmental purpose. These prohibitions are not subject to certain penalties, including the misdemeanor penalty described above.

This bill would subject a person who misuses campaign funds in violation of these requirements resulting in an unlawful direct personal benefit with a monetary value of \$10,000 or more to that misdemeanor penalty and an administrative penalty collected by the Commission of up \$10,000 for each violation or three times the amount of the unlawful direct personal benefit.

Staff Comments:

The Commission has prioritized the enhancement of penalties for illegal personal use of campaign funds. Assembly Bill 2505 would allow for increased administrative penalties and potential criminal penalties for egregious misuse of campaign funds resulting in unlawful direct personal benefit. Staff recommends the Commission formally adopt a "sponsor" position.

3. [AB 2151](#) (Gallagher): Local Campaign Filings; online filing and disclosure systems

Staff Recommendation: Support if Amended

Status: Assembly Elections Committee

Introduced: February 5, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/20/20)

Summary:

Would require a local government agency to post on its internet website a copy of any specified statement, report, or other document filed with that agency in paper format within 72 hours of receiving the statement, report, or other document. This bill would require that the statement, report, or other document be made available for four years from the date of the election associated with the filing. By imposing a new duty on local government agencies, this bill would impose a state-mandated local program.

Staff Comments:

Earlier this year, Assembly Bill 322 died because it missed key legislative procedural deadlines. Assembly Bill 2151 is the re-introduction of AB 322. In 2019, the Commission adopted a “support if amended” position with a simple request to extend the proposed retention period from four years to ten years. The ten-year retention period would align the bill with the electronic document retention timeline under paragraph (i) of Section 84615. Staff recommends the Commission adopt a “support if amended” position to ensure continuity in the Act’s retention policies.

4. [AB 2889](#) (Mullin): Default Local Contribution Limits

Staff Recommendation: Support

Status: Introduced; referral pending

Introduced: February 21, 2020

Last Action: Introduced (02/21/20)

Summary:

For a candidate for elective state office other than a candidate for statewide elective office, the limitation on contributions is \$3,000 per election, as that amount is adjusted by the Fair Political Practices Commission in January of every odd-numbered year. The act, beginning January 1, 2021, subjects a candidate for city or county office to this contribution limit. However, this contribution limit and related provisions of the act do not apply in a jurisdiction in which the county or city imposes a limit on contributions.

This bill would clarify that the contribution limitation and related provisions of the act would not be applicable to a candidate for elective county or city office that is subject to a mandatory limit on contributions adopted by the city or county.

Staff Comments:

In 2019, Assembly Bill 571 (Mullin) was chaptered and, starting January 1, 2021, would require city and county elections to be subject to a state default contribution limit. A jurisdiction may avoid the default limit if it adopts a limit different than the state’s limit for state legislative offices. Assembly Member Mullin introduced Assembly Bill 2889 at the request of Commission staff to address two significant issues with AB 571: 1) whether default contribution limits should apply to jurisdictions with voluntary contribution limits and 2) how default contribution limits would apply to jurisdictions where only some offices had limits under local ordinances and other offices do not.

This bill would provide the policy “clean up” necessary to administer the local default contribution limits in 2021. Staff recommends a “support” position.

Sponsored Bills (#5)

5. [SB 423](#) (Umberg): Committee Bank Accounts

FPPC Position: *Sponsor*

Status: Assembly Elections Committee

Amended: April 9, 2019

Last Action: Set for hearing; hearing cancelled at the request of the author (6/24/19)

Summary:

This bill would expand the bank account requirement to include all recipient committees, as defined in [subdivision \(a\) of §82013](#). This would mean all contributions (§82015) received by the committee would have to be deposited in the designated account, and all expenditures (§82025) made by the committee would have to be drawn from the designated account. Currently, only candidate committees are subject to the “one bank account” rule. All non-candidate committees (e.g. primarily formed ballot measure committee, general purpose committee) have not been included in the “one bank account” rule. This bill would also permit a committee to redact its bank account number on the copy of the committee’s statement of organization filed with local filing officers. The bill permits the Secretary of State to redact bank account numbers on statement of organization disclosed in any form.

Staff Comments:

Commission staff believes the issues raised by the regulated community may be resolved early in the 2020 Session. Staff plans to present potential amendments at the April or May Commission meeting.

Active Bills (#6-10)

6. [AB 1217](#) (Mullin): DISCLOSE Act – Issue and Electioneering Ads

FPPC Position: *Support if Amended*

Fiscal Estimate: \$1,026,259 for first year and \$977,259 for ongoing

Status: Assembly Appropriations Committee – Suspense File

Amended: April 29, 2019

Last Action: Referred to Assembly Appropriations Committee Suspense File (05/08/19)

Summary:

This bill does the following:

1. Amends the definition of “advertisement” in the PRA to include “electioneering communication,” “issue advocacy advertisement,” and “major advertiser.” The bill designates “top contributors” established under the Disclose Act as “top funders.” Also, defines “nondonor funds,” “small donor funds,” and “lobbying donor.”
2. Adds definition of “lobbying-available donation” to mean payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, except

if full and adequate consideration is received (or if it is clearly not made for lobbying purposes). Describes what is and is not a “lobbying-available donation.”

3. Would adopt disclaimer requirements of “major advertisers” and “top funders” of an issue advocacy ad totaling \$50,000 or more in a calendar year and require disclosure of three highest lobbying-available donations of \$10,000 or more, as specified.

Staff Comments

Assembly Bill 1217 would adopt disclaimer requirements for ads defined as “electioneering” and “issue advertisements.” This ambitious bill suffers from structural deficiencies that would make interpretation, administration, and enforcement difficult. Some of the deficiencies include:

1. The provisions of these non-campaign related communications are being added to the Chapter and Article of the Act previously exclusive to campaign ads. Inserting unrelated, non-campaign terms and requirements into the campaign advertising sections will severely complicate portions of the Act already filled with complexity.
2. Enforcing the provisions of this bill would require resource-heavy investigations of issue and electioneering ads because there would be no corresponding disclosures filed with filing officers disclosing “lobbying-available donations” and payments for communicating.
3. Establishes pre-election timing thresholds (60 days before a general or special election, 30 days before a primary election) that are substantively different than current electioneering requirements under Section 85310 (within 45 days of any election).

In addition to potential policy and structural issues, FPPC staff believes this bill could lead to legal challenges over its constitutionality.

In August 2019, Assembly Member Mullin decided to make AB 1217 a two-year bill in order to work with the FPPC and other stakeholders on address ongoing issues with the bill. There have been no follow-up stakeholder meetings since August 2019.

7. [AB 2079](#) (Kiley): Contribution Prohibition on Investor Owned Utilities

Status: Assembly Elections Committee

Introduced: February 5, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/20/20)

Summary:

This bill would prohibit an investor-owned utility from contributing to a candidate for elective state office. The bill would also prohibit a candidate for elective state office from accepting a contribution from an investor-owned utility.

Staff Comments:

There are three major investor-owned utilities (IOU) operating within California: Pacific Gas & Electric, Southern California Edison, and San Diego Gas and Electric. Staff continues to analyze

this legislation and the practical issues that may arise when prohibiting contributions from a class or type of contributor.

8. [AB 3078](#) (Garcia): Behested Payments

Status: Assembly Elections Committee

Introduced: February 5, 2020

Last Action: Introduced, referred to Assembly Elections Committee (02/20/20)

Summary:

This bill would provide that an elected officer or member of the Public Utilities Commission is not required to report payments made in response to an invitation to an event hosted by a nonprofit organization unless the elected officer or member of the Public Utilities Commission, or an agent thereof, makes a direct written or verbal request for a payment for a legislative, governmental, or charitable purpose. The bill would specify that an elected officer or member of the Public Utilities Commission is not considered to have made a direct written request solely because the name, signature, photograph, or similar identifying information of the elected officer or member of the Public Utilities Commission is included in the invitation to the event.

9. [SB 300](#) (Umberg): Political Reform Act; Foreign Contributions

FPPC Position: *Support*

Status: Assembly Elections Committee

Amended: March 20, 2019

Last Action: Referred to the Assembly Elections Committee. No hearing set. (5/30/19)

Summary:

This bill would expand prohibitions against foreign influence in campaigns to include contributions, expenditures, or independent expenditures in connection with the qualification or support, or opposition to, a state or local candidate. The act would change the fine to an amount up to the greater of \$10,000 or 3 times the amount contributed or expended.

Staff Comments:

In 2016, the FPPC supported near-identical legislation ([AB 2250 – Ridley-Thomas](#)) to address a potential gap in the PRA related to foreign contributions to state and local candidates. Federal law generally prohibits foreign nationals from spending money in *any* U.S. election. The federal law is one of the issues before the U.S. Supreme Court in [United States v. Ravneet Singh](#). SB 300 may provide a backstop in California if the Court rules against the federal government.

10. [SB 1014](#) (Allen): Recall Elections; contribution limits

Status: Senate Elections Committee

Introduced: February 14, 2020

Last Action: Introduced, referred to Senate Elections Committee (02/24/20)

Summary:

This bill would require an elected state officer to comply with the contribution limits for contributions to oppose a recall. The bill would only become operative if Senate Constitutional Amendment 2 of the 2019—20 Regular Session is approved by the voters.

Staff Comments:

Senate Bill 1014 is only operative if Senate Constitutional Amendment 2 is approved by the voters. SCA 2 would change how a state officer is listed on the ballot in a recall. Under the proposed recall process, recall elections featuring a state elected office would no longer be considered ballot measures, thus a limit on contributions may be appropriate under court precedent. Senator Allen plans on placing SCA 2 on the November 2020 ballot.

Spot Bills (#11-12)

11. [AB 2599](#) (Rivas): Political Reform Act; Commission

Status: Introduced

Introduced: February 20, 2020

Last Action: Introduced (02/20/20)

12. [SB 1436](#) (Grove): Political Reform Act; post government employment

Status: Introduced

Introduced: February 21, 2020

Last Action: Introduced (02/21/20)