



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Miadich, Commissioners Baker, Cardenas, Wilson, and Wood

From: Lindsey Nakano, Sr. Legislative Counsel

Subject: **Legislative Update – November 2021**

Date: November 8, 2021

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2. General Update

Five Commission-related bills were passed by the Legislature and signed by the Governor this year, all of which were formally supported or sponsored by the Commission. The Legislature is now on Interim Study Recess and will reconvene on January 3, 2022.

During the recess period, staff is researching and developing legislative concepts for 2022 and reaching out to potential authors and interested parties.

2022 Legislative Proposals

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1. State-Run Digital Campaign Advertisement Archive

a. Background:

- i. Political campaigns are increasingly using digital media, such as websites and social media, as a means of delivering campaign advertisements to voters.
- ii. Advertisements are powerful tools for campaigns, and the pervasive and immersive nature of ads in the digital realm only increases their ability to influence and persuade.
- iii. Digital campaign ads present regulatory challenges due to their ephemeral nature and their presence on diverse and evolving forms of digital media. The existing tools available to review these ads fall short of providing adequate transparency.
- iv. In part to examine this issue, the FPPC authorized the creation of the Digital Transparency Task Force in fall of 2019. The task force completed its work in July 2021, and its final report included legislative recommendations, including the creation of a state-run digital ad archive.

b. This proposal would:

- i. Require a committee that pays for a digital campaign advertisement to submit a copy of the ad and other specified information to the FPPC or another designated state agency pursuant to a specified deadline.

- ii. Require that the FPPC or other designated state agency make that information available in a publicly accessible online archive.
 - iii. Require that the archive include user-friendly functions, such as expanded search capabilities and the ability to download raw data.
- c. Benefits:
 - i. The digital ad archive would create a way for voters, the news media, researchers, the FPPC, and other committees and candidates to have access at their fingertips to every digital campaign ad issued by a committee.
 - ii. The archive would facilitate transparency and accountability by giving voters and others more information about campaign activity, including the messaging issued by committees and the interests funding campaigns.
 - iii. This proposal would create a tool that is necessary and appropriate to meet the PRA's purposes of fully informing the voters and adequately enforcing the PRA.

2. Political Advertisement Disclaimer Study

- a. Background:
 - i. The purpose of a disclaimer on a campaign advertisement is to tell the voters who paid for the ad, which provides information about what interests support or oppose the subject of the ad.
 - ii. The current required disclaimers on digital campaign ads were generally modeled after disclaimers that have historically appeared on ads appearing in print or on television.
 - iii. The Digital Transparency Task Force raised a question about whether there might be a better way to present disclaimers on digital ads, given the unique and diverse nature of digital ads.
 - iv. In its final report, the task force recommended that the Legislature commission a study with public engagement to examine whether there are different styles of disclaimers that could be required for digital campaign ads that would more effectively provide voters with information about who is paying for the ads.

- b. This proposal would:
 - i. Require the FPPC or another designated state agency to contract with a qualified third party to conduct a study of the effectiveness of disclosures on digital campaign advertisements and to make recommendations about what kinds of disclaimers would be most effective.
 - ii. Require the study to:
 - 1. Include public engagement.
 - 2. Determine what styles of disclosures most effectively provide voters with information about who is paying for digital campaign advertisements.
 - 3. Consider, at a minimum, the form, content, placement, and wording requirements of the disclosure.
 - iii. Provide guidelines for the research process.
- c. Benefits:
 - i. Because of the inherent differences in how digital ads are presented and consumed compared to ads on traditional media, it would be beneficial to study whether different disclaimers would more effectively inform the public about who paid for the ad.
 - ii. This study would result in research-based findings on what kinds of ad disclaimers will most effectively provide information to voters, which could be the basis for future legislation revising the disclosure requirements for digital ads in the Political Reform Act.

3. Automatic Recurring Contributions

- a. Background:
 - i. Some campaigns use a fundraising tactic by which they enroll individuals in the automatic payment of recurring campaign contributions without the individuals' affirmative consent.
 - ii. This is often achieved through the use of pre-checked boxes on an online donation form that make what would be a one-time contribution into a recurring contribution with no further action by the donor.
 - iii. News stories on this practice have included quotes from contributors who say they were misled into making recurring contributions that they did not

intend to make. In some cases, contributors did not become aware of the recurring contributions until a significant amount was automatically deducted from their bank accounts or charged to their credit cards.

- iv. In June 2021, Assemblymember Berman amended AB 775 to address this issue. The Commission voted to sponsor AB 775 at its July 2021 Commission meeting. Although the bill was not voted on by the Legislature in 2021, Assemblymember Berman has confirmed his intent to take up the bill in early 2022 as a 2-year bill.

b. AB 775 would:

- i. Require a candidate or committee to obtain affirmative consent from a person making a recurring contribution at the time of the initial contribution.
- ii. Require a candidate or committee that accepts a recurring contribution to provide a receipt for each contribution, provide information necessary to cancel the recurring contribution, and immediately cancel a recurring contribution upon request.

c. Benefits:

- i. This bill creates more transparency surrounding the campaign practices of committees, and ensures that individuals are actually and effectively informed about the nature of their contribution.

d. Note:

- i. Discussions on potential amendments to AB 775 are ongoing.

4. Lobbying Reports and Audits

a. Background:

- i. Lobbyists, lobbying firms, and lobbyist employers are required to submit quarterly periodic reports. While these reports provide general information about lobbying activity and payments, they provide minimal information about the more detailed subject and substance of the lobbying activity.
- ii. The Political Reform Act requires the Franchise Tax Board to conduct audits of certain reports and statements filed pursuant to the Act, including these lobbying reports. No audits of lobbying reports were completed for the 2017/2018 reporting period, and none are expected to be completed for the 2019/2020 reporting period. FTB has not conducted these audits in recent years, which has resulted in several hundred lobbying firms and

lobbyist employers not being audited as required by the Act.

- iii. The FPPC has the authority to conduct discretionary audits of any reports or statements filed pursuant to the Act, including lobbying reports, but does not currently have the funding to complete a significant number of these audits.

b. This proposal would:

- i. Add to the information reported by lobbying firms, lobbyist employers, and lobbyists. This may include:
 - 1. Requiring a lobbyist to report the full name of each member or officer of a state agency and elected state officer who the lobbyist communicated with directly or through an agent for the purpose of influencing legislative or administrative action, and a description of the specific lobbying interests lobbied.
 - 2. Requiring faster client registration by requiring a lobbying firm to amend its registration no later than 48 hours from a change to the name of a person by whom the lobbying firm is retained. Currently, these amendments are required to be filed “prior to the lobbying firm’s attempting to influence any legislative or administrative action on behalf of that person.”
 - 3. Requiring a new 24-hour report for lobbying firms when they start lobbying on a legislative or administrative action. The report would be submitted directly to the FPPC.
- ii. Transfer the duty to conduct mandatory audits of lobbying entities from the FTB to the FPPC.
- iii. Exempt from mandatory audits placement agents and lobbyist employers and lobbying firms that make/receive less than \$25,000 for lobbying services during the reporting period. This would allow the FPPC to focus resources on traditional lobbying entities engaged in more significant lobbying activity.

c. Benefits:

- i. Expanding lobbying entity reporting duties would provide the public, legislators, the FPPC, and others with more substantive information about the interests influencing legislative and administrative actions.
- ii. Audits are a crucial tool for discovering violations of the Act. Additionally, the real possibility of being audited may result in better self-

regulation by those required to report. Transferring the lobbying report audit duty to the FPPC will help ensure that these audits are prioritized and completed, which would result in increased transparency and better enforcement of Act.

5. State or Local Agency Use of Public Funds for Campaign Communications

a. Background:

- i. Current state law generally prohibits public officials from using public resources for campaign activity.
- ii. The PRA requires state and local government agencies to report payments for public communications that clearly identify a candidate or ballot measure, and authorizes the Commission to impose penalties if an agency fails to report these payments.

b. This proposal would:

- i. Codify and clarify the rules relating to payments by state or local agencies for campaign-related communications.
- ii. Provide that under the Act, campaign communications sent by a state or local government agency at the public expense are prohibited by the Act, including those that clearly identify a candidate or ballot measure, unless the communication fits into a specified exception.
- iii. Provide that “clearly identify” has the same meaning as defined in the Act in Section 82025.
- iv. Provide examples of prohibited communications, including, but not limited to, prohibited mass mailings, bumper stickers, billboards, print media, and mass media communications.

c. Benefits:

- i. By clarifying the rules for the kinds of public communications that fit into this category, this proposal would create greater certainty for the regulated community and would aid in compliance with the Act.
- ii. This proposal would provide greater protection for the public from government agencies and officials impermissibly spending public funds to influence elections.

6. Electronic Filing of Statements of Economic Interest

- a. Background:
 - i. The Commission has successfully implemented its electronic filing system for Form 700s, or SEIs, and has received thousands of e-filed SEIs. Use of the electronic filing system is currently voluntary.
- b. This proposal would:
 - i. Require a statement of economic interests filed by a public official, for whom the Commission is the filing officer, to be filed with the Commission using the Commission's electronic filing system.
- c. Benefits:
 - i. This proposal would further the general modernization efforts of the Commission, reduce staff time spent on processing, reduce facility and storage costs over time, and increase transparency by ensuring that all of these SEIs are available in a searchable format.
 - ii. Additionally, the e-filing system provides a faster and easier filing experience for the filer by pre-filling in many fields in the form after the filer submits their initial SEI.

7. Increase Transparency of Committee Bank Accounts

- a. Background:
 - i. FPPC investigators and auditors often experience delays in, and roadblocks to, obtaining necessary bank records during the course of an investigation or audit.
 - ii. Delays can occur when committees maintain multiple bank accounts that are not clearly identified or do not have clear purposes, when parties with access to records are unavailable or unresponsive, and when records or parties are located out of state.
- b. Options available to address these issues include:
 - i. Creating a long-arm statute to give the FPPC jurisdiction over nonresident parties subject to the act and to subpoena out-of-state records connected to an investigation or audit.
 - ii. Requiring better designation of committee bank accounts, such as through bank account naming requirements or disclosing bank account numbers in

committee filings, which would be available only to the FPPC and would be redacted on public copies.

- iii. Require at least two people, likely the treasurer and the candidate or assistant treasurer, to be authorized signers for committee bank accounts.

c. Benefits:

- i. The long-arm statute would save significant time and resources in reaching out-of-state parties and obtaining out-of-state records associated with parties under investigation or audit.
- ii. Better designation and identification of committee bank accounts would allow investigators and auditors to more efficiently track campaign transactions.
- iii. Requiring two authorized signers would help ensure that there is someone available who has direct access to bank account records. Currently, typically only the treasurer is an authorized signer, which means that only the treasurer has the ability to access bank account records and statements directly. This creates significant issues when the treasurer is unavailable or unresponsive. When the authorized signer is unreachable, complete records are difficult to obtain and delays to the auditing and investigation processes can occur. FPPC auditors have noted that even if a candidate, for example, wants to directly access their own committee bank account records, they are unable to do so if they are not authorized signers.

8. FPPC Special Investigator Authority

a. Background:

- i. FPPC Special Investigators currently have limited access to the background information of parties to an investigation and other witnesses.
- ii. Several other state agencies with investigation/enforcement units have access to state summary criminal history information, which allows investigators in those agencies to effectively research individuals under investigation.

b. This proposal would:

- i. Authorize FPPC Special Investigators to access state summary criminal history information when needed in the course of an investigation.

- c. Benefits:
 - i. This proposal would aid investigators in more effectively and efficiently researching individuals under investigation, contacting witnesses and respondents, and protecting investigator safety in cases where the investigator may be meeting with an individual in person.

9. Gift Limit Reconciliation

- a. Background:
 - i. The PRA currently requires the gift limit to be raised once every two years. Pursuant to that requirement, the gift limit was raised to \$520 at the beginning of 2021, which, for the first time, raised the gift limit to an amount over the income threshold for conflicts of interest, which is set at \$500.
 - ii. Because of this change, there can now be situations where a gift would not create a conflict of interest, but earned income in the same amount would create a conflict of interest. For example, receiving a gift of \$510 could not create a conflict, but receiving a paycheck for \$510 could create a conflict, even if they were both from the same source.
- b. This proposal would:
 - i. Reconcile the \$520 gift limit with the \$500 income threshold for conflicts of interest. This could be accomplished by capping the gift limit at \$500.
- c. Benefits:
 - i. A gift limit that is higher than the earned income threshold creates uneven, illogical, and arguably unfair results when determining what constitutes a conflict of interest. This proposal would reconcile this discrepancy.

10. Minor Changes to Campaign Advertisement Disclosure and Display Requirements

- a. Background:
 - i. The PRA requires campaign advertisements, including digital campaign ads, to include information on the ad that discloses who paid for the ad.
- b. This proposal would:
 - i. Avoid penalties for over-disclosure on certain digital ads by allowing committees to include the full disclaimer directly on the digital ad itself,

instead of just the “who funded this ad?” hyperlink, which is the current requirement.

c. Benefits:

- i. Eliminating penalties for over-disclosure on these ads would free up Enforcement Division resources spent investigating complaints for this over-disclosure, and would allow committees to avoid technical violations where there is no harm.