

Meeting Minutes
Fair Political Practices Commission
Law and Policy Committee Meeting
October 12, 2021 10:00 a.m.

The Law and Policy Committee meeting was called to order at 10:03 a.m.

- 1. Public Comment for items not on the agenda.**
- 2. Approval of September 7, 2021, minutes.**

MOTION: To approve September 7, 2021, Committee minutes. Moved by Commissioner Baker, seconded by Chair Miadich. The motion was approved 2-0.

- 3. Legislative Development Update.**

Lindsey Nakano, Legislative Counsel, reported that the five Political Reform Act bills that were Commission sponsored or supported passed through the Legislature and were signed by the Governor. These will take effect on January 1st, 2022.

Ms. Nakano presented a list of legislative concepts for the 2022 Legislative calendar. The concepts include: the recommendations of the Digital Transparency Task Force - creating a state-run archive for digital campaign advertisements and commissioning a study on disclaimers, requiring affirmative consent for automatic recurring contributions, increasing transparency on lobbying reporting and shifting lobbyist audits from FTB to the FPPC, requiring Statement of Economic Interests to be e-filed, increasing transparency regarding committee bank accounts, prohibiting state or local agencies from spending public money on public communications, give FPPC Special Investigators access to state summary criminal history information, reconciling the \$520 gift limit with the \$500 income threshold for conflicts of interest, and minor changes to campaign advertisement disclosure and display requirements.

Chair Miadich clarified that Staff was asking the Commission for direction on whether to pursue these concepts and asked at what point would the Commission be giving more granular guidance on each concept. Ms. Nakano responded the language would be developed toward the end of the year.

Commissioner Baker discussed the very strong message behind bipartisan support on bills and hopes the Commission approaches authors in this way. Commissioner Baker also stated her belief that when the Commission sponsor a bill, the author should inform the Commission prior to amendments. Commissioner Baker asked for an explanation of what a long arm statute is and why it's helpful to have the labels on bank accounts, particularly for enforcement. Ms. Nakano responded that the benefit of long-arm statute is for because the FPPC does not have jurisdiction outside of the state, so the process would be a lot harder and take more time if we need to access those records. This would allow for the FPPC to have a more direct approach into accessing these records.

Commissioner Baker asked whether the recommendations that were mentioned in the Digital Transparency Task Force report would be used and drafted upon. Ms. Nakano responded that the report will be used as a starting point but that we cannot know what a potential author would take from the report in terms of legislation.

Commissioner Baker discussed the two-year bill concept, specifically with the automatic recurring contributions, and whether any of the proposals would be on a more urgent schedule. Ms. Nakano stated none of the proposals are on an urgent schedule but that the recurring contribution bill is on an extended timeline based on where it ended last legislative session. Chair Miadich asked whether there was any plan to add an urgency clause to the recurring contribution bill. Ms. Nakano stated she would be meeting with the author soon to discuss the bills future.

4. Behested Payment reporting regulations.

Karen Harrison, Senior Commission Counsel, presented on the structure of behested payments and what the proposed regulations will target regarding behested payments.

Commissioner Baker asked for clarification on whether Ms. Harrison is anticipating that if the official doesn't keep asking the non-profit organization for reporting information, it is up the non-profit organization to follow up. Ms. Harrison responded with that is correct and stated the official needs to have exerted a reasonable effort to get the information from the organization. Chair Miadich

discussed the limitations of the statute and the statute doesn't allow the FPPC to require that the Payee provide that information to the public official. Ms. Harrison agreed and states how this regulation will assist in data-gathering going forward. Commissioner Baker asked if the requirement could be to make the official state the information is still needed beyond the 30 days to remove any vagueness. Ms. Harrison discussed an earlier suggestion of creating a form letter the official could use if necessary. Chair Miadich inquired if the "written request" that is stated in section (a) of 18424.1 included emails. Chair Miadich further asked that in section (b) for regulation 18424.1, if the charitable organization isn't being responsive how would the public official satisfy that requirement. Ms. Harrison stated yes, emails are included as written requests and agreed with the points that Chair Miadich had regarding an approach of stating the reason why the public official is unable to provide the necessary information is because they have not received a response to their request.

Commissioner Baker asked if in the situation where there is an anonymous DAF where the name of the foundation becomes the single source, and if there is a separate anonymous donor, would that trigger reporting requirements as one payment. Ms. Harrison responded that they would be lumped together, and the threshold would be for the anonymous group. Ms. Harrison discussed the loss of reporting detail if the sponsoring organization is the listed without noting the payment is from an anonymous DAF, because sponsoring organizations can make behested payments.

Chair Miadich discussed whether Staff looked and assessed the approach of lumping transaction together would be consistent with the behested payments statute requirements that public official discloses the payor. Ms. Harrison stated given the right to make anonymous donations to charitable organizations and the protections that go with that right, this was as fine as Staff could go by identifying the sponsoring organization and identifying that it is a DAF. Ms. Harrison reminded the Committee this could evolve as Staff learns more about Donor Advised Funds, but this regulation language is based off what is understood right now.

Chair Miadich discussed the idea of a donor advisor, and where it is stated in the regulation the donor advisor is “exercising discretion,” what specifically is being talked about and what situations are not allowed. Ms. Harrison responded that we would like the name of the donor and donor’s advisors if the donor’s advisor exercises discretion. The level of ministerial action is based on a case-by-case basis depending on the facts.

In discussion of 18424, Commissioner Baker stated the language should point to staff and stated adding “executive” to the language might not get the point across. Ms. Harrison responded that the idea was for knowledge of the official and for the enforcement side that it could be very difficult for an official to know if a volunteer staff member was in this position. Executive was a nod to a higher level official rather than a volunteer in the mail room. Chair Miadich agreed with Commissioner Baker and stated the language should be modified to be very clear so that we can give advice on this. Chair Miadich discussed 18424 (b)(2) and his concern that the language might be too broad and should be tightened to reflect that the official is specifically involved. Ms. Harrison responded that the conflict-of-interest regulations regarding governing officials’ involvement in decision making can be an area where language is updated to reflect this issue.

Ms. Harrison confirmed option(4) is the option the Committee is recommending and that more discussion is needed for the option provided before that.

5. Discussion of items for November 2021 Committee meeting.

The November 2021 Law and Policy Committee meeting was canceled. The December 2021 Law & Policy Meeting will include a legislative development update.

MOTION: To adjourn the meeting. Moved by Commissioner Baker, seconded by Chair Miadich. The motion was approved 2-0.

The meeting adjourned at 11:41 a.m.