

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

AB 2990 (Low) – As Amended April 15, 2024

SUBJECT: Political Reform Act of 1974: Investigation and Complaint Resolutions.

SUMMARY: Prohibits the Fair Political Practices Commission (FPPC) from bringing a civil or administrative enforcement action alleging a violation of the Political Reform Act (PRA) more than two years after specified events occur. Specifically, **this bill:**

- 1) Prohibits the FPPC from bringing a civil action or an administrative action alleging a violation of the PRA more than two years after either of the following events occurs:
 - a) The FPPC receives a sworn complaint, an audit report, or a referral; or,
 - b) The FPPC commences an investigation on its own accord.
- 2) Provides that the two year period applies only to violations that occurred on or after January 1, 2025.

EXISTING LAW:

- 1) Makes violations of the PRA subject to administrative, civil, and criminal penalties. (Government Code §§83116, 91000-91005.5)
- 2) Prohibits a civil action alleging a violation in connection with specified reports or statements required by the PRA from being filed more than four years after an audit could begin as set forth by a section of law that has been repealed, or more than one year after the Franchise Tax Board forwards its audit report to the FPPC, whichever period is less. Prohibits a civil action alleging a violation of any other provision of the PRA from being filed more than four years after the date the violation occurred. (Government Code §91011)
- 3) Prohibits the FPPC from commencing an administrative action alleging a violation of the PRA more than five years after the date on which the violation occurred. Provides that the service of a probable cause hearing notice upon the person alleged to have violated the PRA constitutes the commencement of the administrative action. (Government Code §91000.5)
- 4) Requires the FPPC, upon receipt of a sworn complaint from any person or on its own initiative, to investigate possible violations of the PRA relating to any agency, official, election, lobbyist, or legislative or administrative action. Requires the FPPC to notify the person who made the complaint of the action, if any, that the FPPC has taken or plans to take on the complaint and the reasons for such action or nonaction, as specified. (Government Code §83115)
- 5) Provides that a finding of probable cause to believe the PRA has been violated shall not be made by the FPPC unless the person alleged to have violated the PRA is notified of the violation by service of process or registered mail with return receipt requested, as specified. (Government Code §83115.5)

- 6) Requires audits and investigations related to reports and statements filed pursuant to the PRA. (Government Code §90000 et seq.)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

This legislation codifies what the FPPC has already included in its policy directives: that FPPC investigations should be resolved within two years. The FPPC is charged with ensuring the fairness and integrity of California's political process, as well as reviewing the conduct and disclosure filings of public servants and lobbyists. In order to ensure fairness and integrity of our political process, it is absolutely critical that FPPC investigations be current so that the public is able to be informed in a timely manner about the conduct of their representatives and lobbyists.

- 2) **FPPC Enforcement Process:** The FPPC enforces violations of the PRA and Government Code section 1090. Violations that do not fall under the PRA may be pursued by a local district attorney, the state Attorney General (AG) or other enforcement agencies. Violations of the PRA that the FPPC enforces include financial conflicts of interest, campaign money laundering, over-the-limit gifts and contributions, improper use of campaign funds, including personal use, campaign mass mailings at public expense, false, inadequate, or inaccurate reporting on statements of economic interests, campaign statements and reports, non-filing or late filing of such statements and reports, and anonymous or cash contributions of \$100 or more. A violation of the PRA can be pursued in three ways: 1) administrative proceedings by the FPPC's Enforcement Division; 2) criminal prosecution by a local district attorney or the state AG; or 3) civil action by the public, certain government agencies or the FPPC's Enforcement Division. The vast majority of cases are handled through the administrative enforcement process.

The FPPC Enforcement Division analyzes and processes over 2,500 complaints and referrals per year about potential violations of the PRA. Complaints and referrals are received from citizens, other government agencies, and the media. The FPPC Enforcement Division also investigates on its own initiative. A matter will be fully investigated if there is sufficient information to believe that a violation of the PRA has occurred. An investigation may include obtaining additional documents, issuing subpoenas, and interviewing witnesses, including the person alleged to have violated the PRA.

Once the FPPC Enforcement Division has fully investigated a complaint, the case may be resolved in several ways. For example, if there is insufficient evidence to prosecute, the case may be closed and a letter finding no action or an advisory letter will be issued. If the seriousness of the offense and public harm are low, a warning letter may be issued identifying a violation of the PRA, but concluding that a monetary fine is not warranted.

Additionally, if a case merits an administrative penalty, the FPPC Enforcement Division may ask the FPPC to approve a settlement agreement in which the subject of the investigation agrees to pay a fine or to take other remedial action. However, if an agreement cannot be

reached, the case may be subject to a more formal administrative proceeding, including a probable cause conference and a hearing before an administrative law judge. In some cases, the FPPC may decide to prosecute a case by a filing a civil lawsuit in court.

- 3) **FPPC Enforcement Policy Directive:** Over the last several years, the length of time it takes to resolve a complaint or referral submitted to the FPPC Enforcement Division has grown unacceptably long. For example, according to the FPPC, since 2017, the Enforcement Division has “carried over” an average caseload of approximately 1,450 “open” cases per year, many of which were originally opened several years earlier. The carryover caseload then becomes the base on top of which an average of 2,600 new case complaints and referrals are added each year. The resulting combined caseload of carryover and new cases cannot be resolved in an acceptable timeframe based on existing Enforcement Division policies and staff.

Last year, the FPPC adopted policy directives to improve the FPPC Enforcement Division’s internal processes that the FPPC believes will assist staff in alleviating the unsustainable burden of large carryover caseloads, reducing the unacceptably long timeframe for resolving most complaints and referrals, while preserving staff’s ability to direct the necessary time and resources on the most egregious violations of the PRA. Notably, the policy directives require the FPPC Enforcement Division to accomplish the following:

- Reduce the number of cases in existence prior to 2023 by 75% no later than December 31, 2024.
- Reduce and ensure that the number of carryover cases does not exceed 625 as soon as practicable.
- Strive to resolve complaints and referrals within two years of receipt, except where the Enforcement Chief determines that circumstances warrant a longer period of time.
- Require the Enforcement Chief to provide quarterly progress reports to the FPPC on achieving the goals as well as any observations and recommendations.

This bill requires the FPPC to implement a stricter timeline for resolving a case than the timeline described in the policy directives adopted by the FPPC. While the policy directives set a goal to resolve complaints and referrals within two years, they also provide the FPPC with flexibility and discretion to go beyond the two-year limit if circumstances warrant a longer period of time. According to FPPC staff, there are circumstances that result in a case taking more time, such as if the person with access to the necessary records is unavailable (out of state, deceased, unreachable), or if it is a large case involving multiple committees, or involving complicated and numerous transactions and records that span multiple years.

This bill would strictly prohibit the FPPC from bringing a civil or administrative enforcement action more than two years after the FPPC receives a sworn complaint, audit, or referral, or commences an investigation of its own accord. According to the author, a Workload Metrics Report by the FPPC found that in 2023, there were about 39 cases still open from 2019, 153 cases remain unresolved from 2020, and it took on average 318 days to resolve cases that were opened that year. In 2018, cases took an average of 403 days to be resolved. The author contends that while the FPPC has recognized the issue of these lengthy cases and has

attempted to reduce the number of open cases by creating policy directives, the financial burden on defendants of having an open case and the backlog in the FPPC investigation process creates a challenge for newer cases to be resolved promptly.

- 4) **FPPC Case Closure Improvements:** In September of last year, the FPPC Enforcement Chief presented their quarterly progress report to the FPPC outlining the progress made towards achieving the policy directive goals. Notably, as of December 31, 2022, there was a total of 1,415 cases in existence prior to 2023 (pre-2023) and less than a year later, 491 pre-2023 cases were closed resulting in a 35% reduction. According to the presentation, in order to achieve a 75% reduction in pre-2023 open cases as outlined in their policy directives, another 570 pre-2023 cases will need to be resolved. The Enforcement Division anticipates reaching a 75% reduction of pre-2023 cases by December 2024.

Additionally, as of December 31, 2022, there was a total of 1,415 carryover cases, however, less than a year later there were only 1,191 carryover cases, resulting in a reduction of 224 open cases. The Enforcement Division anticipates reaching the 625 carryover cases by the end of 2025, however because 2024 is an election year it may lead to greater difficulty resolving currently unresolved cases.

- 5) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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