

Date of Hearing: June 21, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 29 (Glazer) – As Amended March 9, 2023

SENATE VOTE: 40-0

SUBJECT: The Political Reform Act of 1974: Fair Political Practices Commission: political reform education program.

SUMMARY: Permits the Fair Political Practices Commission (FPPC) to develop an educational program that may be completed by persons who commit low-level violations of the Political Reform Act (PRA), in lieu of being subject to an enforcement proceeding. Allows the FPPC to charge a fee for participating in such a program. Specifically, **this bill:**

- 1) Permits the FPPC, as an alternative to an administrative enforcement proceeding under the PRA, to establish and administer a political reform education program (PREP) for persons who violate the PRA, as specified. Provides that requirements for eligibility in PREP include, but are not limited to, the following:
 - a) The person has little or no experience with the section of the PRA that the person violated.
 - b) The underlying violation resulted in minimal or no public harm.
 - c) The person has not been ordered to pay a penalty for the same type of violation in the previous five years.
 - d) There is no evidence of an intent to violate the PRA or to conceal a violation.
- 2) Permits the FPPC to impose additional eligibility requirements for participation in PREP.
- 3) Provides that if a person meets the requirements to complete PREP, the FPPC shall not pursue an administrative action for that same violation and the violation shall not be deemed a prior violation of the PRA in any subsequent administrative proceeding against the person.
- 4) Provides that if a person fails to meet the requirements to complete PREP, the FPPC may pursue an administrative action for that violation.
- 5) Permits the FPPC to charge participants a fee for PREP that does not exceed the reasonable cost to the FPPC to administer the program, in order to offset the costs of the program. Requires the fee to be payable to the General Fund (GF).
- 6) Permits a filing officer to waive a \$10 per day penalty that applies to persons who file statements or reports required by the PRA after the relevant deadline, and prohibits a filing officer from enforcing a \$10 per day penalty that applies to persons who fail to file a *copy* of a report or statement that is required by the PRA, under specified circumstances, in either of the following circumstances:

- a) The person who filed the late statement or report or copy was unable to timely file due to serious illness or hospitalization.
 - b) The person who filed the late statement or report or copy completes PREP for that late filing violation.
- 7) Declares the intent of the Legislature that funds be appropriated annually to the FPPC to administer PREP. Provides that this funding shall not supplant or offset funding appropriated to the FPPC to discharge its other duties under the PRA.
 - 8) Contains an urgency clause, allowing this bill to take immediately upon enactment.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA. (Government Code §§83100, 83111)
- 2) Makes violations of the PRA subject to administrative, civil, and criminal penalties. (Government Code §§83116, 91000-91005.5)
- 3) Imposes a \$10 per day penalty on any person who files an original statement or report after any deadline imposed by the PRA for each day after the deadline until the statement or report is filed, in addition to any other penalties or remedies established by the PRA. Provides that liability need not be enforced by the filing officer if on an impartial basis the filing officer determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the PRA, but provides that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest (SEI), other than a candidate's SEI, five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement. Imposes a \$10 per day penalty on any person who files a *copy* of a statement or report after any deadline imposed by the PRA, starting 10 days, or 5 days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed. Requires the filing officer to deposit any funds received into the general fund of the jurisdiction of which the filing officer is an officer. Limits liability under these provisions to the greater of the cumulative amount stated in the late statement or report, or \$100, whichever is greater. (Government Code §91013)
- 4) Requires the FPPC to develop a diversion program as soon as feasible to allow for education of respondents in enforcement cases who have little or no experience with the PRA and commit minor violations, in lieu of levying monetary penalties against those respondents. (Code of California Regulations, Title 2, §18360.1)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- The FPPC indicates that it would incur first-year costs of \$455,000, and \$421,000 annually thereafter, to implement the provisions of the bill (General Fund). These costs would be offset to some extent by new fee revenue. These FPPC costs would fund three positions, and are included in the Governor's 2023-24 budget proposal.

- The bill would result in increased annual costs to the Secretary of State (SOS) of \$277,000 (General Fund).

COMMENTS:

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

SB 29 enshrines an education and training program for low-level violations in the PRA. Since 1999, the FPPC has implemented a streamline program to create a standardized and efficient procedure for lesser violations. The current streamline program is generally available for violations considered minor that have minimal public harm and meet other qualifying factors. The FPPC recognized an opportunity to further the PRA's purposes of education and enforcement through a new program that will provide training on the PRA's requirements. This program would be in lieu of a streamline enforcement action and penalty. It will be open to individuals who committed a violation with minimal public harm, and have a low level of experience and sophistication with the applicable provision of the PRA. Additionally, this program will provide individuals with a new opportunity to learn how to comply with the PRA, remediate the violation, and avoid a mark on their record. SB 29 codifies the FPPC's education and training program in statute and authorizes FPPC to collect a small fee from participants. By codifying this program, SB 29 provides an important and beneficial service to the regulated community.

2) **Enforcement for Violations of the PRA:** Violations of the PRA generally are subject to administrative, civil, and criminal penalties. Civil and criminal enforcement actions are rare, however, and enforcement actions for violations of the PRA typically are brought through the FPPC's administrative enforcement process.

According to a 2023 annual report by the FPPC detailing its workload, between 2018 and 2022, the FPPC opened an average of about 1,340 enforcement cases and closed about 1,280 cases per year. In about 75% of the closed cases, the FPPC determined that a violation of the PRA had occurred.

To prioritize its resources for cases that involve greater public harm and to align the penalties it imposes with the seriousness of violations of the PRA, the FPPC has multiple ways to close an enforcement case in which it found a violation without the need for an administrative enforcement hearing. Between 2018 and 2022, in about 64% of cases that were closed where the FPPC found that the PRA was violated, the case was closed with a warning letter. By contrast, only about 27% of cases where the FPPC found a violation of the PRA resulted in the FPPC imposing a monetary fine.

In cases where the FPPC imposes a fine for a violation of the PRA, there are multiple processes under which the fine can be imposed. According to a May 11, 2015 staff memo prepared for the FPPC, in 1999, the FPPC's Enforcement Division proposed handling violations of the PRA involving a lesser degree of public harm "through a streamlined procedure where the fines are reduced and the [Stipulation] presented to the [FPPC] are more abbreviated and standardized." Between 2018 and 2022, about 78% of cases where the FPPC imposed a monetary penalty were handled through this streamlined process.

In January 2021, the FPPC considered and approved regulations to expand and adjust its streamlined settlement and warning letter programs. As part of that action, the FPPC also adopted regulatory language that required the FPPC to “develop a diversion program as soon as feasible to allow for education of respondents who have little or no experience with the [PRA] and commit minor violations, in lieu of monetary penalties.” According to the staff memo prepared for the discussion of that regulatory action, the diversion program was “anticipated to apply to first-time, inexperienced parties who attempted to comply in good faith and were unfamiliar with the filing requirements but were cooperative with the [FPPC’s] Enforcement Division when contacted.”

In response to the mandate to develop a diversion program, the FPPC created PREP. The FPPC’s website gives the following information about PREP:

The purpose of PREP is to allow for the education of Respondents who have little or no experience with the Political Reform Act and commit minor violations, in lieu of monetary penalties.

What are the Benefits of the Program?

1. Similar to traffic school, PREP allows Respondents to learn how to comply with the law while avoiding a monetary penalty and a mark on their record.
2. Respondents who successfully complete PREP will have their Enforcement case closed with a No Action Closure Letter.
3. Completion of PREP will not be considered a prior record of violations of the Political Reform Act pursuant to Regulation 18361.5(e)(7) when considering a future violation committed by the Respondent.

How do you Complete the Program?

Respondents who enter into the PREP Agreement will be required to:

- Complete a selected Course;
- Pass the applicable test;
- Complete a survey providing feedback regarding the Course; and
- File any outstanding statements or reports.

What Courses are Available?

- Statement of Economic Interests Course

Currently, PREP offers a Statement of Economic Interests Course, which is available at no cost for a limited time for testing purposes.

Who Qualifies for the Program?

The Enforcement Division may refer a Respondent to PREP if they meet the following general requirements for eligibility:

- Violations committed by the Respondent appear to be the result of low level of experience and sophistication of the party;
- Violations committed by the Respondent resulted in minimal public harm; and
- The Respondent has not paid a penalty to the Commission for the same type of violation occurring within the last five years. Respondents who received a Warning Letter for the same type of violation occurring within the last five years may still qualify for PREP.

What are the Exclusions from the Program?

A Respondent does not qualify for PREP if any of the following exclusions apply:

- Any evidence of an intent to conceal or violate the Political Reform Act or regulations relating to the Act.
- Respondents presented the FPPC false or altered evidence.
- Respondents made false statements to the FPPC regarding material facts.
- Evidence of intentional interference with a witness in the FPPC matter.
- Respondents have other violations under review for prosecution that do not qualify for a streamline penalty.
- The Respondent does not qualify for a streamline penalty based on specific exclusions listed in Regulation 18360.1 or 18360.3.
- The Respondent completed PREP for the same type of violation occurring within the last five years.

According to the FPPC, since June 2022, the PREP program has received 96 referrals for the Statement of Economic Interests course, and 79 learners have completed the course. As of June 14, 2023, 14 learners are enrolled but have yet to complete the course. In order to sustain the program long term and expand it to other types of violations, additional funding is needed. Once the full program is launched, the FPPC anticipates that 300-400 participants will be eligible for the program each year.

While the PREP program currently is being offered free of charge to participants, this bill would allow the FPPC to charge participants a fee. While this bill does not specify an amount or a range of possibilities for the potential fee, FPPC staff indicates that the anticipated fee would be \$50 for Statements of Economic Interests training and \$100 for all other training and subjects.

3) **FPPC Budget for PREP:** The Governor's proposed budget for the 2023-24 fiscal year included a \$455,000 general fund appropriation in 2023-24, and \$421,000 in 2024-25 and ongoing, along with 3.0 positions to continue to develop, administer, and expand the PREP program. According to documents prepared in connection with that budget item, the FPPC identified the following courses that could potentially be offered as part of the PREP program in the future if sufficient funding was provided:

- Campaign Course for Candidates and Candidate-Controlled Committees (Local)
- Campaign Course for General Purpose and Primarily Formed Committees (Local)

- Campaign Course for Independent Expenditure and Major Donor Committees (Local)
- Campaign Course for Candidates and Candidate-Controlled Committees (State)
- Campaign Course for General Purpose and Primarily Formed Committees (State)
- Campaign Course for Independent Expenditure and Major Donor Committees (State)
- Behested Payment Reports Course
- Lobbying Reports Course
- Advertising and Mass Mailing Disclosures Course

Both the Assembly and the Senate Budget Committees approved the proposal to fund the PREP program as proposed by the Governor. At the time of the preparation of this committee analysis, however, a state budget for the 2023-24 fiscal year had not been signed into law, so it is unclear whether the FPPC will have the necessary budget to expand the PREP program.

- 4) **Suggested Amendments:** The provisions of this bill expressly prohibit the FPPC from pursuing an administrative action against a person for a violation if that person has completed the PREP program for that violation. However, as detailed above, violations of the PRA are subject to civil and criminal enforcement actions in addition to administrative enforcement actions brought by the FPPC. In order to ensure that people who complete the PREP program for violations that have minimal public harm are not potentially subject to more substantial penalties for those violations through civil or criminal actions, committee staff recommends that this bill be amended to specify that a person shall not be subject to administrative, civil, or criminal enforcement actions for a violation if the person has completed the PREP program for that violation. Additionally, committee staff recommends technical amendments to clarify that the protection from a subsequent enforcement action applies only to a person who completes the PREP program. To effectuate these recommendations, committee staff recommends that the text of page 3, lines 17-26 of the bill be amended as follows:

(c) (1) If a person meets the requirements to ~~complete~~ *participate in* the political reform education program specified by the ~~commission~~, *commission and completes the program*, the ~~commission shall not pursue an administrative action~~ *person shall not be subject to administrative, civil, or criminal penalties under this title* for that same violation and it shall not be deemed a prior violation of this title in any subsequent ~~administrative enforcement~~ proceeding against the person.

(2) If a person fails to ~~meet the requirements to~~ complete the political reform education program specified by the commission, the commission may pursue an administrative action for that violation.

- 5) **Arguments in Support:** The sponsor of this bill, the FPPC, writes in support:

The FPPC recognized an opportunity to further the [PRA's] purposes through a new education program that provides training on the [PRA's] requirements, in lieu of an enforcement action. In June of 2022, the FPPC launched a limited pilot program version of the program on the subject of statements of economic

interests, which has been very successful.

The program creates multiple benefits. Individuals in the regulated community who participate in the program will learn how to comply with the [PRA], while also avoiding a mark on their record and any monetary penalties. Within the FPPC, by redirecting low-level violations into the education program, the FPPC's enforcement division will be able to focus its resources on more serious violations with higher public harm, helping to bring these cases to a faster resolution.

SB 29 will help ensure the long-term sustainability of the program and consistency within the program over time.

- 6) **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

Fair Political Practices Commission (Sponsor)
California Common Cause
California Special Districts Association

Opposition

None on file.

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