
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: SB 29 **Hearing Date:** 3/21/23
Author: Glazer
Version: 3/9/23
Urgency: Yes **Fiscal:** Yes
Consultant: Scott Matsumoto

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

DIGEST

This bill codifies a political reform education program (PREP) into the Political Reform Act of 1974 (PRA) for low-level violations of the PRA as an alternative to an administrative proceeding, as specified.

ANALYSIS

Existing law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Requires the FPPC, in addition to its other duties, to do all of the following:
 - a) Prescribe forms for reports, statements, notices, and other documents required by the PRA.
 - b) Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of the PRA, and explaining the duties of persons and committees under the PRA.
 - c) Provide assistance to agencies and public officials in administering the provisions of the PRA.
 - d) Maintain a central file of local campaign contribution and expenditure ordinances forwarded to it by local government agencies.
 - e) Annually publish a booklet no later than March 1 that sets forth the provisions of the PRA and includes other information the FPPC deems pertinent to the interpretation and enforcement of the PRA, as specified.
- 3) Requires the FPPC to issue an order that may require the violator to do all or any of the following when the commission determines, on the basis of the hearing, that a violation has occurred:

- a) Cease and desist the violation of the PRA.
 - b) File any reports, statements, or other documents or information required by the PRA.
 - c) Pay a monetary penalty of up to \$5,000 per violation to the General Fund of the state. Provides that when the FPPC determines that no violation has occurred, it shall publish a declaration so stating.
- 4) Provides that if any person who files an original statement or report or copy of a statement or report after any deadline imposed by the PRA is liable in the amount of \$10 per day after the deadline until the statement or report is filed, as specified.

This bill:

- 1) Permits the FPPC to establish and administer PREP for persons who violate the PRA as an alternative to an administrative proceeding under the PRA, as specified.
- 2) Provides that requirements for eligibility in PREP include, but are not limited to, all of 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 or conceal a violation of the PRA.
- 3) Permits the FPPC to impose additional eligibility requirements for participation in PREP.
- 4) Provides that if a person meets the requirements to complete PREP, as specified by the FPPC, then the FPPC shall not pursue an administrative action for that same violation and shall not deem it as a prior violation of the PRA in any subsequent administrative proceeding against the person. Provides that if a person fails to meet the requirements to complete PREP, then the FPPC may pursue an administrative action for that violation.
- 5) Permits the FPPC to charge a fee to a person who participates in PREP that does not exceed the reasonable cost to the FPPC to administer PREP in order to offset the costs of PREP. Requires the fee be payable to the General Fund.
- 6) States that it is the intent of the Legislature that funds be appropriated annually to the FPPC to administer PREP and that this funding shall not supplant or offset funding appropriated to the FPPC to discharge its other duties under the PRA.

- 7) Provides that liability shall not be enforced by the filing officer if the person who filed a late statement or report was unable to timely file the statement or report due to serious illness or hospitalization. Additionally, provides that liability shall not be enforced by the filing officer if the person completes PREP.
- 8) Contains an urgency clause in order to allow the FPPC to commence administration of the full version of PREP as soon as possible.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

Enforcement and Administrative Actions. The Enforcement Division within the FPPC is tasked with fairly, effectively, and efficiently enforcing the provisions of the PRA. According to the FPPC, the Enforcement Division analyzes and processes over 1,500 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 Enforcement Division also investigates on its own initiative. The division also operates a campaign audit program of both mandatory and discretionary audits. A matter will be fully investigated if there is sufficient information to believe that a violation of the Act has occurred.

A violation of the PRA can be pursued in three ways: (1) administrative proceedings by the Enforcement Division; (2) criminal prosecution by a local district attorney or the state attorney general; or (3) a civil action by the public, certain government agencies, or the Enforcement Division. A majority of cases are handled through administrative proceedings.

When cases are resolved without the issuance of an administrative penalty, the Enforcement Division will issue a letter to the individual(s) complained about to conclude the case. There are three types of letters used and they are the following:

- **Warning Letters:** A Warning Letter is issued if a violation of the PRA is found but the seriousness of the offense is low, public harm is minimal, and/or other mitigation is found so that a monetary fine is not warranted. Since no administrative penalty is imposed, these letters are issued by the Enforcement Division and do not require approval by the FPPC.
- **Advisory Letters:** If there is insufficient evidence to prosecute a case but the person complained about appears to need information about the PRA to ensure future compliance, the Enforcement Division closes the case with an advisory letter.
- **No Action Closure Letters:** A No Action Closure letter will be issued for circumstances including: insufficient evidence to prosecute, further information would not be helpful to move forward, the allegation has been disproven, the potential violations lack sufficient public harm to pursue, or the potential violations are being addressed in another forum.

In 2021, the FPPC resolved 1,590 cases with 266 settlements and \$472,248 in total fines. In 2022, the FPPC resolved 1,075 cases with 161 settlements and \$617,548 in total fines.

Current Regulation. Within the regulations of the FPPC, there are provisions related to the creation of a political reform education program, such as the one this bill attempts to place in statute. Added in 2020, Regulation 18360.1 states “The Commission will develop a diversion program as soon as feasible to allow for education of respondents who have little or no experience with the Political Reform Act and commit minor violations, in lieu of monetary penalties.”

Prepared to Launch. According the FPPC, they currently has a pilot program that is open only for Statements of Economic Interests violations. This initial version will be free to participants. Since June 2022, PREP received 62 referrals for the Statement of Economic Interests course, and 49 learners have completed the course. As of February 13, 2023, 12 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 200-300 participants will be eligible for the program each year.

COMMENTS

- 1) 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) What’s the fee? This bill permits the FPPC to charge a fee to a person participating in the program to help offset the overall costs of the program. Even though there are provisions specifying that the fee shall not exceed the reasonable costs to the FPPC to administer the program, the bill does not specify an amount or a range of possibilities for the potential fee. Unless it is specified in this bill or a subsequent bill, if the FPPC establishes a fee for specific courses within the program, then the FPPC should consider creating a fee that is reasonable within the context of the violation. For example, if a violation occurs where the penalty is \$100, then the fee to enroll in PREP should be substantially less than \$100. FPPC staff has indicated that the fee

would be \$50 for Statements of Economic Interests training and \$100 for all other training and subjects.

- 3) Argument in Support. In a letter sponsoring SB 29, California Common Cause states, in part, the following:

The establishment of PREP acknowledges and addresses the complicated nature of the law and creates a more fair process for handling minor violations, like incomplete forms or late filings, in lieu of administrative penalties that establish a permanent record. By ensuring inexperienced candidates are not disadvantaged for their lack of institutional knowledge, California politics will become more equitable and accessible to all citizens. The education program in SB 29 will also likely enable FPPC staff to prioritize prosecuting egregious offenders of the law instead of uninformed candidates.

We additionally hope that the educational and training products produced by the program will be freely accessible on the FPPC's website to members of the public who wish to utilize them.

RELATED/PRIOR LEGISLATION

SB 1483 (Glazer) of 2022 was substantially similar to this bill and would have created PREP. SB 1483 was held on the Senate Committee on Appropriation's Suspense File.

SB 1025 (Johnson), Chapter 855, Statutes of 1999, among other provisions, required the FPPC to annually publish a booklet setting forth the provisions of the PRA with other information the FPPC deems pertinent to the interpretation and enforcement of the PRA.

POSITIONS

Sponsor: Fair Political Practices Commission

Support: California Common Cause

Oppose: None received

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