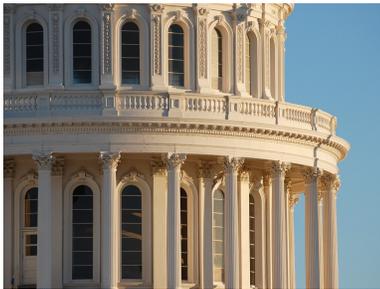


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New Laws Part I: 2018 Brings Campaign, Election and Records Reforms

PublicCEO



By Jeffrey Ballinger

From bumping up the statewide primary election date to protecting the personal information of public employees and making campaign contributions more transparent, state lawmakers passed a wave of laws regarding campaigns, elections and public records in 2017 that will impact public agencies.

Below is a recap of these new laws, most of which went into effect Jan. 1.

The Evolution of The Political Reform Act

California became the first state to pass a far-reaching political reform package in light of the Watergate scandal. In 1974, voters passed Proposition 9, known today as the [Political Reform Act](#)— a multiparty-backed measure championed by then Secretary of State Jerry Brown to end political corruption.

The law established contribution limits, lobbying restrictions and strict conflict of interest laws, banned anonymous contributions more than \$100 and created the Fair Political Practices Committee, an independent oversight body. Through legislative and ballot measures, the Act continues to evolve.

Lawmakers added numerous provisions in 2017 regarding transparency and conflicts of interest.

- [Assembly Bill 187](#) requires committees to file an activity-based report each time it makes contributions or has independent expenditures totaling \$5,000, in support or opposition of a local initiative of referendum ballot measure. These reports must be filed in the same local jurisdiction as the initiative or referendum within 10 business days of reaching the \$5,000 mark.
- [Assembly Bill 867](#) created standalone definitions for “election-related

People



Jeffrey S. Ballinger

PARTNER

(619) 525-1343

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activities” and “behested payments” — the latter, a legislative, charitable or governmental contribution made at the request, suggestion or solicitation of a public official.

- [Assembly Bill 551](#) extends post-employment lobbying restrictions beyond an elected official, city manager or other high-ranking public official to include former government officials who have become independent contractors from communicating with their former agency for compensation.
- [Senate Bill 45](#) codifies current [FPPC regulations](#) permitting and prohibiting mass mailings – defined as 200 substantially similar pieces of mail sent in response to an unsolicited request, letter or other inquiry. Generally, the Act prohibits mass mailings at the public’s expense. This bill also bars mass mailers by or for a candidate on a ballot from being sent within 60 days of an election.
- [Senate Bill 226](#) also pertains to mass mailers, specifically those known as “slate mailers,” that support or oppose multiple candidates or ballot measures. If the mailer claims to represent public safety professionals, this information and how many are represented, must be disclosed.

Prime-time Primaries and Other Election Law Changes

California lawmakers pushed through numerous election-related measures last year regarding vote-by-mail ballots, poll accessibility, sign-gathering tactics, petitions and more. Most notably, the State moved its primary election from June to March – from one of the last primaries in the nation to one of the first. The Prime Time Primary Act, [Senate Bill 568](#), moved the statewide primary election for both presidential and non-presidential election years to the first Tuesday after the first Monday of March. The State’s more than 19.4 million registered voters will cast ballots in the next presidential primary on March 3, 2020.

SB 568 also consolidated state and presidential primary votes in an effort to boost voter engagement, limit voter confusion and reduce the costs of local elections.

Other important changes to state election laws include:

- **Vote-by-mail:** Vote-by-mail voters who cannot surrender their vote-by-mail ballots to a polling place can now vote with a regular, non-provisional ballot on Election Day. [Senate Bill 268](#) imposes additional duties on local elections officials, who must verify that the vote-by-mail ballot has not been submitted and annotate the voter is not voting by mail.
- **Electronic Signatures:** Under [Assembly Bill 840](#), voters who fail to sign their vote-by-mail ballot’s identification envelope may now submit their signed voter statement electronically via email instead of by traditional mail or in person.
- **Canvassing:** Elections officials are required to conduct a semi-final canvass of 1 percent of the vote-by-mail and precinct ballots. AB 840 provides that provisional ballots cannot be included in this 1 percent manual tally of ballots.
- **Local Initiatives:** [Assembly Bill 765](#) requires that elections for county, municipal or district initiatives that qualify for the ballot be voted on during the

next statewide or regular election unless a special election is called by the governing body.

- **Ballot Languages:** A state-mandated local program was created under [Assembly Bill 918](#) that imposes new duties on county elections officials to ensure voters have access to ballots in languages other than English.
- **Candidate Filing Fees:** [Assembly Bill 469](#) changes a candidate's filing fee, or signature petition in lieu of the filing fee, from being submitted at least 15 days before the close of the nominating period to at least 30 days. Elections officials must also make signature forms available to candidates 60 days before the start of circulating nomination papers.
- **Signature Gathering:** California law criminalizes false statements made by an affiant about an initiative, referendum or recall petition – an offense punishable by up to \$5,000 and one-year imprisonment. [Assembly 1367](#) extends criminal liability to individuals and organizations overseeing a petition who knowingly direct an affiant to make a false statement or who should reasonably know if a false statement has been made.
- **Petition Saving:** [Assembly Bill 1729](#) requires county elections officials to save referendum and initiative petitions for one year after it was last examined by proponents.

Emails, Crime Recordings Among PRA Modifications

The California Public Records Act, too, had a transformative year.

In March, transparency notched a win as the [California Supreme Court](#) [unanimously](#) California Supreme Court unanimously held that public business communications conducted by public officials on private email accounts and personal devices could be subject to disclosure under the PRA regardless of where the records are stored.

“The whole purpose of CPRA is to ensure transparency in government activities,” the Court wrote. “If public officials could evade the law simply by clicking into a different email account, or communicating through a personal device, sensitive information could routinely evade public scrutiny.”

The decision sought to balance the public's need for transparency and an official's right to privacy.

“We clarify, however, that to qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public's business,” the court added. “This standard, though broad, is not so elastic as to include every piece of information the public may find interesting.”

The Legislature also clarified rules for email addresses and police-body camera footage under the PRA:

- **Public Employee Email Addresses:** The home addresses, telephone numbers and birth dates of all public agency employees have long been exempt from disclosure under the PRA – except under certain instances. Under [Assembly Bill 119](#), this exemption was extended to include personal

email addresses, unless the employee used the email address to conduct public business.

- **Police Body-Camera Footage:** With the passage of [Assembly Bill 459](#), the PRA doesn't require the disclosure of police body-camera footage and other videos or audio of certain crimes, including, rape, sexual assault, domestic violence or child abuse that depicts the face, intimate body part or voice of a victim. In general, body-camera footage hasn't been released beyond the courtroom and state legislators continue to grapple with public access of this footage.

This summary touches on a segment of the laws state legislators enacted last year that will impact public agencies. [Part two of this series](#) will explore changes to land use, public property and public works laws.

This article was originally published Feb. 28, 2018 in [PublicCEO](#).

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