



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU
VICE-CHAIRPERSON

PAUL A. RENNE
COMMISSIONER

QUENTIN L. KOPP
COMMISSIONER

YVONNE LEE
COMMISSIONER

(VACANT)
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: March 12, 2018

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Policy Analyst

Re: **AGENDA ITEM 8 – Policy Report for the March 16, 2018 Meeting, Including Commission’s Policy Plan and Legislative Tracker**

Summary: This memorandum provides updates on ongoing policy initiatives, legislation, and upcoming projects to assist the Commission, the public, and Staff in addressing planned policy projects for the year. It includes the Annual Policy Plan as Attachment 1, updated for the month of March.

Action Requested: That the Commission review its planned and pending policy projects and take action to provide any further direction it may have regarding the priority level or scope of those projects.

As a reminder, the Commission’s policy and legislative work is categorized into two sections.

Section I provides brief status reports about ongoing policy initiatives currently before the Commission, or that already have been acted on by the Commission. Where noted, these items also appear as a separate item on the Commission’s monthly agenda. Items noted in Section I are provided for informational purposes only and require no action by the Commission.

Section II is designed to inform the Commission about other planned or pending policy matters, or newly emerging items, to enable it to focus on the relative priority level or scope it desires for a particular issue or set of issues. Given the broad number of policy discussions that can be underway at any given time, Commission action to clarify its sense of priority for these items can be useful for planning purposes and to set expectations for when Staff and Commission action on those matters may be feasible.

Where applicable, individual items may include a Staff recommendation to assist the Commission in determining how it would like to see items sequenced for its review and action.

I. Ongoing Policy Initiatives

2017 San Francisco Anti-Corruption and Accountability Ordinance (“Ordinance”). On February 15, 2018, the Budget and Finance Committee heard File No. 180001, an ordinance that would amend the Campaign and Governmental Conduct Code. The Committee voted to amend the file to “incorporate amendments proposed for review and adoption before the Ethics Commission on February 16, 2018. At its February 16th meeting, the Ethics Commission voted 4 to 1 to adopt amendments to the Ordinance that the Committee had incorporated into File No. 180001 the day before. The Ethics Commission also voted 3-1 to make certain additional amendments to the ordinance that were recommended by Supervisor Aaron Peskin. The Commission additionally urged Staff and the Board to gather information on the possibility that a joint meeting be held to review the Ordinance and potentially vote to pass the legislation at the proposed joint meeting. On March 6, 2018 the Board voted to hold a joint meeting with the Ethics Commission on April 3, 2018 at 3p.m. Staff is in communication with the Board and the City Attorney’s office to obtain more information about the joint meeting and will provide the Commission with more information on the procedure for the meeting over the next several weeks in preparation for the joint meeting.

Form 700 – Non-voting Ordinance. The Commission voted to amend and approve the ordinance at its August meeting, and the ordinance was introduced at the Board of Supervisors by Supervisor Peskin on October 3, 2017. Commission Staff proposed a further technical modification to the introduced ordinance to ensure that the Commission would maintain an updated database on its website regarding SEI filings. The technical modification was accepted and the legislation reintroduced, by Supervisor Peskin, on October 31, 2017. The ordinance approved and forwarded, by unanimous vote of the Rules Committee to be transmitted to the Board. At the Board’s February 27 meeting several amendments to the notice provisions of the ordinance were introduced by Supervisor Stephani. Those amendments expanded the notice requirements of the Commission. In particular, on or before April 10th of each year, the Commission must notify each Commission Secretary, or a person who fills that role, of where the Ethics Commission maintains an online list of names, departments, and positions of persons who must file a Form 700, Sunshine Ordinance Declaration, or a Certificate of ethics Training. Additionally, the Ethics Commission must notify an appointed officer’s Commission secretary if the appointed officer fails to file these three documents after assuming office. Lastly, one of the amendments allows the Commission Executive Director to “waive” the prohibition on voting for non-filers, if cause is shown. At its March 6 meeting, the Board voted unanimously to pass the ordinance. The legislation will be forwarded to the Mayor for his approval. The ordinance, if signed by the Mayor, will become operative 30 days after his signature.

Whistleblower Ordinance. This item appears as Agenda Item 6 in this month’s meeting materials.

II. Planned and Pending Policy Projects

A. Legislation

- 1) **Supervisor Cohen Legislation** (File No. 170738). Supervisor Cohen introduced legislation on June 13, 2017 that would require the Commission to accept disclosures and enforce rules related to spending in races for the elected positions on the Health Services Board, Retirement Board and Retiree Health Care Trust Fund Board. On September 11, Staff sent a letter of comment to the Clerk of the Rules Committee conveying overall support of the intent and purpose of the legislation but also providing some considerations for the Board of Supervisors to strengthen the proposals, its implementation, and enforcement. At its September 13 meeting, the Rules Committee voted to continue the matter. Staff confirmed, the week of January 8, 2018, that the legislation is still pending re-drafting by the City Attorney's based on Staff's letter of September 11.

Recommendation: No action necessary. Staff is monitoring.

- 2) **Supervisor Kim Legislation** (File No. 170868): At its regular meeting on November 27, 2017, the Commission heard a presentation by Supervisor Kim presenting her campaign finance legislation (File No. [170868](#)). Staff, at the request and approval of Chair Keane and Vice-Chair Chiu, submitted to Supervisor Kim, on December 29, 2017, a letter outlining the Commission's research, issues, and open questions with the current version of the ordinance. Commission Staff is continuing to monitor the legislation and is working with the Supervisor's office to schedule in-person meetings related to Staff's memorandum. Staff emailed the Supervisor's office most recently on February 20th to check-in on the legislation. No response has been received from Staff's inquiry.

Recommendation: No action necessary. Staff is monitoring.

- 3) **AB 664 (Steinorth)** - The Political Reform Act of 1974 (PRA) currently prevents a spouse or domestic partner of a candidate for elective office from receiving compensation from campaign funds in return for services rendered. The PRA also indicates that payments for services rendered "shall be the fair market value" of the service provided. However, the PRA does not prevent candidates from employing other family members, nor does it set guidelines to prevent excessive compensation to these family members. In response to questions about this issue, the FPPC has issued advice that payment "is reasonable compensation for the services rendered." However, because this interpretation is not explicitly stated in the PRA there could be a lack of clarity on how to comply with these rules. This bill would codify the existing FPPC advice and provide such clarity.

Recommendation: No action necessary. Staff is monitoring.

B. Other Planned Projects

Per the Commission's Annual Policy Plan during calendar year 2018, Staff are preparing to begin three longer-term projects needed to update and improve various sections of the

Campaign & Governmental Conduct Code and accompanying regulations that underpin several core programs and operations. As planned, these projects will run simultaneously to one another:

- 1) **Review of Conflict of Interest Code.** This project is planned to ensure key areas within the Conflict-of-Interest Code can be updated and strengthened. Most likely, this project will culminate in a proposed conflict-of-interest ordinance that Staff will present to the Commission.
- 2) **Review of Campaign Finance Reform Ordinance Regulations.** Regulations that interpret and implement CFRO are necessary to update and strengthen those regulations. This project will also likely include identifying and developing regulations to carry out the new requirements proposed in the Commission's *Anti-Corruption and Accountability Ordinance*, in the event that that ordinance becomes law. Most likely, this project will culminate in a set of regulations that Staff will present to the Commission. This project will begin on April 1, 2018.
- 3) **Review of the City's Public Financing System.** Analysis of the City's public financing system is needed to determine what updates and improvements could improve candidate participation and therefore better support the policy goals for which it was established. Per the Commission's policy directive in November, this review will include an evaluation of provisions that address the possible misuse of public financing. This project began on February 1, 2018. Staff has had initial meetings to create a project plan and to work on focusing the project scope. Additionally, Staff had a meeting with Oakland Ethics Commission Executive Director, Whitney Bartozo, to discuss that City's current public financing review. Staff is currently working internally to research and provide a brief framework of the public financing law in its current form and will update the Commission with that analysis when available. Staff will begin doing additional external outreach in April of this year towards the goal of providing the Commission with a summary programmatic review at its June meeting. A proposed project plan appears for this item appears as attachment 3.

Recommendation: That the Commission proceed with these scheduled policy reviews to ensure it can formulate policy positions on these matters in early 2018.

C. Recently Identified Policy Projects

Several additional projects have been identified by the Commission as matters of interest to be added to the Commission's policy agenda. They are:

- 1) **Online Communications Database: Social Media and Election Integrity.** At the February meeting, Commission Staff updated the Commission on its progress in reviewing current issues related to the use of social media in elections. The Commission relayed at the February meeting that they would like Staff to continue its research on this issue and work towards convening stakeholder meetings and a forum of subject matter experts to discuss this issue further. In the interim, Staff has begun contacting other California jurisdictions to seek their input and experiences with this issue. In the medium term, those local

jurisdictions, working with this Commission, may ask, via letter, that the Fair Political Practices Commission or other appropriate State body review the issue as well. Staff continues to track ongoing efforts to require disclosure of online political communications, compiling research, and will prepare an update for the Commission at its April meeting.

Recommendation: The Commission provide is policy guidance on the proceeding and proceed with the project schedule as provided at the February 16 meeting.

2) **Independent Legal Counsel.** At its November meeting, the Commission requested Staff review and research the possibility of a Charter change that would give the Commission its own independent counsel. At its January meeting the Commission clarified the request and asked that it appear as an Agenda item for the March meeting.

Recommendation: A memorandum on this item appears in Agenda Item 7.

3) **Regulating County Central Committees.** Commissioner Kopp has expressed a desire that staff explore whether the Commission may create rules regulating candidate committees controlled by candidates running for a seat on the county central committee (CCC) of a political party. These committees are currently regulated under state law, and California Government Code contains express language limiting the ability of local jurisdictions to regulate these committees.¹ Staff is currently seeking guidance from the City Attorney's office and the FPPC as to the precise scope of this prohibition on local regulations. Once Staff has received advice from these two offices, Staff will report to the Commission on the scope of the Commission's authority to regulate CCC candidate committees. Staff will also explore potential rules to curb the use of CCC campaign funds to benefit a candidate's separate race for City elective office once Staff has ascertained the scope of the Commission's authority in this area.

¹ See CA Gov't Code § 85703. "... [A] local jurisdiction shall not impose any contribution limitations or prohibitions on an elected member of, or a candidate for election to, a county central committee of a qualified political party, or on a committee primarily formed to support or oppose a person seeking election to a county central committee of a qualified political party."

ATTACHMENT 1

Federal, State, or Local	Proposal or Bill (File#)	Sponsors	Date Introduced	Date Passed	Procedural Stage	Summary
Local	File No. 170868	Supervisor Kim	7/25/2017		Pending Committee Action	Ordinance amending the Campaign and Governmental Conduct Code to 1) require candidates to attest, under penalty of perjury, to the lack of any coordination with other committees; 2) require that the Voter Information Pamphlet note which candidates have agreed to voluntary spending limits; 3) clarify supplemental reporting for the public financing program; 4) require written disclaimers to appear in 14-point font; 5) require that disclaimers be included at the beginning of audio and video advertisements; This ordinance contains other related provisions and other existing laws.
Local	File No. 170738	Supervisor Cohen	6/13/2017		Pending Committee Action	Ordinance amending the Administrative Code to require disclosure of candidate and third-party spending in Retirement Board, Health Service Board and Retiree Health Care Trust Fund Board elections ["Trustee Elections"]; set late filing fees and penalties for violations;
State	AB 664	Steinorth	2/14/2017		In Senate. Read first time. 1/29/18	Would prohibit a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate for elective office from receiving, in exchange for goods, services, facilities, or anything of value other than money rendered, compensation from campaign funds held by a controlled committee of that officer or candidate which exceeds the fair market value of that item.
State	AB 1524	Brough	2/17/2017		Joint Rule 56 Legislation Returned to Clerk	Would prohibit, within 90 days preceding an election, the sending of a mass mailing by either (1) a candidate, or on his or her behalf, if the candidate's name will be on the ballot at that election, or (2) an agency, if a measure on the ballot at that election will have a direct financial impact on the agency, except as specified. This bill contains other related provisions and other existing laws.
State	SB 529	Nguyen	2/16/2017		Joint Rule 56 Legislation Returned to Clerk	Current law requires filing officers to hold nomination documents and signatures in lieu of filing fee petitions for a specified time. Current law limits public access to these documents and allows only for the public to view them. This bill would require that nomination documents and signatures in lieu of filing fee petitions be furnished promptly upon request, and it would clarify that a member of the public need not request these records pursuant to the California Public Records Act.
Local	171066	Peskin (o/b SFEC)	10/31/2017		Recommend by Rules 2/14/2018	Ordinance amending the Campaign and Governmental Conduct Code to disqualify members of City boards and commissions who have not filed their Form 700s (Statements of Economic Interests), Sunshine Ordinance Declarations, and Certificates of Ethics Training from participating in or voting on matters before their boards and commissions, and to modify the Ethics Commission's reporting requirements regarding the filing of Form 700s.
State	AB 2155	Mullin	2/12/2018		Committee March 15.	The act defines "expenditure" as a payment, a forgiveness of a loan, a payment of a loan by a 3rd party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes, and provides that an expenditure is made on the date payment is made or on the date the consideration, if any, is received, whichever is earlier. This bill would make technical, nonsubstantive changes to these provisions.
State	AB 2882	Harper	2/12/2018		Committee March 19.	The Political Reform Act of 1974 establishes certain limits on the amount of contributions that a person or group can make to a candidate for elective state office, or to a committee. Dues, assessments, fees, and similar payments made to a membership organization or its sponsored committee in an amount less than \$500 per calendar year from a single source for the purpose of making contributions or expenditures are not considered earmarked. This bill would reduce this exception for payments to a membership organization or its sponsored committee to \$100.
State	SB 964	Allen	1/31/2018		Referred to Committee on RLS. March 3.	The Political Reform Act of 1974 requires the Secretary of State to conspicuously post on his or her Internet Web site hyperlinks to the Internet Web site of any local government agency that contains publicly disclosed campaign finance information and to update these hyperlinks accordingly no later than December 31 of each year. This bill would instead require that the hyperlinks be updated before December 31 of each year.

ATTACHMENT 2

San Francisco Ethics Commission - Annual Policy Plan

Fiscal Year 2018 (July 1, 2017 - June 30, 2018)

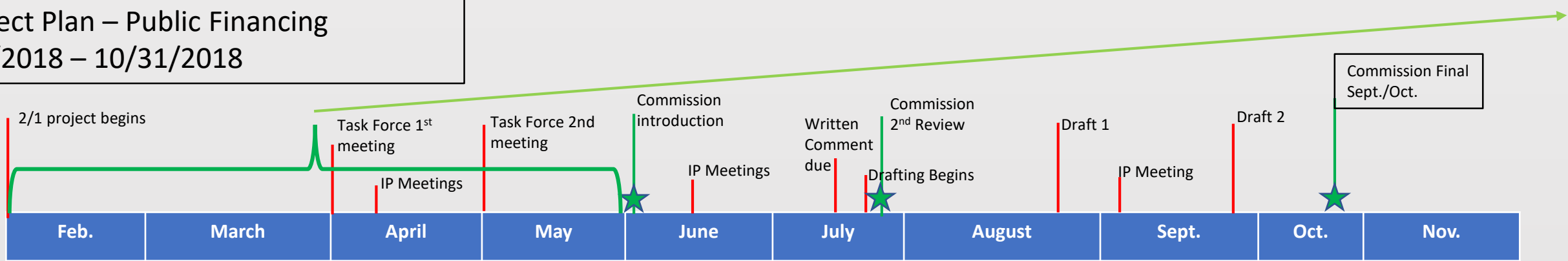
Policy Issue or Topic		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
General	Policy Summit Convened by Ethics Commission												SR
	Annual Budget and Status Report											△	EC
	Sunshine Ordinance Task Force Removal Project									△	SR		
	Commission Independent Counsel Project				SR					EC			
	Opinion & Advice Regulations							SR			EC	SR	EC
Enforcement	Enforcement Regulations Project	SR	EC		SR		EC	EC	BOS	BOS	IM		
Lobbying	Lobbying Code Review												△
	Lobbying Regulations Review												△
	Expenditure Lobbying Program Review												△
	Permit Consultant Program Review												△
Campaigns	Public Financing Program Review									△	SR		EC
	CFRO Code Review and Revision	SR	EC	EC	EC	EC	BOS	BOS	EC	BOS	BOS	EC	
	Slate Mailer Filings to Ethics Project	SR											
	Social Media and Election Integrity Project				SR		EC	SR	EC	SR	EC		
	County Central Committee Project					SR				EC	EC		
	CFRO Regulation Review										△	SR	
	Campaign Consultant Program Review												
Ethics	E-filing for Form 700 Project	SR			SR						EC		
	Ethics Code Review												△

- △ Planned Project Start
- SR Staff Review & Public Comment
- EC Before Commission
- BOS Before Board of Supervisors

- IM Implementation
- Tentative Dates

ATTACHMENT 3

Project Plan – Public Financing
2/1/2018 – 10/31/2018



Staff Level Research & Review

Phase I

- Policy Division Research 2/1/18 – 3/31/18
- Task Force Team Review 4/1/18 – 5/31/18

Outside Input, Review & Drafting

Phase II

- Outside Feedback Period 4/1/18 – 9/1/18

Programmatic Review

- Drafting 7/15/18 – TBD

Substantive Review

Implementation

Phase III

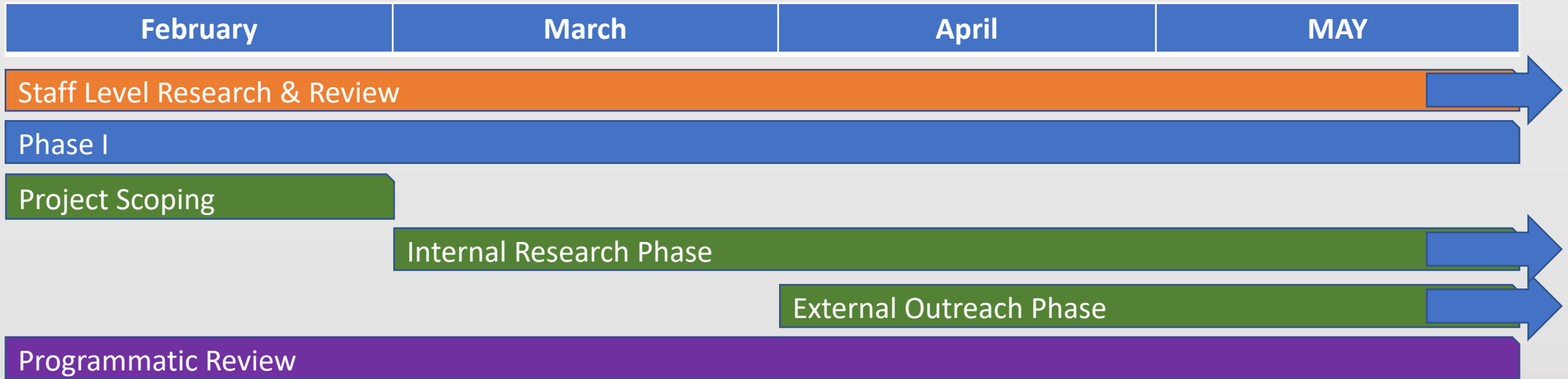
Implementation

PHASE I; Program Review: Identification and Improvements to current framework – Seeking to answer basic questions:

- 1) What does this policy/law do now
- 2) What was is meant to do/accomplish
- 3) What do we want it to do
- 4) How do we make it work

PHASE II; Substantive Review: Reinforce or Challenge fundamental policy goals and objectives:

- 1) What goals and objectives do we want the program to accomplish
- 2) Can those goals and objectives be achieved within our laws current framework
 - 1) If yes, how do we implement within framework; If no, can the framework be modified
- 3) Construct alternatives, select criteria, project outcomes and confront trade-offs



<p>Project Scope:</p> <ul style="list-style-type: none"> • Define Issue(s) • Determine Desired Outcomes and Objectives • Set Goals • Set Tasks to Achieve Goals • Requirements • Refine Schedule 	<p>Internal Research:</p> <ul style="list-style-type: none"> • What the law does now • What it was put in place to do • What it actually does • What we want it to do • How do we accomplish that • Cost/Benefit analysis 	<p>External Outreach:</p> <ul style="list-style-type: none"> • Challenge initial analysis • Stakeholder engagement • Subject-matter expert engagement • Interested persons engagement
---	--	--