

Memorandum 89-26

Subject: Conflicts of Interest

This memorandum considers two issues arising with regard to conflicts of interest under the Political Reform Act (PRA) of 1974. The first issue involves the disqualification rules and the second issue concerns whether the Commission needs to amend its agency Conflict of Interest Code in light of studies added to the Commission's agenda since the Code was adopted.

Disqualification

Government Code Section 87100, the governing statute, is simple on its face:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Several questions arise in applying this statute. What is a financial interest under this provision and when does an official know or have reason to know that he or she has one? What is a material financial effect that is distinguishable from the effect on the public generally? When is an official's participation in a governmental decision legally required?

Financial Interest

The "financial interest" concept is broader than it might first appear. The Political Reform Act applies to decisions that would have a financial effect on the official directly or the official's family. In addition, the PRA imputes to the official the financial effect of a governmental decision on a business entity, property, or source of income in which the official has the requisite interest. Hence, even

though the governmental decision would not necessarily have an effect on the income of the official, the PRA bars participation in the decision if it is reasonably foreseeable that the decision would have a material financial effect on the entity, property, or source of income. This is spelled out in Government Code Section 87103, which is set out in full in Exhibit 1. Note as well that the last paragraph of Section 87103 relating to indirect investments and interests picks up certain investments and interests owned by a spouse, dependent child, or agent of the official.

Material Financial Effect

If an official has a financial interest within the terms of the PRA, the next step is to determine whether it is reasonably foreseeable that the decision would have a material financial effect. Leaving aside the issue of foreseeability for the time being, FPPC regulations provide detailed and concrete rules concerning what constitutes a material financial effect under the Political Reform Act. (For the full text of these rules, see FPPC Reg. §§ 18702-18702.6 (1988), at exhibit pp. 14-21.)

Direct financial effects of a decision on financial interests of an official or the official's family are fairly obvious and are covered by FPPC Regulation Section 18702.1. (Exhibit pp. 15-16.) But as noted above, disqualification may be required where there is the requisite material financial effect on a business entity, source of income, or property in which the official has an interest, even though there is no effect on the official's income or assets. The FPPC rules concerning materiality of effect on a business entity revolve around the Fortune 500 lists and which stock exchange a company is listed on, if any. (See FPPC Reg. § 18702.2, at exhibit pp. 16-18.)

The materiality of decisions affecting real property ownership and leasehold interests is covered by FPPC Regulation Sections 18702.3 and 18702.4. (Exhibit pp. 18-20.) These rules do not admit of convenient summary, so we suggest that you review them in detail.

Regulations also delineate the materiality of effect on nonprofit entities and individuals who are a source of income. (See FPPC Reg. §§ 18702.5-18702.6, at exhibit pp. 20-21.)

Knows or Has Reason to Know - Reasonably Foreseeable

Government Code Section 87100 requires disqualification where the official "knows or has reason to know" of the financial interest. Section 87103 uses different terminology, referring to a "reasonably foreseeable" material financial effect. The FPPC's pamphlet summarizes the foreseeability rule as follows:

An effect on an official's financial interests is foreseeable when there is a substantial likelihood that it will occur as a result of a governmental decision. An effect does not have to be certain to be foreseeable; however, if an effect is a mere possibility, it is not foreseeable.

This standard is from the *Thorner* opinion, 1 FPPC Ops. 198 (1975). (A photocopy of the FPPC pamphlet is attached; see exhibit pp. 5-9.)

Distinguishable From Effect on General Public

Even if a decision would have a foreseeable and material financial effect on an official's financial interests, disqualification is not required if the effect is not "distinguishable from its effect on the public generally." (Gov't Code § 87103.) FPPC Regulation Section 18703 provides detail on this rule. (See exhibit pp. 21-22.) A material financial effect is indistinguishable if it "will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public." An "industry, trade or profession" is not a "significant segment of the general public" unless the Legislature makes a special finding and declaration as provided in Regulation Section 18703(c) or such a finding and declaration is "implicit, taking into account the language of the statute" creating the agency and the "nature and purposes of the program, any applicable legislative history, and any other relevant circumstance."

Legally Required Participation

Government Code Section 87101 provides an exception to the disqualification rule where the officials "participation is legally required for the action or decision to be made." The question arose at the last meeting whether the need for a quorum or to attain the number

of votes necessary to make a recommendation to the Legislature would satisfy this standard. The statute provides that the need for a tie-breaking vote does not satisfy the "legally required" standard, but otherwise is silent.

FPPC Regulation Section 18701 fleshes out the legally required standard in relevant part as follows:

18701. (a) A public official is not legally required to make or participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

. . .
(c) This regulation shall be construed narrowly, and shall:

. . .
(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.

This regulation presents several difficulties when considered in light of Commission practices. The Commission has 10 members, but the Legislative members have traditionally not been considered in determining a quorum, since they are a joint interim investigating committee (Gov't Code § 8281) and are normally unable to attend Commission meetings. In applying this FPPC regulation, a Commission quorum is properly considered to be five members and Legislative members should not be considered in applying the rule concerning whether a "quorum can be convened of other members of the agency."

Review of Disclosure Rules in Commission Conflict of Interest Code

In order to provide some guidance and limits on the disclosure requirements applicable to Commission members appointed by the Governor, the Commission's Conflict of Interest Code was drafted to focus on the particular types of entities that might be affected by

studies on the Commission's agenda of topics. Since topics can be added to the Commission's agenda, we have an understanding with the FPPC that we will amend the relevant disclosure categories under the Conflict of Interest Code within 90 days after commencing consideration of a topic. (A copy of the Commission's Code is attached as Exhibit 2, at exhibit pp. 3-4.) The list of entities and sources of income in the Appendix to the Commission's Conflict of Interest Code was drafted after a thorough review of all of the topics on the Commission's agenda when the Code was adopted.

Two topics have recently been added to the Commission's agenda of topics: administrative law ("whether there should be changes in administrative law") and attorney's fees ("whether there should be changes in the law relating to the payment and the shifting of attorneys' fees between litigants").

The staff has considered whether there is any foreseeable business entity or source of income that should be added to the list in our Conflict of Interest Code and concludes that there is none. We asked Professor Asimow whether he could think of any business entity that might be materially affected by any aspect of the administrative law study. He said there was not. We had wondered whether it was conceivable that some type of change in administrative law could have an affect on a heavily regulated business, such as public utilities. However, given the procedural nature of the administrative law study, we could not anticipate any possible material affect. In any event, "privately owned public utilities" are already listed in the Commission's Conflict of Interest Code.

Similarly, we cannot see any additional type of entity that should be included on the basis of the attorney's fees study. "Law firms" are already listed in our Code.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

SELECTED PROVISIONS OF POLITICAL REFORM ACT (as of 01/01/89)

Government Code § 87100. Participation forbidden if financial interest

87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Note. Government Code Section 87102 provides that the "requirements of Section 87100 are in addition to the requirements of . . . any Conflict of Interest Code adopted" by the agency.

Government Code § 87101. Participation in decision

87101. Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

Government Code § 87103. Financial interest in decision

87103. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by

a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Government Code § 87300:

87300. Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

EXHIBIT 2

COMMISSION'S CONFLICT OF INTEREST CODE

The following materials constitute the Commission's Conflict of Interest Code. It is our understanding with the Fair Political Practices Commission that if the Law Revision Commission begins to consider a topic which could affect a type of interest not described in Disclosure Category 1 of the Appendix to the Conflict of Interest Code, the Disclosure Category must be amended within 90 days of the beginning of consideration of the topic. (Letter from Sarah T. Cameron, Deputy Chief for Conflicts of Interest, to Stan Ulrich, September 15, 1980.)

The Commission's Conflict of Interest Code, including the Appendix relating to designated employees and disclosure categories, is set out below.

**CONFLICT OF INTEREST CODE FOR
THE CALIFORNIA LAW REVISION COMMISSION**

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix A in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the California Law Revision Commission.

Pursuant to Section 4(A) of the standard Code, designated employees shall file statements of economic interests with their agencies. Upon receipt of the statements of Commissioners and the Executive Secretary, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

APPENDIX A

DESIGNATED EMPLOYEES

<u>Designated Employees</u>	<u>Disclosure Categories</u>
Commission Member (appointed by Governor)	1, 2
Legislative Counsel	1, 2
Executive Secretary	1, 2, 3
Assistant Executive Secretary	1, 2, 3
Staff attorneys	1
Administrative Assistant	2, 3

DISCLOSURE CATEGORIES

Category 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments in business entities listed below.
3. Personal income from entities or persons listed below.
4. Business entity income from entities or persons listed below.
5. Business positions in entities listed below.

The following entities, in the jurisdiction of California, constitute the financial interests which foreseeably may be materially affected by a Law Revision Commission decision:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the leasing or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.
13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.

Category 2

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide leased space or consulting services to or on behalf of the Law Revision Commission.

Category 3

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide equipment, materials, supplies, or services (other than consulting services) to or on behalf of the Law Revision Commission.

**A GUIDE TO
THE POLITICAL REFORM
ACT OF 1974**

**CALIFORNIA'S CONFLICT OF
INTEREST LAW FOR PUBLIC
OFFICIALS**

**California Fair Political
Practices Commission**

What is the Political Reform Act?

The Political Reform Act was enacted by the people of the State of California by an initiative, known as Proposition 9, in 1974. One of the Act's main purposes is to prevent financial conflicts of interest on the part of public officials.

* * *

How does the Political Reform Act prevent conflicts of interest?

1. By Disclosure: The Political Reform Act requires every public official to disclose all financial interests, such as investments, interests in real estate (real property), or sources of income, which the official may possibly affect by the exercise of his or her official duties. Disclosure is made on a form called a "statement of economic interests."

2. By Disqualification: If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence a governmental decision.

* * *

Who must file statements of economic interests under the Political Reform Act?

The Governor, members of the Legislature, elected state and local officials, judges of courts of record, and all high ranking state and local officials must file statements of economic interests. Other officials or employees of state and local government agencies must also file statements of economic interests if they are "designated" by the agencies for which they work. Each agency must designate all its officials or employees who make or participate in governmental decisions which could cause conflicts of interest. Unpaid members of boards or commissions and consultants to state or local government agencies also may be required to file statements of economic interests. Each government agency has a list of all agency officials and employees who have to file statements of economic interests. Anyone may inspect this list.

* * *

Are statements of economic interests available to the public?

Statements of economic interests are public records. Any member of the public must be permitted to inspect and copy any statement during normal business hours. No more than 10 cents a page may be charged for copies. No one can be required to identify himself or herself or sign anything before being permitted to inspect or copy statements. No other conditions can be imposed on inspection and copying.

Statements of economic interests must be kept on file by the official's or employee's agency and made available upon request. Statements of certain officials, including elected state officials, members of the Legislature, judges, most high ranking state officials, and many elected local officials and planning commissioners, are also available at the offices of the Fair Political Practices Commission.

* * *

Who may be disqualified under the Political Reform Act?

The disqualification requirements of the Political Reform Act apply to all elected state or local government officials, to all appointed state or local government officials, and to all government agency employees, except judges. Unpaid members of boards or commissions and consultants to state or local government agencies may also have to disqualify themselves under the Act.

* * *

What is a conflict of interest?

A public official or employee has a conflict of interest when *all* of the following occur:

1. The official makes, participates in, or uses his or her official position to influence a governmental decision;
2. It is foreseeable that the decision will affect the official's financial interest;
3. The effect of the decision on the official's financial interest will be material;
4. The effect of the decision on the official's financial interest will be distinguishable from its effect on the public generally.

Each of these four components of a conflict of interest is discussed below.

1. The official makes, participates in, or uses his or her official position to influence a governmental decision.

A. Governmental decision:

A governmental decision is any decision made by a government body or by a government official or employee in his or her official capacity. Governmental decisions include: decisions on ordinances, regulations and resolutions; decisions on contract awards, purchases and leases; decisions on hiring, firing and personnel actions; decisions on land use, zoning, redevelopment plans, permits and variances; and decisions on any other matter which may come before a state or local government agency. Governmental decisions do not include purely private decisions made by a public official in his or her personal capacity.

B. Making a governmental decision:

A public official makes a governmental decision when he or she votes as a member of a board, commission or council on any governmental decision, regardless of the outcome of the vote, and regardless of whether the official votes for or against the action.

Heads of departments, directors of agencies, and employees of state or local government agencies make governmental decisions when they take or authorize any official action on behalf of their agencies. A determination that an agency will not take a particular action is also a governmental decision.

C. Participating in a governmental decision:

A public official participates in a governmental decision when he or she advises or makes recommendations to a decision-maker, whether or not the decision-maker ultimately follows the official's advice. However, a consultant who is under contract to prepare a report or analysis independent of the control or direction of an agency, and who has no authority with respect to the agency's decision, does not participate in a governmental decision by making a recommendation or giving advice.

A public official who negotiates on behalf of his or her agency with any other agency or with any person outside his or her agency concerning a governmental decision participates in that decision.

An employee whose actions are solely ministerial, secretarial, clerical or manual does not make or participate in governmental decisions.

D. Using one's official position to influence a governmental decision:

A public official influences or attempts to influence a governmental decision when the official appears before any government agency in his or her official capacity and urges that a particular governmental decision be made, or when the official, whether or not appearing in his or her official capacity, urges that a particular governmental decision be made by:

- i. The official's own agency;
- ii. Any individual within the official's agency;
- iii. Any other government agency, if the official's agency appoints the members of the other agency, or has budgetary control over the other agency;
- iv. Any individual within such an agency.

A public official can sometimes influence a governmental decision when acting in a private, as well as in an official capacity. For example, an official appearing as an attorney for a third party before the official's own agency is influencing or attempting to influence a governmental decision.

2. It is foreseeable that the decision will affect the official's financial interest.

A. An official's financial interest:

An official's financial interest is affected whenever a governmental decision affects:

- i. A business entity located in or doing business in the official's jurisdiction, in which the official, or his or her spouse or dependent child has an investment of \$1,000 or more. Investments in a business entity include: ownership of stock, bonds, or commercial paper; a general or limited partnership interest; or any other form of ownership interest in a business entity. Investments do not include: bank accounts; interests in mutual funds, money market funds, or insurance policies; or government bonds or securities. Business entities include: corporations; partnerships; joint ventures; sole proprietorships; and any other type of enterprise operated for a profit. A nonprofit organization is not a business entity.

- ii. Real estate (real property) located in the official's jurisdiction, in which the official, or his or her spouse or dependent child has an interest of \$1,000 or more. Interests in real property include: ownership (equity); deeds of trust (mortgages); leaseholds; options to buy; and joint tenancies.

- iii. A person or business entity located in or doing business in the official's jurisdiction, from which the official has received income of \$250 or more, or the official's spouse has received income of \$500 or more, in the past 12 months. With certain exceptions, income includes: salaries; commissions; rents;

payments for goods or services (including payments for purchase of real property or stock); loans (including loans previously made but still outstanding); and all other types of payments. Gifts, whether from sources inside or outside the official's jurisdiction, also are income. Income does not include: government salaries; inheritances; dividends, interest or premiums from publicly traded stock, mutual funds, bank accounts, credit unions or insurance policies; alimony or child support; loans from banks, credit unions, or credit cards of \$10,000 or less on terms generally available to the public; mortgages on a principal residence; loans or gifts from family members; or most pensions.

- iv. A business entity in which the official is a director, officer, partner, trustee, employee or holds a position of management;

- v. The official's personal financial status, or that of his or her spouse. This does not apply, however, to decisions which affect the official's government salary, or the receipt of any payments by the official or his or her spouse which are not considered income under the Political Reform Act.

B. A foreseeable effect:

An effect on an official's financial interests is foreseeable when there is a substantial likelihood that it will occur as a result of a governmental decision. An effect does not have to be certain to be foreseeable; however, if an effect is a mere possibility, it is not foreseeable.

3. The effect of the decision on the official's financial interests will be material.

As a general rule, an effect of \$100,000 or more on real property or a business entity in which an official has an investment, or on a source of income to an official, is considered material. When the effect of a governmental decision is between \$1,000 and \$100,000, the effect may be material. Specific circumstances under which such an effect is material are set forth in the Commission's regulations. An effect of less than \$1,000 on an official's investments or sources of income is not material. An effect of \$100 or more on the official's own income or out of pocket expenses is material, however. For purposes of determining whether there is a conflict of interest, it does not matter whether the financial effect increases or decreases income or assets.

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, the effect may be material if the decision significantly affects the use or enjoyment of land or other interests, or if the official's receipt of income from a private source is directly related to the decision.

4. The effect of the decision on the official's financial interests will be distinguishable from its effect on the public generally.

An official does not have a conflict of interest if the effect of a governmental decision on the official's financial interests is no different from its effect on most other persons or interests in the jurisdiction. For example, a decision to impose a city sales tax, which will affect all residents of the city, does not affect any individual city councilmember (no matter how much he or she pays in sales taxes) in a different manner than it affects the public generally, and, as a result, does not create a conflict of interest for any city councilmember. By way of contrast, a decision concerning a zoning variance for an official's business or home, which has a different effect on the official's financial interests than on other members of the general public, does constitute a conflict of interest for the official.

* * *

What should a public official who has a conflict of interest do?

When a public official determines that a governmental decision will foreseeably have a material effect on his or her financial interest, the official has a conflict of interest and must not vote on, make, participate in any way in, or attempt to influence the decision. This is called disqualification. When an official disqualifies himself or herself from a governmental decision because of a conflict of interest, the reason for the disqualification and the financial interest which may be affected by the decision must be announced (in the case of a member of a voting body), or disclosed in writing (in the case of all other officials).

* * *

Is a governmental decision valid if it was made by an official who had a conflict of interest?

A governmental decision is not invalidated by the fact that an official who made or participated in the decision had a conflict of interest. However, a court can set aside a governmental decision if the court determines that an official who made the decision had a conflict of interest, that without that official's actions the decision would not have been made, and that setting aside the decision will not cause injury to innocent persons.

Can a public official ever make a decision in which he or she has a conflict of interest?

There may be situations in which a public official is legally required to make or participate in a decision, even though the official has a conflict of interest. This occurs when no one other than the official has the legal authority to make or participate in the decision. In such a case, the Political Reform Act allows the official to go ahead, so long as the existence and nature of the official's financial interest is put on the public record.

An official is not legally required to make or participate in a decision because the official's vote is needed to break a tie, or because the official is needed for a quorum as a result of some other official's absence for a reason other than a conflict of interest. If so many members of an agency are disqualified because of conflicts of interest that a quorum cannot be convened, there is a procedure for allowing some officials who have a conflict of interest to vote.

What are the penalties for violation of the conflict of interest provisions of the Political Reform Act?

The Fair Political Practices Commission can bring an administrative action against an official who has violated the disclosure or disqualification requirements of the Political Reform Act, and can impose administrative penalties of up to \$2,000 for each violation. An official who violates the Act may be subject to a civil lawsuit, in which a court can impose a fine. A willful violation of the Act is also a misdemeanor, punishable by a fine of up to \$10,000 or by imprisonment, and may result in the official being ineligible to run for public office for four years.

These penalties apply to violations of the disclosure requirements of the Act by any public official. However, they do not apply to violations of the disqualification provisions of the Act by the Governor, other constitutional officers or members of the Legislature. They do apply to disqualification violations by all other public officials.

* * *

How can a public official find out if he or she has a conflict of interest?

When a public official suspects that he or she may have a conflict of interest, the attorney for the official's agency should be consulted. The official can also ask the Legal Division of the Fair Political Practices Commission for advice. Requests for written advice are generally answered within 21 working days, although written or telephone advice may be given more quickly in urgent situations. If the Commission advises an official that disqualification is not necessary, the official is protected against legal or administrative action arising from conflict of interest charges. If an official poses a question which is unusually complex, significant or unique, the full Commission may issue an opinion.

The Commission can only issue opinions or give advice regarding conflicts of interest to the official who may have to be disqualified, or to the official's authorized representative. Advice about specific situations cannot be given to members of the public, or to other persons who are interested in whether or not an official should be disqualified from the specific decision. However, general guidance about the requirements of the law will be provided to anyone who requests it.

All Commission regulations and opinions are published by the California Continuing Education of the Bar. All advice requests and advice letters are public records. Opinions and significant advice letters are summarized in the Commission's monthly Bulletin. Copies of opinions and advice letters can be obtained from the Commission.

* * *

What should you do if you suspect that a public official has violated the conflict of interest provisions of the Political Reform Act?

Complaints concerning violations of the conflict of interest provisions of the Political Reform Act should be made to the local district attorney, the Enforcement Division of the Fair Political Practices Commission, or the Attorney General.

* * *

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Fair Political Practices Commission

The Fair Political Practices Commission administers and enforces the Political Reform Act. It has five members. The chairman and one other member are appointed by the Governor, one member is appointed by the Attorney General, one by the Secretary of State, and one by the Controller. The Governor's two appointees must be from different political parties. Commissioners serve for four years and cannot be reappointed.

Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, California 95804

Legal Division 916/322-5901
Statements of Economic Interests 916/322-6444
Enforcement Division 916/322-6443

TITLE 2 FAIR POLITICAL PRACTICES COMMISSION

§ 18700

(Register 85, No. 33—8-17-85)

(p. 327)

CHAPTER 7. CONFLICTS OF INTEREST**Article 1. Conflicts of Interest; General Prohibition****18700. Public Official Making, Participating in Making a Governmental Decision (87100).**

The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

(b) A public official "makes a governmental decision," except as provided in subsection (d) of this section, when he or she, acting within the authority of his or her office:

(1) Votes on a matter;

(2) Appoints a person;

(3) Obligates or commits his or her agency to any course of action;

(4) Enters into any contractual agreement on behalf of his or her agency;

(5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4), unless such determination is made because of his or her financial interest. When the determination not to act occurs because of his or her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor, appointing power or any other person specified in a conflict of interest code adopted pursuant to Government Code Section 87300.

(c) A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

(d) Making or participating in the making of a governmental decision shall not include:

(1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;

(2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests; or

(3) Actions by public officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

HISTORY:

1. Repealer and new section filed 12-17-76, as an emergency; effective upon filing (Register 76, No. 51). For prior history, see Register 76, No. 40.

2. Certificate of Compliance filed 3-31-77 (Register 77, No. 14).

3. Amendment of section heading and repealer of subsections (e) and (f) filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).

18700.1. Using Official Position to Influence (87100).

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence, include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) Notwithstanding subsection (a) an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by subsection (a) if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

- (2) Communicates with the general public or the press.
- (3) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.
- (4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.

(5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:

(A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;

(B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(C) The official is a sole practitioner.

(c) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

HISTORY:

- 1. New section filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).

18701. Legally Required Participation.

(a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall:

(1) Disclose as a matter of official public record the existence of the financial interest;

(2) Describe with particularity the nature of the financial interest before he or she makes or participates in making the decision;

(3) Attempt in no way to use his or her official position to influence any other public official with respect to the matter;

(4) State the reason there is no alternative source of decision-making authority;

(5) Participate in making the decision only to the extent that such participation is legally required.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Government Code Section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87101, Government Code.

HISTORY:

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).

2. Amendment of subsection (c) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).

18702. Material Financial Effect—Specific Rules, General Rules.

(a) **Specific Rules.** The following regulations, governing specific types of governmental decisions which affect certain specific types of economic interests, shall be utilized in determining whether the reasonable foreseeable effects of the decision will be material with respect to the economic interest.

(1) **Economic Interests Directly Involved in the Decision—Section 18702.1.**

(2) **Economic Interests Indirectly Involved in the Decision:**

(A) **Business entities—Section 18702.2;**

(B) **Ownership interests in real property—Section 18702.3;**

(C) **Leasehold interests in real property—Section 18702.4;**

(D) **Nonprofit source of income—Section 18702.5; and**

(E) **Individual source of income—Section 18702.6.**

In order to determine if a decision's effect is material, it must first be determined if the official's economic interest is directly involved and the effect of the decision is material under Section 18702.1. If the official's economic interest is not directly involved in the decision, or the effect of the decision is not material, under Section 18702.1, then it must be determined if the effect is material under the appropriate regulation of Sections 18702.2 through 18702.6.

(b) **General Rule.** Whenever the specific provisions of Sections 18702.1 through 18702.6, inclusive, cannot be applied, the following general rule shall apply:

The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official.

(c) Public Generally Exception. Notwithstanding any determination that the reasonable foreseeable effect of a decision is material under this regulation or under Sections 18702.1 through 18702.6, an official is not disqualified from participation in a governmental decision if the decision affects the official's interest in a manner which is not distinguishable from the manner in which the decision will affect the public generally as set forth in Section 18703.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).
2. Amendment filed 3-19-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 12).
3. Amendment filed 12-20-78; effective thirtieth day thereafter (Register 78, No. 51).
4. Amendment of subsection (a) and (b) filed 7-5-79; effective thirtieth day thereafter (Register 79, No. 27).
5. Amendment of subsection (b) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
6. Amendment filed 6-22-87; operative 7-22-87 (Register 87, No. 26).
7. Repealer and new section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18702.1. Material Financial Effect: Official's Economic Interest is Directly Involved in the Decision.

(a) The effect of a decision is material if any of the following applies:

(1) Source of Income or Gifts—Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency or there is a nexus as defined in subdivision (d) between the purpose for which the official receives income and the governmental decision; or

(2) Investment in Business Entity—Any business entity (other than one covered by Section 18702.2(a) or (b)) in which the official has a direct or indirect investment of \$1,000 or more, any business entity covered by Section 18702.2(a) or (b) in which an official has a direct or indirect investment of \$10,000 or more, or any business entity in which the official is an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in a decision before the official's agency; or

(3) Interest in Real Property—

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(E) For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the subject property, but shall not refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category.

(4) The Official or Immediate Family—The decision will result in the personal expenses, income, assets (other than interest in real property), or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250.

(b) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(1) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position;

(2) Although disqualification would otherwise be required under subsection (a) (1), (a) (2), or (a) (3) the decision will have no financial effect on the person or business entity who appears before the official, or on the real property.

(d) There is a nexus between the purpose for which an official receives income and a governmental decision if the official receives income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 9-5-85; effective thirtieth day thereafter (Register 85, No. 36).
2. Amendment filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18702.2. Material Financial Effect: Business Entity Indirectly Involved in the Decision.

The effect of a decision is material as to a business entity in which an official has an economic interest if any of the following applies:

(a) For any business entity listed on the New York Stock Exchange or the American Stock Exchange:

(1) The decision will result in an increase or decrease to the gross revenues for a fiscal year of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in gross revenues must be \$1,000,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in expenditures must be \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in assets or liabilities must be \$1,000,000 or more.

(b) For any business entity listed on the National Association of Securities Dealers National Market List (securities of companies on this over-the-counter market list are registered with and subject to the Security and Exchange Commission's rule requiring tape reporting of last sale information [17 CFR Section 240.77 Aa3-1]):

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

(c) For any business entity not covered by subdivisions (a) or (b) but which is listed on the Pacific Stock Exchange or is qualified for public sale in this state and is listed on the Eligible Securities List maintained by the California Department of Corporations (which applies to partnerships and other business entities as well as corporations):

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

(d) For any business entity not covered by subdivision (a) which meets the financial standards for listing on the most recently published Fortune Magazine Directory of the 500 largest U. S. industrial corporations or the 500 largest U. S. nonindustrial corporations, the tests in subdivision (a) applicable to non-Fortune 500 business entities listed on the New York or American Stock Exchanges may be applied.

(e) For any business entity not covered by subdivisions (a) or (b) which meets the financial standards for listing on the New York Stock Exchange, the tests in subdivision (b) may be applied. The standards are as follows: The business entity has net tangible assets of at least \$18,000,000 and had pre-tax income for the last fiscal year of at least \$2,500,000.

(f) For any business entity not covered by subdivisions (a) or (b) which meets the financial standards for listing on the National Association of Securities Dealers National Market List, the tests in subdivision (c) may be applied. The standards are as follows: The business entity has net tangible assets of at least \$4,000,000, and had pre-tax income for the last fiscal year of at least \$750,000, with net income from that period of at least \$400,000.

(g) For any business entity not covered by subdivisions (a), (b), (c), (d), (e) or (f):

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 7-24-85; effective thirtieth day thereafter (Register 85, No. 30).
2. Repealer of subsection (h) filed 6-22-87; operative 7-22-87 (Register 87, No. 26).
3. Amendment filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18702.3. Material Financial Effect: Ownership Interest in Real Property Indirectly Involved in the Decision.

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

(2) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or substantially improved services.

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

(b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision; unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a) (3) (A) or (a) (3) (B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the real property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

(c) For decisions which may affect an interest in real property but which do not involve a subject property from which the distances prescribed in subdivisions (a) and (b) can be determined, the monetary standards contained in subdivision (a) (3) (A) and (B) shall be applied.

(d) For a decision which is covered by subdivision (a) (3) or (b) (1) or (c), factors which shall be considered in determining whether the decision will have the effects set forth in subdivision (a) (3) (A) or (B) include, but are not limited to:

(1) The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

(2) Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

(3) In addition to the foregoing, in the case of residential property, whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

(e) Redevelopment Decisions: For purposes of this section "the boundaries (or proposed boundaries) of the property which is the subject of the decision" are the boundaries (or proposed boundaries) of the redevelopment project area whenever the decision is a redevelopment decision to designate the survey area, to make findings of blight, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18702.4. Material Financial Effect: Leasehold Interests in Real Property Indirectly Involved in the Decision.

The effect of a decision is material as to a leasehold interest in real property if any of the following applies:

(a) The decision will change the legally allowable use of the leased property, and the lessee has a right to sublease the property;

(b) It is reasonably foreseeable that the lessee will change the actual use of the property as a result of the decision;

(c) It is reasonably foreseeable that the decision will result in a change in the actual use of property within 300 feet of the leased property, and the changed use will significantly enhance or significantly decrease the use or enjoyment of the leased property;

(d) The decision will increase or decrease the amount of rent for the leased property by \$250 or 5 percent, whichever is greater, during any 12-month period following the decision; or

(e) The decision will result in a change in the termination date of the lease.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18702.5. Material Financial Effect: Nonprofit Entity Source of Income or Gifts Indirectly Involved in the Decision.

The effect of a decision is material as to a nonprofit entity which is a source of income or gifts to the official if any of the following applies:

(a) For an entity whose gross annual receipts are \$400,000,000 or more, the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$1,000,000 or more; or

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$1,000,000 or more.

(b) For an entity whose gross annual receipts are more than \$100,000,000 but less than \$400,000,000, the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$400,000 or more; or

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$100,000 or more; or

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$400,000 or more.

(c) For an entity whose gross annual receipts are more than \$10,000,000, but less than or equal to \$100,000,000 the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$200,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$50,000 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$200,000 or more.

(d) For an entity whose gross annual receipts are more than \$1,000,000, but less than or equal to \$10,000,000 the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$100,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$25,000 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$100,000 or more.

(e) For an entity whose gross annual receipts are more than \$100,000 but less than or equal to \$1,000,000 the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$50,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$50,000 or more.

(f) For an entity whose gross annual receipts are \$100,000 or less, the effect of the decision will be any of the following:

(1) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$10,000 or more.

(2) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$2,500 or more.

(3) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$10,000 or more.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18702.6. Material Financial Effect: Source of Income or Gifts Who is an Individual Indirectly Involved in the Decision.

The effect of a decision is material as to an individual who is a source of income or gifts to an official if any of the following applies:

(a) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

(b) The decision will affect the individual's real property interest in a manner that is considered material under Section 18702.3 or Section 18702.4.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

18703. Effect on the Public Generally.

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the

public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

(a) In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally.

(b) In the case of any other elected official, an industry, trade or profession of which that official is a member may constitute a significant segment of the public generally if that industry, trade or profession is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the official.

(c) An industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the creation of the official's agency or office contains a finding and declaration, including an express reference to Section 87103 of the Government Code, to the following effect:

The Legislature [or other authority] declares that the individual[s] appointed to the office of _____ is [are] intended to represent and further the interest of the [specified industry, trade or profession], and that such representation and furtherance will ultimately serve the public interest. Accordingly, the Legislature [or other authority] find that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

(d) In the absence of an express finding and declaration of the type described in subsection (c) of this section, such an industry, trade or profession constitutes a significant segment of the public generally only if such a finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 2-20-76; effective thirtieth day thereafter (Register 76, No. 8).
2. Amendment of subsection (d) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
3. Amendment of initial paragraph only filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

18703.5. Sources of Income to Owners of Retail Business Entities.

(a) For purposes of Government Code Section 87103.5, the retail customers of a business entity constitute a significant segment of the public generally if either of the following is true:

- (1) The retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction; or
- (2) The retail customers of the business entity during the preceding 12 months number at least ten thousand.

For purposes of this subdivision, a customer of a retail business entity is each separate and distinct purchaser of goods or services, whether an individual, household, business or other entity. If records are not maintained by customer

name, a good faith estimate shall be made to determine what percentage of sales transactions represent multiple transactions by repeat customers. The total number of sales transaction shall then be reduced by the estimated percentage of repeat customers to yield the number of customers for purposes of applying this subdivision.

(b) For purposes of Government Code Section 87103.5, the amount of income received by a business entity from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question during the preceding 12 months is less than one-tenth of 1 percent of the gross sales revenues of the retail business entity for the preceding fiscal year.

(c) For purposes of Government Code Section 87100, an official who owns 10 percent or more of a retail business entity which meets the criteria in either subdivision (a) (1) or (a) (2), does not "have reason to know" that a decision will affect a source of income to the retail business entity when either of the following applies:

(1) If all of the following are true:

(A) The customer does not have a charge account or open book account with the retail business;

(B) The retail business does not maintain records for noncharge customer transactions by customer name or other method for tracking transactions which would provide the customer name; and

(C) The fact that the person is a customer is not personally known to the official; or

(2) If all of the following are true:

(A) The accounts and books of the retail business entity are maintained by someone other than the official or a member of the official's immediate family; and

(B) The fact that the person is a customer is not personally known to the official.

(d) For purposes of subdivision (c), a credit card transaction utilizing a credit card not issued by the retail business entity is considered a "noncharge customer transaction."

(e) Subdivision (c) shall not be utilized in determining whether an official "knows" of a financial interest in a decision within the meaning of Government Code Section 87100. When such knowledge exists, or the fact that a person is a source of income is brought to the attention of the official prior to the governmental decision, the provisions of subdivision (c) shall have no effect on the official's duty to disqualify.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103.5, Government Code.

HISTORY:

1. New section filed 11-21-88; operative 12-21-88 (Register 88, No. 48).

18704. Source of Income (87103(c)).

Source of income, as used in Government Code Section 87103(c), shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employ-

ment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103(c), Government Code.

HISTORY:

1. New section filed 1-20-76 as an emergency; effective upon filing (Register 76, No. 4).
2. Repealer by operation of law, Section 11422.1, Gov. C. (Register 76, No. 25).
3. New section filed 6-17-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 25).

18704.3. Sources of Commission Income to Brokers, Agents and Salespersons.

(a) This section contains the disclosure and disqualification requirements for any public official who receives commission income for services rendered as an insurance broker or agent, a real estate broker or agent, a travel agent or salesperson, a stockbroker or a retail or wholesale salesperson.

(b) "Commission income" means gross payments received as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.

(c) The sources of commission income in a specific sale or similar transaction include for each of the following:

- (1) An insurance broker or agent:
 - (A) The insurance company providing the policy;
 - (B) The person purchasing the policy; and
 - (C) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.
- (2) A real estate broker:
 - (A) The person the broker represents in the transaction;
 - (B) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;
 - (C) Any brokerage business entity through which the broker conducts business; and
 - (D) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
- (3) A real estate agent:
 - (A) The broker and brokerage business entity under whose auspices the agent works;
 - (B) The person the agent represents in the transaction; and
 - (C) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
- (4) A travel agent or salesperson:
 - (A) The airline, hotel, tour operator or other person who provided travel services or accommodations in the transaction;
 - (B) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and
 - (C) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.

(5) A stockbroker:

~~(A) The brokerage business entity through which the broker conducts business; and~~

(B) The person who trades the stocks, bonds, securities or other investments through the stockbroker.

(6) A retail or wholesale salesperson:

(A) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and

(B) The person who purchases the product or service.

(d) For purposes of determining whether disqualification is required under the provisions of Sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.

(e) For purposes of disclosure under Section 87207 or under a conflict of interest code adopted pursuant to Section 87300, a public official who receives commission income on a regular basis is a business entity. The full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction. The official shall report commission income as follows:

(1) On the income schedule, the total amount of commission income received during the period covered by the statement, if it exceeds \$250. The source of the income shall be listed as the official if he or she is self-employed. If the official conducts business through a firm or other business entity, the source of income shall be listed as the firm or other business entity.

(2) On the income to business entities schedule, the name of any source of gross commission income (other than one listed on the income schedule) of \$10,000 or more during the period covered by the statement.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030, 87103, 87207 and 87302, Government Code.

HISTORY:

1. New section filed 12-21-84; effective thirtieth day thereafter (Register 84, No. 51).

18705. Academic Decisions.

(a) Except as provided in subsection (b), neither disclosure of financial interests nor disqualification is required under Government Code Sections 87100, 87302, or any Conflict of Interest Code, in connection with:

(1) Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching;

(2) Decisions made by a person who has teaching or research responsibilities at an institution of higher education to pursue personally a course of academic study or research, to apply for funds to finance such a project, to allocate financial and material resources for such academic study or research, and all decisions relating to the manner or methodology with which such study or research will be conducted. Provided, however, that the provisions of this subsection (2) shall not apply with respect to any decision made by the person in the exercise of institution- or campus-wide administrative responsibilities respecting the approval or review of any phase of academic research or study conducted at that institution or campus.

(b) Disclosure shall be required under Government Code Section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for

a research project to undertake such research, if it is to be funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, but disqualification may not be required under Government Code Sections 87100, 87302 or any Conflict of Interest Code in connection with any such decision if the decision is substantively reviewed by an independent committee established within the institution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 87100 and 87302, Government Code.

HISTORY:

1. New section filed 1-24-78; effective thirtieth day thereafter (Register 78, No. 4).
2. Amendment filed 6-4-82; effective thirtieth day thereafter (Register 82, No. 23).

18706. Financial Interests in Decisions Affecting Parents, Subsidiaries or Otherwise Related Business Entities.

An official has a financial interest in a decision within the meaning of Government Code Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code Section 87103(a), (c) or (d).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 8-16-84; effective thirtieth day thereafter (Register 84, No. 33).

Article 2. Disclosure

18722. Statements of Economic Interests for New Members of the California Coastal Commission and Regional Coastal Commissions (87200 and 87202).

NOTE: Authority cited: Sections 81014 and 83112, Government Code. Reference: Sections 87200 and 87202, Government Code.

HISTORY:

1. New section filed 11-24-76 as an emergency; effective upon filing (Register 76, No. 48).
2. Repealed by operation of Section 11422.1(c), Government Code (Register 77, No. 14).