

Memorandum 90-73

Subject: Commission's Handbook of Practices and Procedures

The Commission's Handbook of Practices and Procedures collects procedural decisions and Commission practices since its creation. From time to time, the Commission updates the Handbook to incorporate new decisions and revised practices since the last edition. The Handbook was last revised at the December 1987 meeting.

The Handbook cites specific authority for a policy in a footnote, if there is any. In other cases, the stated policy represents the current practice. As practices change, the statements are revised as appropriate and adopted as part of the Handbook when it is reapproved. Thus, for example, we have eliminated the statement that Saturday meetings are normally scheduled from 9 a.m. to noon, since it is not the current practice to meet on Saturday.

The attached revised Handbook draft does not include all of the appendices pertaining to statutory details, authorized studies, travel expense information, and other administrative details. This material will be completed when the Handbook is reissued.

New Policy on Transcripts?

An additional matter was raised informally at the April meeting. The view was expressed that transcripts of Commission meetings should not be made unless it is announced beforehand. The idea is that people should feel free to express themselves fully at Commission meetings and engage in an open exchange, without having their remarks become a permanent record. It was suggested that transcripts should not be made unless the Commission decides to do so and announces the decision before the discussion takes place.

The problem with this approach is that in all or most cases we can remember, the desirability of a transcript did not arise until after a discussion took place. For example, at the last meeting there was a question raised as to the accuracy of the Minutes and the staff was

asked to verify the decision by means of a transcript. In other cases, the staff has prepared a transcript in order to preserve a particularly valuable and informative discussion, such as in the case of attorney's fees in probate and the Uniform Management of Institutional Funds Act.

What policy does the Commission wish to adopt? If the Commission wants to adopt a policy restricting transcripts, you might consider the following, which seeks to preserve some flexibility, while also protecting the interest in free and open exchange:

Transcripts of Commission meetings. As a general rule, transcripts should not be made of Commission meetings unless the Commission decides to direct the staff to prepare a transcript on a particular matter and announces that decision before the discussion to be transcribed. There are two exceptions to this general policy: (1) In the case of a question as to the accuracy of the Minutes for the previous meeting, at the request of a Commissioner, the staff may prepare a transcript, for Commissioners only, of the part of the discussion as needed to resolve the issue. (2) The Commission may decide to transcribe a discussion without prior notice if all Commissioners present consent and no persons who participated in the discussion object to the transcript.

Any policy the Commission wishes to adopt on this issue will be included in the "Conduct of Meeting" portion of the Handbook.

Biographies

Appendix 2 of the Handbook consists of biographical information on the Commissioners and staff. We will continue the same information in this appendix unless you send the staff a revised version of the information you wish included. To facilitate this, we are sending each Commissioner, under separate cover, a copy of his or her biographical information currently included in the appendix.

Respectfully submitted,

Stan Ulrich
Staff Counsel

California Law Revision Commission

Staff Draft

HANDBOOK

of

PRACTICES AND PROCEDURES

May-June 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
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CHAPTER 1. OFFICERS AND MEMBERS OF COMMISSION

OFFICERS

The officers of the Commission are the Chairperson¹ and the Vice Chairperson. The term of office of the Chairperson and Vice Chairperson is one year, commencing on September 1 of each year.² No officer is eligible to succeed himself or herself in the same office in which the officer has served a full term.³ However, an officer who has served for less than a full term may succeed himself or herself in the same office for a full term;⁴ and, where the Chairperson is reelected to office, the incumbent Vice Chairperson is eligible for reelection even though reelection may result in the Vice Chairperson succeeding himself or herself for another full term.⁵

RECOGNITION OF SERVICE

The practice of the Commission is to present a plaque containing a gavel to each Chairperson shortly after the term as Chairperson ends. The cost of the plaque is financed by contributions from the other members of the Commission and the legal staff.⁶

Certificates are awarded to members upon completion of their service on the Commission in substantially the following form:⁷

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1. Gov't Code § 8283 ("The commission shall select one of its members chairperson.")
 2. Minutes, April 1987.
 3. Minutes, January 1960.
 4. Minutes, December 1960.
 5. Minutes, January 1962.
 6. Minutes, October 1979.
 7. Minutes, February 1978.

CALIFORNIA LAW REVISION COMMISSION
RECOGNITION OF DISTINGUISHED SERVICE AS MEMBER

Presented to

THOMAS E. STANTON, JR.

In recognition of distinguished service as a member of the
California Law Revision Commission
1954-1978

Chairperson 1954-1960, 1970-1971

Vice Chairperson 1968-1970

MATERIALS AND SUPPLIES

Binders for Commission materials. Some members of the Commission use binders to keep Commission material in a convenient form. Upon request to the Commission's office, a member of the Commission will be provided with the binders necessary for this purpose.

Credit cards. Members of the Commission are provided Universal Air Travel Plan charge cards and Department of General Services charge cards for use in connection with official business of the Commission.

EXPENSE CLAIMS

Due to the complexity of applicable regulations, the Commission's Administrative Assistant is charged with the responsibility of supervising the process of preparing travel expense claims. Current information concerning travel expense regulations and claims is sent to Commissioners periodically or upon request. Questions about travel claims or the procedure should be directed to the Administrative Assistant.

The general procedure is described here: Travel claims for Commission members are submitted to the Commission's office. The member submits the necessary information on a worksheet supplied by the Administrative Assistant indicating the required information and receipts. If required information or receipts are missing, there will be delays in processing the travel claims. From the worksheet

information, the Administrative Assistant prepares the formal travel claim and sends it to the Commissioner to be signed. The claim is then returned to the Commission office for final approval and submission to the State Controller for payment.

CHAPTER 2. MEETINGS AND PROCEDURE

MEETINGS⁸

Regular meetings ordinarily are scheduled for at least every other month. A meeting is not held during the month of August. Meetings are scheduled so that meetings are held in various cities throughout the state.⁹

Depending on plane schedules, meeting times are normally scheduled as follows:¹⁰

Thursday - 1:30 p.m. - 6:00 p.m.

Friday - 9:00 a.m. - 2:00 p.m. (without break for lunch)

The Chairperson is authorized to call a special meeting and to change the date, times, and place of a previously scheduled meeting when necessary in order to improve attendance at the meeting or for other good reason. Notice of the special meeting or rescheduled meeting shall be given to all members of the Commission.

MEETING AGENDA¹¹

Subjects that are of interest to persons who attend meetings as observers should be scheduled for consideration early in the meeting so that the meeting can be adjourned early if the agenda is completed. The staff is to schedule no more work for any particular meeting than can reasonably be considered at the meeting.

8. Minutes, October & November 1979; Minutes, November 1980; Minutes, November 1982; Minutes, January 1984. Revised to reflect practice of meeting on Thursday afternoon and evening and on Friday.

9. Minutes, April 1987.

10. Existing practice.

11. Minutes, January 1969. See also Minutes, June 1968.

STAFF-PREPARED MEETING MATERIALS

Staff-prepared meeting materials should be sent out so that Commission members will receive the materials no less than five days prior to the meeting.¹² In preparing materials for the meeting, the staff should show changes in a current draft from the immediately preceding draft by strikeout and underscore or some other appropriate means, to the extent this can be done easily and without causing undue confusion.¹³ Commissioners are presumed to have read all the material to be considered at the meeting and the staff is to make its presentations on this assumption.

CONDUCT OF MEETING

Quorum. Five members of the Commission constitute a quorum and must be present before the Commission may act.¹⁴ Any action may be taken by a majority of those present if a quorum is present, but any final recommendation to the Legislature must be approved by a minimum of four affirmative votes.¹⁵ The Chairperson is authorized to determine that fewer than five members constitutes a quorum for the purposes of a particular meeting and members attending the meeting are entitled to per diem and travel expenses, but in such case the members present act as a subcommittee and no final action may be taken at the meeting.¹⁶

Meeting starting time. Commission meetings are not commenced with the Commission acting as a subcommittee if absent members are known to be in the city where the meeting is being held and are known to be planning to attend the meeting.¹⁷ However, meetings should not be delayed more than 15 minutes from the originally scheduled starting

12. Minutes, April 1987; Minutes, September 1984.

13. Minutes, October 1987.

14. Minutes, April 1987.

15. Minutes, March 1959; Minutes, April 1963; Minutes, February 1966.

16. Minutes, April 1987; Minutes, January 1958; Minutes, April 1963.

17. Minutes, April 1984.

time to await the arrival of an absent member who is known to be planning to attend the meeting.¹⁸

Actions on adopted motion. Actions to send out tentative recommendations for review and comment or to submit recommendations to the Legislature and other Commission actions are made on a motion adopted by the Commission.¹⁹

Roll call votes. A roll call vote shall be taken on any matter at the request of any member of the Commission.²⁰ Votes are not recorded in the Minutes unless a member requests that the vote on a particular matter be so recorded; on rare occasions, a member will request that the Minutes reflect that the member voted against the action taken by the Commission.

Committees. The Commission has disapproved the use of standing subcommittees to initially review studies on the Commission's agenda and to submit their recommendations to the Commission.²¹

Research consultants. Research consultants are requested to attend meetings from time to time.

Open meetings. Meetings of the Commission are open to the public and are subject to the provisions of the Bagley-Keene Open Meeting Act.²² Any person may attend as an observer and may address the Commission or participate in the discussion as authorized by the Chairperson.²³ The agenda for each meeting is sent to those persons who normally attend the meetings as observers and to anyone else who requests a copy of the agenda or who may be interested in the subject matter of a particular meeting.

Termination of deliberations. The Chairperson should terminate prolonged deliberations on any matter either by bringing it to a vote

18. Minutes, April 1987; Minutes, August 1985.

19. Minutes, April 1987; Minutes, January 1985.

20. Minutes, November 1965.

21. Minutes, January 1960; Minutes, May 1960.

22. Gov't Code §§ 11120-11131. See Appendix 6.

23. Minutes, February 1960.

when appropriate or by referring the matter to the staff for further research or redrafting.²⁴

Recording of meetings. Mechanical recording of Commission meetings by persons other than the staff is disapproved. Recording of meetings by the staff is for the purpose of preparing Minutes and redrafting statutes. The tapes are then recycled or erased.²⁵

REPORTS AND RECOMMENDATIONS

Listing of members approving report. A printed report of the Commission is dated as of the month in which the Commission approves its printing and the names of the members of the Commission at the time of such approval are listed in the letter of transmittal.²⁶

Dissents. Dissenting votes of Commission members on all or part of a recommendation of the Commission are not reported in the recommendation. Rather, a statement is included in the Annual Report of the Commission stating in substance that "occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission."²⁷

Editorial, technical, and conforming revisions.²⁸ After the Commission has approved a recommendation for printing, the staff may make substantive or technical revisions in preparing the recommendation for printing where necessary to conform to the Commission's policy decisions or to correct technical defects. Members of the Commission may submit suggested editorial revisions to the staff for consideration in preparing material for publication.

24. Minutes, March 1959.

25. Minutes, March 1988.

26. Minutes, October 1960.

27. Minutes, August 1960. See also Minutes, July 1960.

28. Minutes, October 1979.

CONFIDENTIALITY OF COMMUNICATIONS TO COMMISSION

The Commission has adopted the following policy relating to confidentiality of communications received by the Commission:²⁹

(1) The Commission does not ordinarily receive communications on a confidential basis. The Commission will solicit a communication on a confidential basis only where the Commission has made a determination that the information contained in the communication is necessary for a Commission study and might not reasonably be obtainable without providing confidentiality. An unsolicited request for confidentiality will be considered by the Commission on an individual basis, applying the same standard of necessity. The notice on the cover of a Commission tentative recommendation should state that any comments received will be considered at a public meeting.

(2) A communication received under a Commission assurance of confidentiality will be considered by the Commission without knowledge of the identity of the author of the communication. The Commission staff will summarize the contents of the communication, quote from the communication, reproduce the communication with identifying markings deleted, or handle the communication in another appropriate way to protect the identity of the author from disclosure.

(3) The staff will protect the identity of the author of a communication received under a Commission assurance of confidentiality from disclosure. The staff will mark Commission files as confidential, segregate Commission files, destroy the communication, or take other appropriate action to preserve the author's identity from disclosure. This could be accomplished by filing confidential communications in a separate drawer or by referring to the existence of a confidential communication in the study file to which the communication relates. The staff will resist judicial proceedings to require disclosure of any communication received by the Commission under an assurance of confidentiality.

29. Minutes, September 1987.

CHAPTER 3. RELATIONSHIP WITH LEGISLATURE

INTRODUCTION OF BILLS

Commission bills are ordinarily introduced by one of the legislative members of the Commission.³⁰ The Commission is willing to allow other members of the Legislature to be authors or coauthors of Commission bills.³¹ In such a case, the other legislators are selected by the Executive Secretary after consulting with the legislative members of the Commission. Ordinarily, Commission bills will be introduced in the form in which they are published by the Commission and later amended to reflect changes which the Commission believes desirable.³²

CONTACTING INDIVIDUAL MEMBERS OF LEGISLATURE³³

The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills. A member of the Legislature should not be contacted unless the member has raised questions about the Commission's bills in committee or otherwise and it seems likely that the member does not fully understand the Commission's recommendation or the reasons for it. If it appears desirable, the Executive Secretary may contact the member to answer such questions as the member may have about the bill and otherwise explain it. Care must be taken not to appear to be advocating legislation in violation of Government Code Section 8288, which provides:

8288. No employee of the Commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the Commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before

30. Minutes, January 1959.

31. Minutes, January 1959.

32. Minutes, January 1959.

33. Minutes, January 1971.

any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

ACCEPTANCE OF AMENDMENTS AFTER INTRODUCTION IN LEGISLATURE³⁴

The member of the Legislature carrying a Commission bill and the Executive Secretary are authorized to amend the bill prior to or at the time of the hearing on the bill where the amendment is a technical or nonpolicy amendment or where the failure to make the amendment would jeopardize the enactment of the bill. Where possible, the staff should submit the amendments to the members of the Commission in advance of making the amendments, either at a meeting or by distribution of a draft of the amendments to each member of the Commission. If this is not possible, the amendments made to the bill should be presented, at the first opportunity, to the Commission for review and approval or for revision. In addition, whenever possible, an amendment that involves a policy decision of the Commission should be checked out with the Chairperson or Vice Chairperson by telephone before making the amendment. The authority of the legislator, on his or her own initiative, to amend a bill the member is carrying for the Commission is not limited, but any amendments so made should be submitted to the members of the Commission using the procedure described above.

REQUEST FOR AUTHORITY TO CONTINUE EXISTING STUDIES

A concurrent resolution is submitted at each legislative session to authorize continuance of existing studies and any new studies the Commission desires to undertake and, if needed, to drop previously authorized studies from the Commission's agenda.³⁵

34. Minutes, September 1987.

35. Statement of existing practice. See Gov't Code § 8293.

PROPOSING CHANGES IN LAWS ENACTED UPON COMMISSION RECOMMENDATION

The Commission has established that, as a matter of policy, unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted upon Commission recommendation.³⁶

PROPOSED LEGISLATION AFFECTING COMMISSION

The staff should immediately inform the Commission or members thereof when the staff becomes aware of pending legislation directly affecting the Commission.³⁷

CHAPTER 4. RELATIONSHIP WITH STATE BAR³⁸

The Commission seeks to work closely with the State Bar on major studies. The customary practice is to work with the appropriate State Bar Section to develop a recommendation that will be supported by the State Bar Section or to minimize the differences between the Commission and the State Bar Section.

Meeting materials are distributed to the designated representatives of the State Bar Section not later than the time the materials are distributed to members of the Commission. The State Bar Section provides the Commission with detailed comments concerning the meeting materials prior to the time the meeting materials are considered by the Commission. If time permits, these comments are distributed to each member of the Commission for study prior to the meeting. Representatives of the State Bar Section attend the meeting to answer questions concerning the comments previously sent to the Commission and to provide additional comments.

After a bill has been introduced to effectuate a recommendation, the State Bar Section reviews the bill and the official Comments set

36. Minutes, December 1971.

37. Minutes, October 1986.

38. Minutes, September 1987.

out in the Commission's recommendation to suggest technical and policy changes in the bill or the Comments.

The Chairperson and members of the staff sometimes meet with representatives of State Bar Sections to discuss informally Commission recommendations when requested to do so by the State Bar Section.

CHAPTER 5. RELATIONSHIP WITH RESEARCH CONSULTANTS

COMPENSATION OF RESEARCH CONSULTANTS

Compensation of research consultants is on a modest scale, as paid in connection with public service rather than at regular professional rates.³⁹ Payment is made in a lump sum (rather than on an hourly basis) under a contract made with the consultant.⁴⁰ Partial payments may be made for portions of a research study that have been completed.

FORM AND CONTENTS OF CONSULTANT'S STUDY⁴¹

Statement of scope of background study. The Commission considers it important that there be a clear understanding concerning the scope of the background study so that the background study includes an adequate discussion of those matters that the Commission believes are in need of study. For this reason, a statement of the scope of the study is prepared by the staff in cooperation with the Commission's consultant. The statement identifies those aspects of the topic to be studied that are considered by the Commission to be of particular importance. Where appropriate, the statement may indicate uniform or model acts or statutes of other jurisdictions that are to be considered in the background study. The statement is intended to ensure that the background study includes an adequate discussion of the matters that are described in the statement, but is not intended to restrict the consultant in any way. The consultant is completely free to include in the background study a discussion of any aspect of the topic the

39. Minutes, June 1955.

40. Minutes, June 1955.

41. Minutes, January 1982.

consultant believes should be discussed in the background study, whether or not included in the statement. The study may be written in such form and contain such discussion as the consultant believes is suitable for presentation of the subject matter of the study.

The staff prepares and presents for Commission consideration a draft of a statement of the scope of the study. If the consultant is not present at the time the draft of the statement is considered by the Commission, the staff draft of the statement as revised by the Commission is sent to the consultant. The consultant is requested to review the statement and suggest any additional aspects of the topic in need of study or other modifications of the statement. The suggestions of the consultant are reviewed by the Commission and any necessary changes made in the statement.

In some cases, the Commission may invite the consultant to meet with the Commission before commencing work on the background study to discuss the scope and methodology of the study so that the Commission will gain additional understanding of the subject matter and so that the background study will discuss all of the matters and include all of the information the Commission believes would be useful to the Commission in considering the particular topic.

Form and content of study. The consultant is completely free to determine the form and content of the background study, but the background study should include an adequate discussion of the specific matters that the statement of the scope of the study indicates should be discussed in the background study and such other matters as the consultant believes should be considered in the background study. The background study ordinarily is prepared in the form of one or more law review articles.

The Commission has found a background study most useful if it includes the following:

- (1) An identification of the specific problems that may require legislative action.

- (2) A discussion of existing California decisional and statutory law with respect to each such problem and, where the consultant considers it useful, a discussion of uniform and model acts, statutes of other jurisdictions, and other material.

(3) The alternative methods by which each problem might be solved, the advantages and disadvantages of each alternative, and the consultant's recommendations as to which alternative is best. The consultant is completely free to make such recommendations as the consultant considers appropriate or desirable.

If views expressed in a consultant's study are not in agreement with the final recommendation of the Commission on the subject, the consultant may be asked to review pertinent parts of the study. The consultant is not required, however, to conform the study to the views of the Commission, nor are any portions of the study eliminated when the study is published merely because they are inconsistent with the final action of the Commission.⁴² Whenever possible, the consultant's study is published in a California law review and may be republished in the Commission's recommendation. In some cases, a study may be published only in the Commission's recommendation. Studies are printed with a note explaining that the views expressed are not necessarily the views of the Commission.

PRESENTATIONS BY CONSULTANT TO OTHER PERSONS OR GROUPS⁴³

If the consultant makes any presentation of his or her background study and recommendations to any person, or legislative or other group, the consultant shall make clear at the time the presentation is made that:

(1) The consultant's recommendations are not recommendations of the Commission and do not represent the views or recommendations of the Commission.

(2) The Commission may or may not make recommendations on the particular matter and, if the Commission does make recommendations, those recommendations will be made in the Commission's printed report to the Legislature.

42. Minutes, August 1960.

43. Minutes, January 1982; Minutes, January 1990.

INVOLVEMENT OF CONSULTANT IN LITIGATION⁴⁴

A consultant is free to continue his or her professional activities in an area related to the subject for which the consultant was hired to advise the Commission, including involvement in litigation. However, if the consultant becomes involved in litigation on the side of a party or as amicus curiae, the consultant shall do the following:

(1) Advise the Commission of his or her involvement in the litigation.

(2) When his or her status as a Commission consultant becomes known to the parties litigant or the court, make clear that the consultant's views do not represent the views or recommendations of the Commission and that the Commission's recommendations, if any, will be made in the Commission's printed report to the Legislature.

ADVISERS TO COMMISSION CONSULTANT⁴⁵

Although the Commission encourages consultants to seek the views of other experts and interested persons in the course of preparing a background study, the Commission does not approve the consultant setting up an advisory committee or similar named group.

ADDITIONAL FUNDING OF CONSULTANT STUDIES

A consultant retained by the Commission for the preparation of a background study may seek to obtain grants or funding from foundations or other sources for the purpose of preparing the study required by the Commission, but no grant or funding shall be accepted by the consultant without the prior approval of the Commission, which approval shall be set out in the Minutes of the Meeting at which the approval was given.⁴⁶

44. Minutes, January 1990.

45. Minutes, January 1990.

46. Minutes, September 1987.

REPORT ON STATUS OF RESEARCH STUDIES

The Executive Secretary is to submit for Commission review approximately every six months the status of each research study being prepared by an outside research consultant.⁴⁷

CERTIFICATES FOR CONSULTANTS

It is the practice of the Commission to present a certificate of distinguished service to consultants who satisfactorily complete their work for the Commission.

CHAPTER 6. PRINTING AND DISTRIBUTION POLICIES

DISTRIBUTION OF PRINTED RECOMMENDATIONS

The Executive Secretary determines when material should be printed.⁴⁸ However, no pamphlet containing a Commission recommendation is distributed unless it has first been approved for printing and distribution by the Commission.

PUBLICATION OF COMMISSION MATERIAL IN LAW REVIEWS

A letter should be obtained from a law review publishing a Commission study stating that the Commission itself may republish the article in its pamphlet containing its recommendation to the Legislature.

Studies may be published in law reviews if they are accompanied by the substance of the following note:

This article was prepared to provide the California Law Revision Commission with background information to assist the Commission in its study of this subject. The opinions, conclusions, and recommendations contained in this article are entirely those of the author and do not necessarily represent or reflect the opinions, conclusions, or recommendations of the Law Revision Commission.

47. Minutes, April 1971.

48. Minutes, March 1960, revised to reflect changes in printing procedures.

No tentative recommendation may be published in a law review unless Commission permission is first obtained.⁴⁹ If a tentative recommendation is published in a law review or otherwise distributed, it should be accompanied by the substance of the following note.⁵⁰

This tentative recommendation is published here so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

NUMBER OF COPIES PRINTED

Ordinarily 1,500 copies of each Annual Report are printed. Ordinarily 1,500 copies of each recommendation and study are printed, but a lesser number may be printed if the particular recommendation is not of general interest. The State Printer holds 300 of these copies (unbound) for incorporation into a bound volume of Commission reports, recommendations, and studies. Three hundred copies of the bound volume are printed. In some cases, more copies of a particular publication may be printed.

DISTRIBUTION⁵¹

Bound volumes. When a bound volume is printed, free copies are sent to a number of state and federal governmental officials, agencies, courts, and libraries, and to legal publishers. Bound volumes are also sent to past and present members of the Commission. As a general rule, complimentary distribution is not made to private law firms or to

49. Minutes, December 1965.

50. Minutes, June 1966.

51. The current Publication Distribution Policy is set out in Appendix 7.

out-of-state libraries.⁵² Distribution is made on an exchange basis with various other law revision commissions in the United States and some foreign countries. Bound volumes may also be sent to certain other persons and agencies at the discretion of the Executive Secretary.

Distribution to the members of the Legislature is not made automatically, in accordance with legislative mandate.⁵³ Members of the Legislature are send a complimentary copy upon request.

Printed reports in pamphlet form. Printed recommendations and other reports in pamphlet form are ordinarily sent on a complimentary basis to approximately 500-700 persons, the exact number depending on the particular subject of the publication.

Unpublished studies. The Executive Secretary may send a copy of an unpublished Commission study to a person requesting it.⁵⁴ A "warning note" is included on the study indicating that the study is not a recommendation of the Commission and that no part of the study may be published without prior written consent of the Commission.⁵⁵

SALE OF COMMISSION PUBLICATIONS

The Commission has a liberal policy on distribution of its printed pamphlets, ordinarily distributing them without charge upon request. However, where it is necessary that a charge be made for the Commission's publications, arrangements for the sale may be made with the Documents and Publications Section of the Department of General Services.⁵⁶

COOPERATION WITH CONTINUING EDUCATION OF THE BAR

The Commission has published several publications in cooperation with California Continuing Education of the Bar (CEB). These publications have been published primarily for CEB use in connection

52. See Minutes, May 1959.

53. See Gov't Code § 11095.

54. Minutes, February 1960.

55. Minutes, February 1960.

56. Minutes, August 1962; for existing policy, see Appendix 7.

with programs designed to instruct lawyers concerning major legislative enactments that have resulted from Commission recommendations. The cost of the publication has been paid entirely or substantially by CEB and CEB handles the sale and distribution of the publication. The Commission receives about 400 copies (300 for the bound volume) for its own use in its continuing study of the new legislation.

CHAPTER 7. DELEGATION OF AUTHORITY CONCERNING **PERSONNEL AND FISCAL MATTERS**

PERSONNEL AND FISCAL MATTERS GENERALLY⁵⁷

Both the Chairperson and the Executive Secretary are authorized to sign on behalf of the Commission the necessary documents giving one or more Commissioners and employees authority to sign personnel and financial documents. (As of May 1990, the Chairperson, Executive Secretary, and Assistant Executive Secretary are authorized to sign all such documents; the Administrative Assistant is authorized to sign personnel documents and certain other documents.)

The Executive Secretary is authorized to determine the particular types of documents that the Assistant Executive Secretary and other Commission employees will sign as a matter of practice.

PERSONNEL MATTERS⁵⁸

Appointments, promotions to higher level positions, and involuntary terminations of persons to or from positions as Executive Secretary, Assistant Executive Secretary, and other full-time attorney positions on the Commission staff shall first be approved by the Commission. In the case of an appointment of a person to a full-time attorney position (other than Executive Secretary or Assistant Executive Secretary), the approval of the Chairperson, or the Vice Chairperson in case of the unavailability of the Chairperson, shall be obtained before the appointment is made, but Commission approval is not necessary.

57. Minutes, October 1965.

58. Minutes, October 1965; Minutes, October 1971.

The Executive Secretary is authorized to take all actions, other than those specified in the first paragraph of this section, with respect to appointment, promotions, terminations, leave, merit increases, other salary increases, and the like, for Commission employees other than the Executive Secretary. Any other person authorized to sign personnel documents has similar authority but, except in emergency circumstances, this authority should be exercised only after consulting with the Executive Secretary. It is understood that no such action shall be taken over the objection of the employee involved unless the Chairperson or the Commission first indicates approval of the action proposed to be taken by the Executive Secretary.

The Chairperson, or the Vice Chairperson in case of the unavailability of the Chairperson, is authorized to take all actions, other than those specified in the first paragraph of this section, with respect to appointment, termination, leave, merit increases, and other salary increases, and similar matters for the position of Executive Secretary. The Assistant Executive Secretary, or the Administrative Assistant in case of the unavailability of the Assistant Executive Secretary, is authorized to approve sick leave and vacation leave requests of the Executive Secretary.

OUT-OF-STATE TRAVEL⁵⁹

The Chairperson, or the Vice Chairperson in case of the unavailability of the Chairperson, is authorized to approve requests for authorization by the Department of Finance and the Governor of unbudgeted out-of-state travel by members of the Commission's staff. Requests for budgeted out-of-state travel are presented for approval by the Department of Finance and Governor by submission of the necessary document by the Executive Secretary.

59. Minutes, October 1965.

RESEARCH CONTRACTS AND LEASES

The Executive Secretary is authorized to sign on behalf of the Commission all leases and contracts previously approved by the Commission.⁶⁰

The Executive Secretary is authorized to execute contracts covering equipment maintenance, equipment rental, subscriptions, and the like.

CHAPTER 8. EVALUATION OF SUGGESTED TOPICS

PROCEDURES FOR DETERMINATION OF NEW TOPICS⁶¹

The decision as to which new topics will be requested for authorization at a particular legislative session ordinarily is made at one meeting during the year. Consideration of the possible new topics at the same time gives the Commission a useful overview for deciding which new topics to request authority to study.

A topic may be brought to the Commission's attention when the suggestion is received, but those topics that appear to be suitable for study should be written up for possible inclusion in the Annual Report and a determination whether to request authority to study the topics is considered at the time the Annual Report is approved for printing.

CHAPTER 9. CONFLICTS OF INTEREST

Provisions of the Political Reform Act of 1974 (Gov't Code § 81000 *et seq.*) and the Commission's Conflict of Interest Code pertain to disclosure of financial interests, disqualification from participating in decision-making, and dealings with lobbyists. The chapter outlines the most important aspects of this body of law.⁶²

60. Minutes, July 1964.

61. Minutes, September 1970.

62. For analysis of the disqualification rules of the Political Reform Act, see Appendix 8. Relevant regulations of the Fair Political Practices Commission are set out in Appendix 9.

SELECTED PROVISIONS OF POLITICAL REFORM ACT (as of Jan. 1, 1990)

Gov't Code § 87100. Prohibition against decision-making

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.

Gov't Code § 87101. Exception where participation required

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.

Gov't Code § 87103. Financial interest defined

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.

Gov't Code § 87300. Effect of conflict of interest code

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.

COMMISSION'S CONFLICT OF INTEREST CODE

The following materials constitute the Commission's Conflict of Interest Code. The staff will advise designated employees under the Code when financial statements are due and will make necessary forms and other materials available. 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 its Appendix relating to designated employees and disclosure categories, reads as follows:

**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.

PROVISIONS RELATING TO LOBBYISTS (as of Jan. 1, 1990)

Government Code Section 86203, in the chapter of the Political Reform Act dealing with lobbyists, makes it unlawful for a lobbyist to make a gift of more than \$10 in a calendar month to "one person." Government Code Section 86204 makes it unlawful for "any person knowingly to receive" a gift that is unlawful under Section 86203. For these purposes, "gift" is defined in Government Code Section 82028. Subdivision (b)(2) of this section excludes from the definition any gift that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

APPENDIX 1**STATUTE GOVERNING CALIFORNIA LAW REVISION COMMISSION****Government Code §§ 8280-8297****[as of 01/01/90]****Gov't Code § 8280. Creation of California Law Revision Commission**

8280. There is created in the State Government the California Law Revision Commission.

Gov't Code § 8281. Membership; powers and duties

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms of the members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

Gov't Code § 8282. Compensation

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

Note. Government Code Section 11564.5 provides a per diem salary of \$100, notwithstanding any other provision of law.

Gov't Code § 8283. Chairperson

8283. The commission shall select one of its members chairperson.

Gov't Code § 8284. Executive secretary

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

Gov't Code § 8285. Employees

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

Gov't Code § 8286. Assistance of state agencies

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith, shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

Gov't Code § 8287. Assistance of State Bar

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

Gov't Code § 8288. Advocacy of passage or defeat of legislation

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

Gov't Code § 8289. Receiving suggestions; making recommendations

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

Gov't Code § 8290. Unconstitutional statutes

8290. The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Gov't Code § 8291. Submission of reports

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the

Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

Note. This section is limited by the later-enacted rules governing distribution of state reports set out in Gov't Code §§ 11094-11099.

Gov't Code § 8292. Contents of reports

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the Commission with a full and accurate index thereto.

Gov't Code § 8293. Calendar of topics

8293. The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for the study.

Gov't Code § 8294. Printing of reports

8294. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

Gov't Code § 8295. Cooperation with legislative committees

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

Gov't Code § 8296. Cooperation with bar associations, etc.

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

Gov't Code § 8297. Contracts with research consultants

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

Gov't Code § 8298. Recommendations on minor revisions

8298. The commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.

APPENDIX 2

BIOGRAPHICAL INFORMATION ON
COMMISSION MEMBERS AND STAFF

[being revised]

APPENDIX 3**STUDIES ON CURRENT AGENDA**

[as of 01/01/90]

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics listed below. Each of these topics has been authorized for Commission study by the Legislature.

Creditors' remedies. Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)

Probate Code. Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Real and personal property. Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

Family law. Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

Class actions. Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

Offers of compromise. Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

Procedure for removal of invalid liens. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Special assessment liens for public improvements. Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Injunctions. Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

Involuntary dismissal for lack of prosecution. Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

Statutes of limitation for felonies. Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

Child custody, adoption, guardianship, and related matters. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

Evidence. Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)

Arbitration. Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

Modification of contracts. Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

Liquidated damages. Whether the law relating to liquidate damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

Parol evidence rule. Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

Pleadings in civil actions. Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Administrative law. Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

Attorneys' fees. Whether there should be changes in the law relating to the payment and the shifting of attorneys' fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)

Family Relations Code. Conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by 1989 Cal. Stat. res. ch. 70.)

APPENDIX 4**STUDY NUMBERS**
[as of 05/08/90]**A - ARBITRATION****B - BUSINESS LAW**

- 100 - Modification of Contracts
- 200 - Liquidated Damages (former Study 72)
- 300 - Parol Evidence Rule (former Study 79)

D - DEBTOR-CREDITOR RELATIONS

- 100 - Repossession of Property (includes Claim and Delivery)
- 200 - Attachment (former Study 39.160)
- 300 - Enforcement of Judgments (former Study 39.120; 39.200-39.260)
- 301 - Creditors' Remedies (Follow Up Legislation)
- 302 - Creditors' Remedies (Follow Up Legislation 1984)
- 303 - Creditors' Remedies (Follow Up Legislation 1985)
- 310 - Homesteads
- 312 - Liability of Marital Property For Debts
- 313 - Married Women as Sole Traders
- 316 - Effect of Death of Joint Tenant
- 320 - Enforcement of Claims and Judgments Against Public Entities
- 325 - Bonds and Undertakings
- 326 - Bond and Undertakings (Follow Up Legislation 1984)
- 327 - Limitations on Personal Sureties
- 330 - Revision of Attachment Law
- 400 - Assignment for Benefit of Creditors (former Study 39.270)
- 500 - Confession of Judgment Procedures
- 501 - Confession of Judgment in Support and Paternity Cases
- 550 - Tax Liens
- 600 - Default Judgment Procedures
- 700 - Procedures Under Private Power of Sale
- 800 - Possessory and Nonpossessory Liens
- 801 - Interfamily Transfers as Fraudulent Conveyances
- 802 - Uniform Fraudulent Transfers Act
- 900 - Wage Garnishment Procedure
- 1000 - 1988 Creditors' Remedies Matters

E - EMINENT DOMAIN

- 100 - Ad Valorem Taxes (former Study 36.56)
- 200 - Assessment Liens
- 300 - Wisconsin Eminent Domain Revision
- 400 - Eminent Domain Law

F - FAMILY AND JUVENILE LAW

- 101 - Uniform Veterans' Guardianship Act
- 200 - Appeal of Custody Order
- 300 - Custody of Children (former Study 30.100)
- 400 - Adoption (former Study 30.200)
- 401 - Emancipated Minors
- 500 - Freedom From Parental Custody and Control (former Study 30.400)
- 521 - Community Property in Joint Tenancy Form
- 600 - Community Property

- 601 - Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage
- 602 - Division Upon Dissolution of Marriage of Property Held in Joint Tenancy Form (Retroactive Application of Statute)
- 603 - Retroactive Application of Property Division Legislation
- 610 - Increased Earning Capacity
- 611 - Goodwill
- 620 - Federal Military and Other Federal Pensions
- 630 - Prenuptial Agreements
- 631 - Marital Agreements
- 632 - Reimbursement for Educational Expenses
- 633 - Division of Pensions
- 634 - Support
- 640 - Title and Gift Presumptions and Transmutations
- 641 - Limitations on Disposition of Community Property
- 642 - Combined Separate and Community Property
- 650 - Liability of Step Parent for Child Support
- 660 - Awarding Family Home to Spouse Having Custody of Minor Children
- 661 - Continuation of Support Obligation After Death of Support Obligor
- 662 - Special Appearance in Family Law Proceedings
- 670 - Attorney's Fees in Family Law Proceedings
- 671 - Quasi-Community Property (Tax Implications)
- 672 - Personal Injury Damages as Community or Separate Property
- 1000 - Family Code Generally
- 1001 - Family Code - Division 1. Preliminary Provisions and Definitions (Generally)
- 1100 - Family Code - Part 1. Preliminary Provisions (§§ 1-99)
- 1200 - Family Code - Part 2. Definitions (§§ 100-199)
- 2000 - Family Code - Division 2. General Provisions (Generally)
- 2100 - Family Code - Part 1. Termination of Marriage and Jurisdiction (CC §§ 4350-4353)
- 2200 - Family Code - Part 2. Procedural Provisions (CC §§ 4001, 4355-4365)
- 2300 - Family Code - Part 3. Provisions for Attorneys' Fees and Costs (CC §§ 4370-4371)
- 2400 - Family Code - Part 4. Enforcement of Judgments, Orders and Decrees (CC §§ 4380-4385)
- 2500 - Family Code - Part 5. Wage Assignment for Support (CC §§ 4390-4390.19) (This material might be included under Part 4 above or under Division 10 (Obligation to Support).)
- 2600 - Family Code - Part 6. Domestic Violence Prevention Act (CCP §§ 540-553)
- 2700 - Family Code - Part 7. Family Conciliation Court Law (CCP §§ 1730-1772)
- 2800 - Family Code - Part 8. Statewide Coordination of Family Mediation and Conciliation Services (CC §§ 5180-5183)
- 2900 - Family Code - Part 9. Uniform Divorce Recognition Act (CC §§ 5000-5004)
- 3000 - Family Code - Division 3. Minors (Generally)
- 3100 - Family Code - Part 1. Minors Generally (CC §§ 25, 26, 27, 29, 25.1, 42) (consider H & S Code § 1530.6, 1795.14; CCP 376)
- 3200 - Family Code - Part 2. Medical Treatment of Minors (CC §§ 25.5-25.9, 34.5-34.10)
- 3300 - Family Code - Part 3. Minor's Capacity to Contract (CC §§ 33-34, 35-37)

- 3400 - Family Code - Part 4. Emancipation of Minors Act (CC §§ 60-70)
- 3500 - Family Code - Part 5. Minor's Civil Liability for Wrong (CC § 41)
- 4000 - Family Code - Division 4. Marriage (Generally)
- 4100 - Family Code - Part 1. Validity of Marriage (CC §§ 4100-4104)
- 4200 - Family Code - Part 2. Authentication of Marriage (CC §§ 4200-4216)
- 4300 - Family Code - Part 3. Premarital Examination (CC § 4300-4309)
- 5000 - Family Code - Division 5. Husband and Wife (Generally)
- 5100 - Family Code - Part 1. General Provisions (CC §§ 5100-5103)
- 5200 - Family Code - Part 2. Characterization of Marital Property (CC §§ 5107-5119)
- 5300 - Family Code - Part 3. Liability of Marital Property (CC §§ 5120.010-5122)
- 5400 - Family Code - Part 4. Management and Control of Marital Property (CC §§ 5125-5132)
- 5500 - Family Code - Part 5. Marital Agreements (Generally)
- 5510 - Family Code - Chapter 1. General Provisions (CC §§ 5200-5203)
- 5520 - Family Code - Chapter 2. Uniform Premarital Agreement Act (CC §§ 5300-5317)
- 6000 - Family Code - Division 6. Judicial Determination of Void or Voidable Marriage (Generally) (§§ 4500-4699)
- 6100 - Family Code - Part 1. Void Marriage (CC §§ 4400-4401)
- 6200 - Family Code - Part 2. Voidable Marriage (CC §§ 4425-4429)
- 6300 - Family Code - Part 3. Supplementary Provisions (CC 4450-4458)
- 7000 - Family Code - Division 7. Dissolution of Marriage (Generally) (§§ 4700-5499)
- 7100 - Family Code - Part 1. General Provisions (CC §§ 4501-4516)
- 7200 - Family Code - Part 2. Residence Requirements (CC §§ 4530-4531)
- 7300 - Family Code - Part 3. Summary Dissolution (CC §§ 4550-4556)
- 7400 - Family Code - Part 4. Property Rights of the Parties (CC 4800-4813)
- 8000 - Family Code - Division 8. Parent and Child Relationship (Generally) (§§ 5500-5599)
- 8100 - Family Code - Part 1. Uniform Parentage Act (CC §§ 7000-7021)
- 9000 - Family Code - Division 9. Custody of Children (Generally) (§§ 5600-5999)
- 9100 - Family Code - Part 1. General Provisions (CC §§ 197-204, 211-213, 4600-4610)
- 9300 - Family Code - Part 3. Action to Free Child From Parental Custody and Control (CC §§ 232-239)
- 9400 - Family Code - Part 4. Interstate Compact on the Placement of Children (CC §§ 264-274)
- 9500 - Family Code - Part 5. Priorities of Foster Care and Adoptive Placement (CC §§ 275-276)
- 9600 - Family Code - Part 6. Uniform Child Custody Jurisdiction Act (CC §§ 5150-5174)
- 10000- Family Code - Division 10. Obligation to Support (Generally) (§§ 6000-6499)
- 10100- Family Code - Part 1. Uniform Civil Liability for Support Act (CC §§ 241-254)
- 10200- Family Code - Part 2. General Provisions Relating to Support (CC §§ 196, 196a, 196.5, 201, 205-210, 242, 5131-5132)
- 10300- Family Code - Part 3. Support of Children (CC §§ 4700-4709)
- 10400- Family Code - Part 4. Uniform Reciprocal Enforcement of Support Act (GCP §§ 1650-1699.4)

- 10500- Family Code - Part 5. Other Provisions Relating to Enforcement of Support
- 10510- Family Code - Chapter 1. Enforcement by State and Local Agencies (W & I C §§ 11475-11492.1)
- 10520- Family Code - Chapter 2. Agnos Child Support Standards Act (CC §§ 4720-4732)
- 10530- Family Code - Chapter 3. Child Support Delinquency Reporting (CC §§ 4750-4752)
- 11000- Family Code - Division 11. Juvenile Court Law (excluding W & I Code § 602 cases) (§§ 6500-7999) (W & I code §§ 200-987 (relevant portions) includes Interstate Compact on Juveniles -- W & I Code §§ 1300-1308)
- 12000- Family Code - Division 12. Adoption (§§ 8000-8999) (CC §§ 221-230.8)

G - GOVERNMENTAL LIABILITY

- 100 - Notice of Rejection of Late Claims

H - REAL ESTATE AND LAND USE

- 100 - Lease Law
- 110 - Landlord-Tenant
- 111 - Assignment and Sublease
- 112 - Use Restrictions
- 200 - Partition Procedure
- 250 - Revision of Real Property Law
- 300 - Possibilities of Reverter and Powers of Termination (former Study 85)
- 400 - Marketable Title Act (former Study 86)
- 401 - Ancient Mortgages and Deeds of Trust
- 402 - Dormant Mineral Rights
- 403 - Unexercised Options
- 404 - Land Sale Contracts/Rights of Entry
- 405 - Possibilities of Reverter
- 406 - Abandoned Easements
- 407 - Obsolete Restrictions
- 408 - Uniform Dormant Mineral Interests Act
- 500 - Quiet Title Actions
- 510 - Joint Tenancy; Rights Among Cotenants; Joint Tenancy & Community Property
- 600 - Civil Code Section 1464
- 601 - Recording Severance of Joint Tenancy
- 700 - Abandonment and Vacation of Public Streets and Highways
- 800 - Improvement Acts
- 900 - Lis Pendens
- 1000 - Procedures Under Private Power of Sale Under Trust Deed or Mortgage

I - INVERSE CONDEMNATION

J - CIVIL PROCEDURE

- 101 - Security for Costs
- 200 - Prejudgment Interest (former Study 80)
- 300 - Class Actions (former Study 82)
- 400 - Offers of Compromise (former Study 83)
- 500 - Discovery (former Study 84)

- 501 - Discovery After Judicial Arbitration
- 600 - Dismissal for Lack of Prosecution
- 650 - Court Congestion
- 700 - Mediation
- 800 - Injunctions
- 900 - Shifting Attorneys Fees Between Litigants

K - EVIDENCE

- 100 - Evidence of Market Value (former Study 63.70)
- 200 - Comparison With Federal Rules (former Study 63.100)
- 300 - Psychotherapist-Patient Privilege
- 400 - Mediation Privilege

L - ESTATE PLANNING, PROBATE, AND TRUSTS

- 100 - Escheat; Unclaimed Property (former Study 26)
- 200 - Powers of Appointment
- 300 - Probate Homesteads
- 400 - Rights and Disabilities of Minors/Incompetent Persons
- 500 - Durable Powers of Attorney
- 502 - Dying and Termination of Life Sustaining Procedures
- 600 - Probate Code (Generally)
- 600 - Estates and Trusts Code (Form of Comments)
- 601 - Nonprobate Transfers/Multiple-Party Accounts
- 602 - Intestate Succession
- 603 - Wills
- 604 - Family Protection (includes Pretermission)
- 605 - Rules of Construction
- 605 - Distribution Under a Will or Trust
- 606 - Contracts Concerning Succession and Provisions Relating to
Effect of Death
- 607 - General Provisions
- 608 - Custody and Deposit of Wills
- 609 - International Wills
- 610 - Absentees
- 611 - Missing Persons
- 612 - Simultaneous Death
- 613 - Testamentary Additions to Trust; Life Insurance and Other Trusts
- 614 - Requests to Minors
- 615 - Escheat
- 616 - Definitions
- 617 - Quasi-Community Property
- 618 - Uniform Transfers to Minors Act
- 619 - Statutory Will
- 620 - Uniform Statutory Will Act
- 621 - "Confidential Relationship Doctrine"
- 625 - Wills and Intestate Succession
- 626 - Wills and Intestate Succession (Follow Up Legislation 1984)
- 627 - Notice in Limited Conservatorship Proceeding
- 628 - Order Dispensing with Accounts of Guardian or Conservator
- 629 - Item v. Aggregate Theory of Community Property
- 630 - Wills and Intestate Succession (Follow Up Legislation 1985)
- 636 - No Contest Clause
- 640 - Trusts
- 641 - Creditor's Right to Reach Payments From Trust
- 642 - Application of Trust Law to Excluded Trusts

- 643 - Damages for Breach of Trust
- 644 - Recognition of Trustees' Powers
- 645 - Jurisdiction of Superior Court in Trust Matters
- 646 - Trustees' Voting Requirement for Securities
- 650 - Simplifying Requirements for Execution of Will
- 651 - Recording Affidavit of Death
- 652 - Nonprobate Transfers
- 653 - Notice of Will
- 654 - Ancestral Property Doctrine
- 655 - Probate Referees
- 656 - Bond for Special Administrator
- 657 - Procedure for Objecting to Appraisement of Estate Property
- 658 - Transfer of Real Property of Small Value
- 659 - Parent-Child Relationship
- 660 - Representation (Probate Code § 240)
- 700 - Guardianship-Conservatorship
- 701 - Support to Conservatee From Community Property
- 702 - Procedure for Appointment of Successor Conservator
- 703 - Consent to Health Care
- 704 - Statutory Forms for Durable Power of Attorney
- 705 - Revision of Durable Power of Attorney for Health Care Statute
- 706 - Temporary Guardians and Conservators
- 707 - Qualifications of Conservator
- 800 - Probate Administration/Probate Code (Abatement; Distribution of Interest and Income)
- 810 - Administration Without Court Supervision
- 811 - Form for Advice of Proposed Action
- 825 - Succession Without Administration
- 826 - Distribution of Decedent's Estate Without Administration
- 827 - Waiver of Probate Accounting
- 828 - Transfer Without Probate of Certain Property Registered by State
- 829 - Disposition of Retirement Plan Benefits Without Administration
- 830 - Probate Code (Proration of Estate Taxes)
- 831 - Recording of Affidavit Transferring Evidence of Debt Secured by Lien on Real Property
- 900 - Notary Publics
- 930 - Probate Code - Guardian Ad Litem
- 940 - Substitution and Delegation of Powers of Fiduciaries
- 950 - Effect of Homicide
- 1000 - Probate Code (Jurisdiction; Probate of Wills; Contest of Wills)
- 1010 - Probate Code (Opening Estate Administration)
- 1020 - Probate Code (Powers and Duties of Executors and Administrators) (Standard of Care of Personal Representative) (Probate Code Section 854)
- 1024 - Probate Code (Interest and Income Accruing During Administration)
- 1025 - Probate Code (Presentation of Claims)
- 1026 - Probate Code (Payment of Claims and Demands)
- 1027 - Probate Code (Accountings)
- 1028 - Probate Code (Independent Administration)
- 1029 - Probate Code (Distribution and Discharge)
- 1030 - Probate Code (Collection or Transfer of Small Estate Without Administration) (Distribution Without Administration)
- 1031 - Probate Code (Passage of Property to Surviving Spouse Without Administration)

- 1032 - Probate Code (Small Estate Set-Aside)
- 1033 - Probate Code (Establishing Identity of Heirs)
- 1034 - Probate Code (Public Administrators)
- 1035 - Probate Code (Administration of Estates of Missing Persons Presumed Dead)
- 1036 - Probate Code (Attorneys' Fees)
- 1037 - Probate Code (Estate Management)
- 1038 - Probate Code (Abatement)
- 1039 - Probate Code (Distribution of Income)
- 1040 - Probate Code (Public Administrators)
- 1041 - Probate Code (Bond of Personal Representative)
- 1045 - Probate Code (Definitions)
- 1046 - Probate Code (Nondomiciliary Decedents)
- 1047 - Probate Code (Appeals)
- 1048 - Probate Code (Rules of Procedure)
- 1049 - Probate Code (Orders)
- 1050 - Probate Code (Guardianship-Conservatorship)
- 1055 - Probate Code (Fees of Personal Representative)
- 1058 - Probate Code (Filing Fees)
- 1060 - Multiple Party Accounts
- 1061 - Brokers' Commissions
- 1062 - Priority for Appointment as Administrator
- 1063 - Uniform Multiple-Person Accounts Law
- 1100 - New Probate Code Suggestions
- 2000 - Probate Code (Operative Date)
- 2005 - Probate Code (Conforming Revisions)
- 2006 - Probate Code (Miscellaneous Provisions of Division 3)
- 2007 - Probate Code (Conforming Changes for Division 3)
- 2008 - Probate Code (1988 Urgency Bill)
- 2009 - Probate Code (1988 Probate Legislation)
- 2010 - Probate Code (1989 Probate Cleanup Bill)
- 3000 - Statutory 630 Affidavit Form
- 3001 - Uniform Transfers Act revisions
- 3002 - New Powers of Appointment and Powers of Attorney Divisions
- 3003 - Claims Procedure for Trusts
- 3004 - Rights of Estranged Spouse
- 3005 - Antilapse statute and construction of instruments
- 3006 - Trustee's use of Section 650 Procedure
- 3007 - Ancestral Property Doctrine
- 3008 - Directive to Physicians (Uniform Rights of Terminally Ill Act)
- 3009 - Transfer on death deed and other nonprobate transfer techniques
- 3010 - Fees of Corporate Trustees
- 3011 - Tort and Contract Liability of Personal Representative
- 3012 - Uniform Management of Institutional Funds Act
- 3013 - Uniform Statutory Rule Against Perpetuities
- 3014 - Uniform Custodial Trust Act
- 3015 - Distribution of estate--contingent and disputed claims
- 3016 - Effect of Homicide
- 3017 - Removal of Trustees
- 3018 - Litigation involving decedent
- 3019 - Uniform Statutory Form Power of Attorney Act
- 3020 - Right of Surviving Spouse to Dispose of Community and Quasi-community Property
- 3021 - Delivery of Decedent's Personal Property
- 3022 - Access to Safe Deposit Box

- 3023 - Uniform TOD Security Registration Act
- 3024 - Springing Powers of Attorney
- 3025 - Motor Vehicle TOD
- 3026 - Affidavit Procedure for Substitution of Parties
- 3027 - Execution or Modification of Lease Without Court Authorization
- 3028 - Limitation Period for Action Against Surety in Guardianship or
Conservatorship Proceeding
- 3029 - Court-Authorized Medical Treatment
- 3030 - Custodianship under Uniform Transfers to Minors Act
- 3031 - Acceptance by Agent of Responsibilities under Power of Attorney
- 3032 - Real Property TOD
- 3033 - Notice at County Seat (Probate Code § 1215)
- 3034 - Gifts in View of Death
- 3035 - Information for Fiduciaries Concerning Duties
- 3036 - Videotaping of Wills
- 3037 - Effect of Death of Joint Tenant on Liens
- 3038 - Seven Year Limit on Power of Attorney for Health Care
- 3039 - Revocable Trust as Lottery Beneficiary
- 3040 - Community Property Presumption for Joint Tenancy Upon Death
- 3041 - Procedure for Creditor to Reach Nonprobate Assets
- 3042 - General Standard of Duty of Attorney in Fact
- 3043 - Forms for Multiple-Party Accounts Law
- 3044 - New Power of Attorney Statute
- 3045 - Severance of Joint Tenancy in Securities

M - CRIMINAL LAW

- 100 - Statutes of Limitation on Felonies

N - ADMINISTRATIVE LAW

- 100 --Administrative adjudication generally
- 101 --Structural issues in administrative adjudication
- 102 --Coverage of administrative procedure act
- 103 --ALJ central panel

APPENDIX 5**COMMISSION CONSULTANTS**

[as of 05/08/90]

Note. This appendix lists consultants currently under contract to the Commission as well as recent consultants on subjects under active consideration. Consultants currently under contract are indicated by an asterisk (). The others are listed here because they are the experts who would likely be consulted if a question arose in connection with the study of a topic on the active agenda.*

| | |
|--------------------------------------|------------------------------|
| Professor Michael Asimow * | Administrative Law |
| School of Law, UCLA | |
| Los Angeles | |
| Professor Paul E. Basye | Real & Personal Property Law |
| Hastings College of the Law | Probate Law |
| San Francisco | |
| Professor Gail B. Bird | Real & Personal Property Law |
| Hastings College of the Law | Probate Law |
| San Francisco | |
| Charles A. Collier Jr. * | Probate Law |
| Irell and Manella | |
| Los Angeles | |
| Professor William G. Coskran * | Landlord & Tenant Law |
| Loyola Law School | |
| Los Angeles | |
| Professor Jesse Dukeminier | Real & Personal Property Law |
| School of Law, UCLA | Probate Law |
| Los Angeles | |
| Professor Susan F. French | Real & Personal Property Law |
| School of Law, UCLA | Probate Law |
| Los Angeles | |
| Professor Edward C. Halbach Jr. | Probate Law |
| Boalt Hall, University of California | |
| Berkeley | |
| Professor Jerry Kasner * | Community Property |
| University of Santa Clara Law School | |
| Santa Clara | |
| Professor Russell D. Niles | Real & Personal Property Law |
| Hastings College of the Law | Probate Law |
| San Francisco | |
| Professor William A. Reppy Jr. | Community Property Law |
| Duke Law School | |
| Durham NC | |

Professor Stefan A. Riesenfeld
Boalt Hall, University of California
Berkeley

Creditors' Remedies

Professor Gerald F. Uelman
University of Santa Clara Law School
Santa Clara

Felony Statutes of Limitations

APPENDIX 6

OPEN MEETING LAWS

1. Bagley-Keene Open Meeting Act

Government Code §§ 11120-11132
[as of 01/01/90]

§ 11120. Policy statement; requirement for open meetings

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

§ 11121. State body; defined

As used in this article "state body" means every state board, or commission, or similar multimember body of the state which is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 1702 of the Health and Safety Code, except as provided in Section 1720 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

§ 11121.2. State body; multimember agency

As used in this article, "state body" also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body.

§ 11121.7. Member of state body acting in official capacity as member of other agency

As used in this article, "state body" also means any board, commission, committee, or similar multimember body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation.

§ 11121.8. Applicability to advisory bodies

As used in this article, "state body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

§ 11121.9. Requirement to provide law to members

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

§ 11122. Action taken, defined

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

§ 11123. Requirement for open meeting

All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

§ 11124. No conditions for attending meetings

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 11124.1. Right to record meetings

Any person attending an open and public meeting of the state body shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the state body that such recording constitutes, or would constitute, a disruption of the proceedings.

§ 11125. Required notice

(a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body, which is a state body as defined in Section 11121.8, shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of a state body which complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to

be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a [sic] reasonable time of, and nearby, the meeting of the state body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

§ 11125.1. Public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with

Section 6250) of Division 7 of Title 1), and shall not be construed to exempt from public inspection any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

§ 11125.2. Announcement of personnel action

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

§ 11125.5. Emergency meeting, defined; notice; public report

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125.

For purposes of this section "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(a) Work stoppage or other activity which severely impairs public health, safety, or both.

(b) Crippling disaster which severely impairs public health, safety, or both.

(c) Difficulties with examinations for licensure which require immediate attention.

(d) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention.

(e) Consideration of applications for licensure where a decision must be made in less than 10 days.

(f) Consideration by a licensing agency of proposed legislation which requires immediate attention due to legislative action

which may be taken prior to the next regularly scheduled meeting of the agency, or due to time limitations imposed by law.

(g) Action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code if a 10-day delay would detrimentally affect the ability to provide or operate low- or moderate-income housing or seriously affect the fiscal integrity of the program pursuant to which the loan or grant was made or the assisted housing development.

However, newspapers of general circulation and radio or television stations which have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. In the event that telephone services are not functioning the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 11126. Permitted closed sessions; Lawyer-client privilege

(a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include

review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(l) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation. For the purpose of real property investment decisions which may be considered in a closed session pursuant to this subdivision, a state body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter which properly could be considered in a closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

- (1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.
- (2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.
- (y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.
- (z) This article shall not prevent the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the chief investment officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

§ 11126.1. Minutes; availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of

Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

§ 11126.3. Public notice and legal authority for closed session

(a) Prior to holding any closed session, the state body shall state the general reason or reasons for the closed session, and cite the specific statutory authority, including the particular section, subdivision, and paragraph under which the session is being held. If the session is closed pursuant to paragraph (1) of subdivision (q) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its statement.

(c) The statement shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the closed session agenda has been published in compliance with this section, any additional pending litigation (under subdivision (q) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

§ 11126.5. Removal of disruptive persons

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting

the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

§ 11126.7. Charging fees prohibited

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

§ 11127. State bodies covered

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

§ 11128. Time restrictions for holding closed sessions

Each closed session of a state body shall be held only during a regular or special meeting of the body.

§ 11129. Continuation of meeting; notice requirement

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body which is noticed pursuant to Section 11125. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 11130. Legal remedies to stop or prohibit violations of act

Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to actions or threatened future action by members of the state body.

§ 11130.3. Cause of action to void action

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 30 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

§ 11130.5. Court costs; attorney's fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 11130.7. Violation with knowledge; misdemeanor

Each member of a state body who attends a meeting of such body in violation of any provision of this article, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 11131. Prohibited meeting facilities; discrimination

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

§ 11132. Closed sessions: Express authorization required

Except as expressly authorized by this article, no closed session may be held by any state body.

2. Attorney General Opinion Summary

[from Cal. Att'y Gen., Open Meeting Laws 15-21 (Oct. 1988)]

C. WHAT IS A MEETING?

1. General Rule

In general, a meeting is a gathering of a quorum of the legislative body, no matter how informal, where business is discussed or transacted. (61 Ops.Cal.Atty.Gen. 220 (1978).) There is no question about the existence of a meeting when it is a duly noticed regular or special meeting. When there is informal communication involving a majority of the board, problems arise as to the applicability of open meeting statutes. In reviewing the cases and opinions which follow, two concepts should be kept in mind.

First, if communications to the body or among members of the body are part of the deliberative or information acquisition process, the public generally has a right to be involved. The purpose of having open meetings by multi-member boards is to ensure that a variety of viewpoints are considered and that a collective decision is made. Unless specifically exempted, the public has a right to witness the process by which the board acquires information, observe its deliberations on a decision, and see the information upon which the board's decision is based.

Second, if a quorum of a board ultimately receives information or participates in a deliberation, directly or indirectly, a meeting generally has occurred.

Serial, rotating, or seriatim meetings by which a quorum of the board becomes involved in the information acquisition or deliberative process are prohibited unless the notice and public access provisions of the open meeting laws are satisfied. Similarly, meetings in which the hub of a wheel (e.g., a chairperson or executive director) communicates with the various spokes (e.g., board members) also are prohibited. For a more detailed discussion of serial meetings, see subsection C(4), Serial Meetings (p. 18) of this pamphlet.

The term "meeting" is not specifically defined in either the Brown Act or the Bagley-Keene Act. This office long ago concluded that "informal," "study," "discussion," "informational," "factfinding," or "precouncil" gatherings of a quorum of the members of a board generally fell within the scope of the Act as meetings. This conclusion was irrespective of whether the members intended to take or

actually took any action at such a gathering. (42 Ops.Cal.Atty.Gen. 61 (1963).) In addition, a meeting need not occur all at one time. It can occur in a serial fashion through a series of telephone calls or other communications by which a quorum of the board's membership is involved. (Stockton Newspapers, Inc. v. Redevelopment Agency, *supra*, 171 Cal.App.3d 95; 63 Ops.Cal.Atty.Gen. 820 (1980).)

2. Informal Gatherings

In certain circumstances, informal gatherings such as lunch or dinner may be attended by the members of a board. As discussed above, a gathering is not a meeting unless official business is discussed. If a gathering is construed as a meeting, it would not violate open meetings laws so long as it is properly noticed and the public has a reasonable opportunity to observe and participate in the meeting in a meaningful fashion. A luncheon meeting in a crowded dining room would not meet the requirements of open meeting laws, because the public does not have an adequate opportunity to hear or participate in the deliberations of the board members.

In 43 Ops.Cal.Atty.Gen. 36 (1964), this office concluded that informal luncheon gatherings in which business is discussed or transacted also constitute meetings. (Also, see I.L. 75-255; I.L. 71-122.) The opinion specifically involved regularly held meetings between the council and the representatives of various organizations to discuss civic matters such as schools or airport problems. The opinion was careful to point out that the open meeting laws did not prohibit all attendance at social or organizational functions. However, precautions must be taken to make certain that the public's right to witness the information acquisition and deliberative processes of the board are not infringed upon.

In Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., *supra*, 263 Cal.App.2d 41, the court held that a luncheon gathering which included five county supervisors, the county counsel, a variety of county officers, and representatives of a union to discuss a strike which was under way against the county was a meeting within the meaning of the Brown Act. Therefore, members of the media and public should have been admitted to witness the meeting. In reaching its conclusion, the court stated:

"In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques. An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference

except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County Board of Supervisors, was such a meeting." (Id. at pp. 50-51.)

3. Conferences, Workshops And Retreats

Attendance at general conferences, which involve a discussion of broad issues and which are attended by a broad spectrum of officials from a variety of cities, counties, districts, or government agencies, are not covered by open meeting laws so long as members of a particular body do not discuss amongst themselves matters which are, or potentially may be, before their body. (I.L. 75-97.) Such conferences are distinguished from workshops which focus on a specific law and which are attended by a limited number of officials. The discussion set forth below is equally applicable to both state and local bodies.

The cornerstone of the Brown Act is the general requirement that meetings of legislative bodies be open and available to the public. This office has opined that a "meeting" is any gathering of a quorum of a legislative body, no matter how informal, where business is transacted or discussed. (61 Ops.Cal.Atty.Gen. 220 (1978).) In 42 Ops.Cal.Atty.Gen. 61 (1963) we advised that the Brown Act generally covered study groups, informal or informational gatherings, and fact-finding or pre-counsel discussions. The courts also have concluded that luncheon discussions may constitute meetings as well. (Sacramento Newspaper Guild v. Sacramento County Board of Suprs., supra, 263 Cal.App.2d 41.) However, mere social attendance at luncheons and dinners are not prohibited. (43 Ops.Cal.Atty.Gen. 36 (1964).) Accordingly, the crucial issue is whether a specific retreat falls under the business or the social side of this dividing line.

In Index Letter No. 75-255, we discussed application of these concepts to conferences and workshops. We concluded that attendance at general conferences which involve a discussion of broad issues and which are attended by a broad spectrum of officials from a variety of government agencies are not covered by open meeting laws so long as members of a

particular government agency do not discuss amongst themselves matters which are or potentially may be before their agency. Thus, conferences which are designed to encourage the discussion and exchange of information of interest to city officials throughout California generally would not be subject to the provisions of the Brown Act.

The Index Letter distinguished these general conferences from workshops which focused on a specific law and which involved a limited number of officials. In this latter instance, we concluded that the number and range of issues and officials was not sufficiently broad so as to take it outside the requirements of open meetings laws. Thus, the state agency in question was advised to provide public notice of any workshops on its enabling legislation which a quorum of its members were planning to attend.

In light of the authorities discussed above, we think that a retreat which is attended by officials from a single jurisdiction and which includes discussion of matters related to that jurisdiction also would fall under the notice and public meetings provisions of the Brown Act. This would be the case even if the matters to be discussed were limited to issues of procedures, morale or other concerns involving communications among board members or between board members and staff.

4. Serial Meetings

This issue of serial meetings stands at the vortex of two significant public policies: First, the constitutional right of the citizens to address grievances and communicate with their elected representatives; and second, the Brown Act's policy favoring public deliberation by multi-member boards, commissions and councils. The purpose of the serial meeting prohibition is not to prevent citizens from communicating with their elected representatives but, rather, to prevent public bodies from circumventing the requirement for open and public deliberation of issues. When viewed from this perspective, it makes sense to focus on who initiated the communications, the presence of communications between members of the body, and the goals of the communications.

In Stockton Newspapers, Inc. v. Redevelopment Agency, supra, 171 Cal.App.3d 95, the court concluded that a series of individual telephone calls between the agency attorney and the agency members constituted a meeting. In that case, the agency attorney individually polled the members of the agency for their approval on a real estate transaction. The court concluded that even though the meeting was conducted in a serial fashion, it nevertheless was a meeting for the purposes of the Brown Act. This opinion confirmed the

conclusion reached in 65 Ops.Cal.Atty.Gen. 63 (1982) and 63 Ops.Cal.Atty.Gen. 820 (1980). In those opinions, this office concluded that a less than a quorum exception does not exempt from the open meeting requirements a series of meetings, each of which technically is comprised of less than a quorum of the agency's membership but, which taken as a whole, involves a majority of the agency's members. We termed them serial or rotating meetings and concluded they do not fall within the rationale of the less than a quorum exemption because ultimately a majority of the members are involved.

These opinions pose some difficult problems of interpretation for executive officers who wish to communicate with members of their boards. We do not think the serial meeting prohibition would prevent an executive officer from planning upcoming meetings by discussing times, dates, and the placement of matters on the agenda. It also appears that an executive officer may receive spontaneous input from any of the board members with respect to these or other matters. The problems arise when systematic communication begins to occur, which involves members of the board in acquiring information for an upcoming meeting or engaging upon debate, discussion, lobbying, or any other aspect of the deliberative process either among themselves or with staff. For example, executive officers frequently wish to brief their members concerning policy decisions and background events involved in proposed agenda items. Based on the principles of the Stockton Newspapers, Inc. case, and our opinions, we believe that a court would conclude that such communications violate the open meeting laws, because such briefings and discussions are a part of the deliberative process. If these communications are permitted to occur in private, a large part of the process by which the members reach their decisions have occurred outside of the public eye. In this way, the public is able only to witness the shorthand version of the deliberative process, and its ability to contribute or monitor the decision-making process is curtailed.

In summary, citizens, lobbyists and media representatives may, at their own behest, contact their elected or appointed representatives in order to communicate information or ask questions whenever they wish. Restrictions on serial meetings forbid members of bodies from discussing matters of official business amongst themselves and from orchestrating, agreeing or cooperating as a group to meet with any individuals or groups without providing notice to the public so they may attend.

In quasi-judicial proceedings, an issue to be considered which is not addressed in this pamphlet, is whether due process rights may restrict communications otherwise

permitted by open meeting laws. (Safeway Stores, Inc. v. City of Burlingame (1959) 170 Cal.App.2d 637; Flagstad v. City of San Mateo (1957) 156 Cal.App.2d 138; Desert Turf Club v. Board of Supervisors (1956) 141 Cal.App.2d 446; La Prade v. Department of Water & Power (1945) 27 Cal.2d 47.)

5. Video Teleconferencing and Telephone Conference Calls

Recent amendments to the Brown Act authorize the conduct of meetings by local legislative bodies through video teleconferencing facilities under specified circumstances. (§ 54953(b).) In so doing, the Legislature impliedly forbade the use of any other technology, including conference telephone calls, to link disparate meeting sites. The use of video teleconferencing is limited to the receipt of public comment, or testimony by or deliberations of the legislative body. Language permitting use of teleconferencing to establish a quorum or to take a roll call vote was removed from the legislation (AB 3191, April 27, 1988; May 24, 1988). Accordingly, only the persons physically present at the location designated for the meeting may be counted for purposes of establishing a quorum or determining the outcome of a vote (see Bill Analysis, *infra*). A body which uses video teleconferencing shall post an agenda at all video teleconference facilities and adopt regulations to protect the constitutional and statutory rights of the public and any parties to the proceeding.

By authorizing the limited use of video teleconferences, the Legislature impliedly prohibited the use of any other technology to conduct meetings from remote locations. Legislative history indicates that this negative implication was undertaken knowingly and intentionally. "By clearly authorizing video teleconferencing, AB 3191 implicitly excludes other technologies which it does not mention." (Bill Analysis of Senate Local Government Committee as the Bill was amended June 28, 1988.)

6. The Less Than A Quorum Exception

In brief, this exception provides that a meeting of a legislative body has not occurred when less than a quorum of a board or commission gathers to discuss business. (See discussion of what is a meeting, in section C of this pamphlet commencing at p. 15.) The underlying theory is that the findings of such a committee or gathering have not been deliberated upon by a quorum of the legislative body and, consequently, the opportunity still remains for a full public hearing before a quorum of the legislative body on the committee's recommendations and findings. Accordingly, the public's rights to participate in the decision-making process are still protected. Obviously, attempts to conduct

serial meetings between various, less than a quorum groupings would not protect the public's rights and, therefore, are not exempt from coverage. (See the discussion of serial meetings on p. 18 of this pamphlet; Stockton Newspapers, Inc. v. Redevelopment Agency, supra, 171 Cal.App.3d 95; Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d 41; 65 Ops.Cal.Atty.Gen. 63, 65 (1982); 63 Ops.Cal.Atty.Gen. 820 (1980).)

Aside from its explicit application to advisory committees, under the Brown Act, the less than a quorum exception applies by implication, equally to legislative bodies under the Brown Act and state bodies under the Bagley-Keene Act. This office first opined about the existence of the exception in 32 Ops.Cal.Atty.Gen. 240 (1958). In 1969, and again in 1972, this office reaffirmed its conclusion regarding the continued viability of the less than a quorum exception. (I.L. 72-49; I.L. 69-131.)

As noted above, the Brown Act expressly recognizes the less than a quorum exception in section 54952.3 concerning advisory committees. The Bagley-Keene Act, on the other hand, limits application of a less than a quorum exception to advisory committees by providing that all advisory committees of three members or more are covered by the open meeting provisions. (§ 11121.8.)

In Joiner v. City of Sebastopol, supra, 125 Cal.App.3d 799, the applicability of the less than a quorum exception was examined in the context of a committee comprised of less than a quorum of the city council and the planning commission. The court concluded that the less than a quorum exception was not applicable because the committee acted as a "unitary" body when it reviewed the qualifications of job applicants and made recommendations to the full city council. Since the less than a quorum exception can only apply to a subcommittee of a single legislative body, the conclusion that members of the council and the planning commission were acting jointly as a "unitary" body meant that the less than a quorum exception was inapplicable. Accordingly, the meetings of the committee were subject to the open meeting requirements of the Brown Act. Had the members of the council and the planning commission met only for the purposes of exchanging information, they would have qualified as subcommittees of their respective legislative bodies, and the less than a quorum exception would have applied. (See also 64 Ops.Cal.Atty.Gen. 856 (1981).)

APPENDIX 7**PUBLICATION DISTRIBUTION POLICY**

[as of 05/14/90]

I. Hardcover Bound Volumes**A. Complimentary Distribution**

Hardcover bound volumes of the Commission's *Reports, Recommendations, and Studies* are distributed on a complimentary basis on request to county law libraries, libraries requesting volumes under the Library Distribution Act, law school libraries, courts, present and former Commissioners, legislators, and organizations with which we have exchange agreements.

B. Sale

Other individuals and organizations may purchase copies of *Reports, Recommendations, and Studies* directly from the Commission (so long as the volume being requested is still in print).

II. Softcover Reports**A. Complimentary Distribution**

Softcover copies of Commission reports are distributed on a complimentary basis (with some exceptions) to individuals and organizations on our mailing list, and to anyone requesting a copy so long as they are still in print. The Commission clears its mailing list each year, and is required by Government Code § 14911 to remove names from our mailing list if the annual list clearance form is not returned by the individual or organization.

B. Sale

In certain exceptional cases, the Commission imposes a charge for copies of its softcover reports. In those cases where this charge is imposed, copies of the reports may be purchased directly from the Commission. When such a charge is imposed, individuals and organizations on our mailing list are advised of the availability and cost of the report and afforded an opportunity to order copies.

III. Tentative Recommendations**A. Complimentary Distribution**

Copies of tentative recommendations are distributed on complimentary basis to two groups. These groups are:

- 1) On request, to county law libraries, libraries requesting copies under the Library Distribution Act, law school libraries, courts, present and former Commissioners, legislators, Commission consultants, and organizations with which we have exchange agreements.

- 2) Individuals and organizations who review and comment on the tentative recommendations. Since the primary reason for distributing tentative recommendations is to obtain comments and feedback from the legal community and other interested parties, such complimentary distribution is limited to those persons who actually submit comments to the Commission or who review the tentative recommendations for organizations that actually submit comments to the Commission. Failure to comment on tentative recommendations will result in an individual or organization being removed from this complimentary distribution group.

B. Sale

Copies of tentative recommendations are also available by subscription for those individuals and organizations who do not qualify for complimentary distribution under (1) above and who do not wish (or are unable to) comment on the tentative recommendations.

IV. Meeting Materials

A. Complimentary Distribution

Copies of Commission meeting materials are distributed on a complimentary basis to three groups. These groups are:

- 1) The California State Library and the Los Angeles County Law Library.
- 2) Individuals and organizations who attend Commission meetings and need to review the materials prior to the meeting. Since the primary reason for distributing these materials is to obtain comments and feedback from the legal community and other interested parties, such complimentary distribution will be limited to those persons who actually attend Commission meetings. Failure to attend will, if continued, result in an individual or organization being removed from this complimentary distribution group.
- 3) Interested individuals or organizations may obtain complimentary copies of first and final agendas, and of individual items on request.

B. Sale

Copies of meeting materials are also available by subscription for those individuals and organizations who do not wish (or are unable) to attend Commission meetings.

These guidelines apply to individuals and organizations who are on the Commission's mailing list and who receive materials and publications on an ongoing basis. Any individual or organization may request a copy of a softcover printed report, tentative recommendation, or meeting material item.

V. Miscellaneous

Application of these rules has traditionally meant complimentary distribution of bound volumes to the following:

Library of Congress
U.S. Supreme Court Library
California State Library
Libraries of the several state Courts of Appeal
Judicial Council Library
California county law libraries on the mailing list
California law school libraries on the mailing list (exchange
law reviews for Commission publications)
California Continuing Education of the Bar
Members of the Law Revision Commission (past and present)
California Department of Justice
The Governor
The Legislative Counsel
West Publishing Company
Bancroft-Whitney Publishing Company
Libraries of the State Bar of California

APPENDIX 8**DISQUALIFICATION FROM DECISION-MAKING**

[adapted from Memorandum 89-26]

This appendix analyzes the law applicable to disqualification from participation in Commission meetings, or otherwise making governmental decisions, under the Political Reform Act of 1974 (PRA).

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. See Gov't Code § 87103. 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, 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, in Appendix 9 to this Handbook.)

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. (See Appendix 9 to this Handbook.) 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, in Appendix 9 to this Handbook.)

The materiality of decisions affecting real property ownership and leasehold interests is covered by FPPC Regulation Sections 18702.3 and 18702.4. (See Appendix 9 to this Handbook.) These rules do not admit of convenient summary, so Commissioners and legal staff should 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, in Appendix 9 to this Handbook.)

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 information 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).

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 Appendix 9 attached to this Handbook.) 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 has arisen at Commission meetings 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."

APPENDIX 9

CONFLICT OF INTEREST REGULATIONS

[as of 01/01/90]

Note. This appendix sets out regulations of the Fair Political Practices Commission relevant to conflicts of interest and participation in governmental decisions. (2 Cal. Admin. Code §§ 18700-18706.) These regulations are discussed in Appendix 8.

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 a 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) State the reason there is no alternative source of decision-making authority;
- (4) Participate in the decision only in an open meeting of the agency, as required by Government Code Sections 11123 and 54953, or in closed session, as provided in Government Code Sections 11126, 54956.7, 54956.8, 54956.9, 54957 and 54957.6, where participation by the official is legally required for the agency to act.

(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).
3. Amendment of subsection (b) filed 10-19-89; operative 11-18-89 (Register 89, No. 42).

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 employment; 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).