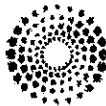

Barclays Official
**CALIFORNIA
CODE OF
REGULATIONS**

Title 2. Administration

Division 6. Fair Political Practices Commission

Vol. 3



THOMSON REUTERS™

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
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Division 6. Fair Political Practices Commission

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(3) Identify the public official's economic interests. (See 2 Cal. Code Regs. § 18703.)

(4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (See 2 Cal. Code Regs. § 18704.)

(5) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704. (See 2 Cal. Code Regs. § 18705.)

(6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of Regulations, title 2, section 18705) on each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See 2 Cal. Code Regs. § 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If it is reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, and the official does not participate in the decision, determine whether the official may segment the decision into separate decisions to allow his or her participation in subsequent decisions. (See 2 Cal. Code Regs. § 18709.)

(7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the official can establish that the reasonably foreseeable material financial effect on his or her economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Political Reform Act. (See 2 Cal. Code Regs. § 18707.)

(8) Determine if the public official's participation is legally required despite the conflict of interest. If the official can establish that his or her participation is legally required, he or she may participate in the governmental decision despite the conflict of interest. (See 2 Cal. Code Regs. § 18708.)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103, 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 (c) and (f) filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).
4. Amendment of section and NOTE filed 6-23-94; operative 6-23-94 (Register 94, No. 25).
5. Editorial correction of subsection (a)(2)(B) (Register 96, No. 43).
6. Amendment of subsection (d)(2) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
7. Editorial correction of subsection (d) (Register 98, No. 44).
8. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
9. Editorial change reformatting table (Register 98, No. 52).
10. Change without regulatory effect amending table filed 1-27-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 5).
11. Editorial correction of HISTORY 8 (Register 2000, No. 25).
12. Change without regulatory effect amending table filed 7-18-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
13. Amendment of subsections (b)(1) and (b)(8) filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

14. Change without regulatory effect amending subsection (b)(8) filed 1-16-2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

15. Amendment of subsections (b)(1)-(8) filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

16. Amendment of subsections (a), (b)(7) and (b)(8) filed 12-20-2005; operative 1-19-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 51).

§ 18700.1. Using Official Position to Influence (87100).

[Repealed]

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).
2. Repealer filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
3. Editorial correction of HISTORY 2 (Register 2000, No. 25).

§ 18700.3. Parent-Subsidiary, Otherwise Related Business Entity: Defined.

(a) For purposes of Section 82034 and Section 87209, in determining if a business entity has an interest in real property or does business or plans to do business in the jurisdiction, or has done business in the jurisdiction at any time during the two years prior to the time any statement or any other action is required under the Act, the business entity includes a "parent," "subsidiary," or "otherwise related to" another business entity as those terms are defined in subdivision (b) below.

(b) Parent, Subsidiary, Otherwise Related Business Entity, defined.

(1) Parent — A business entity is a "parent" if it is a corporation that controls more than 50 percent of the voting stock of another corporation. The parent corporation is also a parent to any subsidiaries of the corporation that it controls.

(2) Subsidiary — A business entity is a "subsidiary" if it is a corporation whose voting stock is more than 50 percent controlled by another corporation. The subsidiary corporation is also a subsidiary to any corporation that controls its parent corporation.

(3) Otherwise related business entity. Business entities are otherwise related if:

(A) The same person or a majority of the same persons direct or control each business entity; or

(B) The same person or a majority of the same persons have a 50 percent or greater ownership interest in each business entity.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

HISTORY

1. New section filed 8-12-2014; operative 9-11-2014 pursuant to title 2, section 18312(e)(1) of the California Code of Regulations. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2014, No. 33).

§ 18701. Public Official, Definitions.

(a) For purposes of Government Code section 82048, which defines "public official," and Government Code section 82019, which defines "designated employee," the following definitions apply:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority.

(A) A committee, board or commission possesses decisionmaking authority whenever:

(i) It may make a final governmental decision;

(ii) 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 that may not be overridden; or

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

(B) A committee, board, or commission does not possess decision-making authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.

(2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

(i) Approve a rate, rule, or regulation;

(ii) Adopt or enforce a law;

(iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

(iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

(v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

(vi) Grant agency approval to a plan, design, report, study, or similar item;

(vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code section 87302.

(b) For purposes of Government Code section 87200, the following definitions apply:

(1) "Other public officials who manage public investments" means:

(A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B) above.

(2) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(4) "Management of public investments" means the following non-ministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

COMMENT: In limited circumstances, the members of a nonprofit organization may be "public officials." (*In re Siegel* (1977) 3 FPPC Ops. 62.)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 82048, 87100, 87200 and 87302, 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).
4. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
5. Editorial correction of History 4 (Register 2000, No. 25).
6. Amendment of section heading, section and Note filed 1-11-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
7. Amendment filed 12-29-2005; operative 1-28-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).

§ 18702. Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined.

(a) To determine if a public official is making, participating in making, or using or attempting to use his/her official position to influence a government decision, apply 2 Cal. Code Regs. sections 18702.1 through 18702.4, respectively.

(b) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1)-(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003, 87100, 87101, 87105 and 87200, 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).
8. Amendment of subsection (c) filed 4-26-95; operative 4-26-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
9. Editorial correction of subsections (a) and (c) (Register 95, No. 50).
10. Amendment of section heading, section and NOTE filed 3-26-96; operative 3-26-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 13).
11. Amendment of subsections (d)(2)-(3) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
12. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
13. Change without regulatory effect amending section filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
14. Editorial correction of HISTORY 12 (Register 2000, No. 25).
15. Amendment of section and NOTE filed 6-10-2003; operative 6-10-2003 (Register 2003, No. 24).