



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

To: Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: Hyla P. Wagner, General Counsel
Brian G. Lau, Senior Commission Counsel

Subject: Conflict of Interest Regulations: Making, Participating in Making, and Influencing Governmental Decisions

Date: May 6, 2015

Summary

Under the Act, a public official “shall not 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.” (Gov. Code § 87100.)¹ This agenda item proposes revisions to the Commission’s regulations defining when an official is making, participating in making, or attempting to use his or her position to influence a decision. Additionally, this proposal merges existing disqualification and recusal requirements, for an official disqualified from a decision, into a single regulation and renumbers an existing regulation defining consultants and public officials who manage public investments.

Conflict of Interest Project

This proposal is part of the ongoing project to revise and streamline the regulations implementing the Act’s conflict of interest provisions. Under this project, the Commission has adopted multiple regulatory changes consolidating the conflict of interest analysis. As adopted, a public official has a disqualifying conflict of interest if:

- It is reasonably foreseeable that the governmental decision will have a financial effect on any of the public official’s financial interests;
- The reasonably foreseeable financial effect will be material;
- The official cannot establish that the material financial effect on his or her interest is indistinguishable from its effect on the public generally; and
- The public official is making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision.

¹ The Political Reform Act (Act) is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

This proposal completes the conflict of interest project by examining the rules for determining when an official is making, participating in making, or attempting to use his or her position to influence a decision.

Making, Participating in Making, or Attempting to Use Official Position to Influence a Decision

Existing Regulations 18704 through 18704.4 define when a public official is making, participating in making, or influencing a governmental decision, along with exceptions to these provisions. This proposal will consolidate the existing five regulations into the single proposed Regulation 18704. For the most part, the consolidation is non-substantive in nature removing only redundant and unnecessary language.

Substantively, the only revision made by this proposal is the addition of an exception for additional services from a consultant in proposed Regulation 18704(d)(7). This provision derives from the *McEwen* Advice Letter, No. I-92-481. In this letter, Commission Staff determined that a contracted city attorney was not making, participating in making, or influencing a decision that would result in additional legal fees so long as the services were provided in accordance to the existing consulting contract. Codifying this principle, proposed Regulation 18704(d)(7) clarifies that a consultant may make recommendations regarding additional services for which the consultant or consultant's employer will receive additional income if the agency has contracted with the consultant to make the recommendations.

Technical Clean Up

Disqualification Requirements: For any official who holds an office specified in Section 87200, existing Regulation 18704.5 provides rules the official must follow when recusing him or herself from a decision in which he or she has a disqualifying conflict of interest. Additionally, existing Regulation 18704.1(a)(5), (b) and (c) provides guidelines for all other officials recusing themselves from a decision in which they have a disqualifying interest. For the purposes of clarifying these provisions, this proposal merges these existing disqualification rules into a single proposed Regulation 18707.

Consultants and Public Officials Who Manage Public Investments: This proposal renumbers existing Regulation 18704.5 defining "consultant" and "public official who manages public investments" for purposes of the Act's conflict of interest provisions to proposed Regulation 18700.3. This renumbering will locate the definitions with other definitions that apply for purposes of the conflict of interest provisions in Regulations 18700 through 18700.2.

Conclusion and Recommendation

Staff recommends the approval of this proposal and submits that the proposed revisions will improve the identification of potential conflicts of interest and promote compliance.

Attachments:

Adopted Regulation 18700.3
Amended Regulation 18704
Adopted Regulation 18707
Repealed Regulation 18704.1
Repealed Regulation 18704.2
Repealed Regulation 18704.3
Repealed Regulation 18704.4
Repealed Regulation 18704.5
Repealed Regulation 18704.6