



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811  
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## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)<sup>1</sup> by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **November 21, 2024**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **November 20, 2024**.

### BACKGROUND/OVERVIEW:

Under the Act, a public official is prohibited from making, participating in making, or attempting to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on the official's financial interest, distinguishable from its effect on the public generally. Regulation 18703 sets forth the rules for applying the "public generally exception." Subdivision (a) provides the general rule and the two-prong test to establish if the effect of a decision on an official's financial interest is indistinguishable from the effect on the public generally. The first prong is to determine if a "significant segment" is affected, and the second prong is to ask if the effect on the official's financial interest "is not unique compared to the effect on the significant segment." In addition to this test, Regulation 18703(e) provides special circumstances under which the public generally exception applies to certain decisions that broadly apply to a large portion of the public.

### *Proposed Amendment of Regulation 18703*

The proposed amendments would add a new provision under the special circumstances in subdivision (e) that would explicitly enable application of the public generally exception to circumstances where the governmental decision at issue is made by a government entity that manages an airport or harbor and the decision broadly affects all persons with a permit, license or use entitlement from the government entity, such as those who lease spaces in airport hangars managed by a multicounty airport district and renters of boat slips managed by a city harbor district

Specifically, the proposed revisions to Regulation 18703 would enable the public generally exception to be applied to circumstances where the governmental decision at issue is made by a government entity that manages an airport or harbor, and: (a) the decision affects in a similar manner those permits, licenses or other use entitlements granted by the governmental entity that are broadly available to all others similarly situated and are provided on substantially the same terms as

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

for any other recipient; and (b) the only interests affected relate to the official's permit, license or other use entitlement from the government entity.

The existing regulation provides no specific public generally exception for government entities that manage airports or harbors. Moreover, the general rule in the existing public generally exception applies only if the governmental decision affects 25 percent of either all businesses or non-profit entities; all real property, commercial real property, or residential real property; or all individuals within the official's jurisdiction. (Regulation 18703(b)(1)-(3).) Because "jurisdiction" is defined as the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected (Regulation 18703(d)), an official's jurisdiction generally includes the entire geographic location in which the agency has jurisdiction, typically a city, county, or an agency with larger multi-county boundaries.

However, identifying a "significant segment" within the entire geographic location of an official's jurisdiction is imprecise for an airport or harbor because an official's authority is specific to the management of the infrastructure and the people using it, and an official's duties do not necessarily extend to the entire city, county or multicounty area for which the airport or harbor has been created. The proposed revisions resolve this by enabling the identification of a "significant segment" among the people who use the infrastructure. Thus, for instance, under the proposed revisions the public generally exception will apply to a city harbor district if the decision affects all people with a licensed boat slip from the district even if the number of people with a licensed boat slip is less than 25 percent of the business entities or individuals within the city, most of whom do not use the harbor.

Under the proposed revisions, the public generally exception would apply where an official is a member of a government entity that manages an airport or harbor with a specific jurisdiction and the governmental decision is relevant only to the government entity's specific jurisdiction. In these circumstances, the government entity provides public services through its publicly available infrastructure but generally only to the users of the infrastructure. Staff has determined that, in such cases, the affected "significant segment" under the public generally exception should be identified among people within the government entity's specific jurisdiction, provided the governmental decision at issue affects all permit, license or lease holders within the government entity in a similar manner, and the only interests affected by the decision result from the official's permit, license or other use entitlement from the government entity.

The proposed amendments would enable the public generally exception to be applied in specific circumstances involving governmental entities that manage an airport or harbor. These amendments would be consistent with the purpose of the public generally provision in the statute and would harmonize the Act with Section 1090 in this narrow circumstance.

#### REGULATORY ACTION: Adopt Proposed Regulation 18703

Commission staff proposes to amend current Regulation 18703 to enable application of the public generally exception to circumstances where the governmental decision at issue is made by a government entity that manages an airport or harbor. The Commission may also consider whether to extend the proposed public generally exception to other governmental entities similar to an airport or harbor.

SCOPE: The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issue identified above or any related issue.

FISCAL IMPACT STATEMENT:

<u>Fiscal Impact on Local Government.</u>	None.
<u>Fiscal Impact on State Government.</u>	None.
<u>Fiscal Impact on Federal Funding of State Programs.</u>	None.

AUTHORITY: Section 83112, Government Code provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE: Gov. Code, §§ 87100 and 87103.

CONTACT: Any inquiries should be made to John Feser, Fair Political Practices Commission, 1102 Q St., Suite 3050, Sacramento, CA 95811; email: [jfeser@fppc.ca.gov](mailto:jfeser@fppc.ca.gov); telephone 279-237-5912. The proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.