

ITEM 16

ADOPTION OF COMMISSION ORDER TO INITIATE CORRECTION OF CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 9 CONFLICT OF INTEREST CODE

Section 1189.10, Appendix

EXECUTIVE SUMMARY

Government Code sections 87300 through 87306 require every state agency to adopt a conflict of interest code that enumerates the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest; and the specific types of investments, business positions, interests in real property and sources of income that are reportable. No conflict of interest code shall be effective until it has been approved by the Fair Political Practices Commission (FPPC).

Every agency shall amend its conflict of interest code, subject to the provisions of Government Code section 87303, when change is necessitated by changed circumstances. Every state agency shall also submit to the FPPC a biennial report identifying changes in its conflict of interest code.

Section 18752 of the FPPC's regulations govern nonsubstantive amendments to conflict of interest codes.¹ Under section 18752, a state agency is required to submit proposed nonsubstantive amendments to the FPPC for approval, within 90 days of an agency submitting its biennial report to the FPPC. Section 18752 identifies the following position changes as nonsubstantive amendments.

- revising the titles of existing positions; and
- deleting titles of positions that have been abolished.

Upon FPPC approval of nonsubstantive amendments, the Commission is required to submit the amended conflict of interest code to the Office of Administrative Law for publication and inclusion in the Commission's regulations.

Section 1189.2 of the Commission's regulations requires the adoption of a Commission order to initiate regulatory changes.²

Commission Conflict of Interest Code

On February 18, 2009, the Commission submitted its biennial report to the FPPC indicating that nonsubstantive changes are needed. The Commission must submit its proposed nonsubstantive amendments to the FPPC on or before May 19, 2009. Following are the nonsubstantive changes:

¹ California code of Regulations, title.2, division 6, chapter 7, article 3, section 18752,

² California Code of Regulations, title 2, division 2, chapter 2.5, article 8, section 1189.2.

- Revising the titles of two existing positions because they were revised:
 1. Staff counsel to staff counsel III positions.
 2. Assistant information systems analyst to senior information systems analyst.

The reporting requirements for the above positions remain the same.

- Deleting titles of positions that have been abolished:
 1. Staff services manager III.
 2. Information services technician.

Attached is the proposed order initiating correction to the Commission's conflict of interest code (Attachment A), and the proposed amendments (Exhibit B). Following adoption of the order, staff will submit the proposed changes to the FPPC for approval, and upon approval, will submit the changes to the Office of Administrative Law for publication.

Staff Recommendation

Staff recommends that the Commission adopt the order to initiate correction of the Commission's conflict of interest code.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

In the Matter of:

Nonsubstantive Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Article 9, Conflict of Interest Code, Section 1189.10, Appendix

No. 09-01

ORDER TO INITIATE CORRECTION OF CONFLICT OF INTEREST CODE

Proposed for Adoption on March 27, 2009

Pursuant to California Code of Regulations, title 2, division 2, chapter 2.5, section 1189.2, the Commission on State Mandates (“Commission”) hereby adopts this order to institute correction of the Commission’s conflict of interest code pursuant to Government Code sections 87300 through 87306, and California Code of Regulations, title.2, division 6, chapter 7, article 3, section 18752, and title 2, division 2, chapter 2.5, article 8, section 1189.2.

PROPOSED REGULATORY ACTION. The Commission proposes to amend section 1189.10, and Appendix of the California Code of Regulations, division 2, title 2, chapter 2.5.

AUTHORITY AND REFERENCE. Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to make nonsubstantive corrections to the Commission’s conflict of interest code.

Paula Higashi, Executive Director

March 27, 2009

Article 9. Conflict of Interest Code

1189.10. General Provisions

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 (Cal. Code of Regs., tit. 2, § 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 to the Political Reform Act after public notice and hearings. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the commission.

Designated employees shall file statements of economic interests with their agency. Upon receipt of the statements of the commission members, their alternates and the executive director, the commission shall make and retain a copy and forward the originals to the Fair Political Practices Commission. Statements for all other designated employees shall be retained with the commission and made available for public inspection and reproduction. (Gov. Code, § 81008).

Appendix

<i>Designated Employees</i>	<i>Disclosure Categories</i>
Members and alternates of the Commission on	
State Mandates	1
Executive Director	1
Chief Legal Counsel (Career Executive Assignment)	1
<u>Staff Counsel III</u>	<u>1</u>
Staff Counsel	1
Staff Services Manager I, II	2, 3
Staff Services Manager III	1
Staff Services Analyst	2, 3
Associate Governmental Program Analyst	2, 3
Graduate Legal Assistant	1
Information Services Technician	2
Senior Assistant Information Systems Analyst	2
Staff Information Systems Analyst	2
Consultants *	1

Disclosure Category

Category 1 designated employees must disclose all investments, and business positions in business entities, interests in real property, income and gifts from any source.

Category 2 designated employees shall report all investments, business positions in any business entity, interests in real property, income and gifts from any source of the type which has contracted, or in the future may contract with the commission to provide services, supplies, materials, machinery or equipment.

Category 3 designated employees shall report all business positions and income from any school district, local governmental agency or special district which has received, or in the future may receive, state reimbursement under [article XIII B, section 6 of the California Constitution](#).

*The disclosure by consultants is subject to the following limitation:

The executive director may determine in writing that a particular consultant, although a "designated employee," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The executive director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.