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General Conflict of Interest Laws Under the Political Reform Act

The [Political Reform Act of 1974](#) prohibits a public official from making, participating in making, or attempting to use his or her position to influence a governmental decision if it is reasonably foreseeable that the decision could have a material financial effect on the official, the official's immediate family, or on specified financial interests of the official.

Financial Interests

The following is a list of financial interests which *may* trigger disqualification of a [public official](#) from participating in the making of a particular governmental decision. If a public official has one or more of the listed financial interests, he or she should consult with agency counsel to determine whether to participate in the decision.

- **Business Investments.** A public official has a financial interest in a business entity in which the official, his or her spouse or dependent child, or any agent acting on his or her behalf, 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 worth \$2,000 or more. ([Cal. Gov't. Code, § 87103 subd. \(a\)](#); [Cal. Code Regs., tit. 2 § 18700 subd. \(c\)\(6\) par. \(A\)](#).)
- **Business Employment or Management.** A public official has a financial interest in a business entity for which the official (but not the official's spouse or dependent children) is a director, officer, partner, trustee, employee, or holds any position of management. ([Cal. Gov't. Code, § 87103 subd. \(d\)](#); [Cal. Code Regs., tit. 2 § 18700 subd. \(c\)\(6\) par. \(D\)](#).)
- **Real Property.** A public official has a financial interest in real property in which the official, his or her spouse or the official's dependent children or anyone acting on the official's behalf has invested \$2,000 or more, and also in certain leasehold interests. ([Cal. Gov't. Code, § 87103 subd. \(b\)](#); [Cal. Code Regs., tit. 2 § 18700 subd. \(c\)\(6\) par. \(B\)](#).) If an official's real property is near (within 500 feet) a development project then the official should not participate in a governmental decision involving that project unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. ([Cal. Code Regs., tit. 2 § 18702.2 subd. \(a\)\(7\)](#).) If an

official's property is located more than 500 feet but less than 1,000 feet from a development project then an analysis must be undertaken to determine if the official's property interests will be affected. (Cal. Code Regs., tit. 2 § 18702.2 subd. (a)(8).)

- **Sources of Income.** A public official has a financial interest in anyone, whether an individual or an organization, from whom the official has received (or from whom the official has been promised) \$500 or more in income within 12 months prior to the decision about which the official is concerned. (Cal. Gov't. Code, § 87103 subd. (c); Cal. Code Regs., tit. 2 § 18700 subd. (c)(6) par. (C).) When thinking about sources of income, keep in mind that an official has a community property interest in the income of the official's spouse. So, a person from whom the official's spouse receives income may also be a source of a conflict of interest to the official. Also keep in mind that if a public official, his or her spouse or the official's dependent children own 10 percent or more of a business, it may be considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to the public official. Further, if an official receives income from a business entity, the official may also have an interest in parent, subsidiary or otherwise related business entities.
- **Sources of Gifts.** A public official has a financial interest in anyone, whether an individual or an organization, who has given the official, his or her spouse or the official's dependent children gifts which total \$590 or more within 12 months prior to the governmental decision about which the official is concerned. (Cal. Gov't. Code, § 87103 subd. (e); Cal. Code Regs., tit. 2 § 18700 subd. (c)(6) par. (E).)
- **Personal Financial Effect.** A public official has a financial interest in his or her personal finances and those of his or her immediate family. (Cal. Code Regs., tit. 2 § 18700 subd. (c)(6).)

Four Step Analysis

The FPPC has developed a four-step process for analyzing whether a prohibited conflict of interest exists. (Cal. Code Regs., tit. 2 § 18700 subd. (d).)

(1) Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?

To determine if the financial effect is reasonably foreseeable, the first consideration is whether the financial interest is explicitly or not explicitly involved in the decision. (Cal. Code Regs., tit. 2 § 18701.) For example, if the official has a financial interest in a company that is

a named party in or the subject of, a governmental decision before the official or the official's agency, then the financial interest is explicitly involved. If the financial interest is not explicitly involved in a decision then it must be determined whether the financial effect on the official's financial interest can be recognized as a realistic possibility and more than hypothetical or theoretical. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. (Cal. Code Regs., tit. 2, section 18702.3 subd. (b).) There are a number of factors that can be considered in determining whether a financial effect is reasonably foreseeable, including but not limited to, the following factors: the extent to which the occurrence of the financial effect is contingent upon intervening events; whether the public official should anticipate a financial effect on the official's financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care; or whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on the official's financial interest in formulating a position. (Cal. Code Regs., tit. 2, section 18701 subd. (b).)

If the answer to the question in Step One is "yes," then the analysis must continue to Step Two, if the answer to the question in Step One is "no," then the analysis can stop and there is no conflict of interest.

(2) Step Two: Will the reasonably foreseeable financial effect be material?

The second step of the analysis requires a determination on whether the reasonably foreseeable financial effect is material. In other words, the effect of the decision on a local official's financial interest must be more than a nominal, inconsequential or insignificant effect. To determine if the financial effect of a governmental decision is material, there are various standards for each of the different types of financial interests (business entity, real property, source of income, source of gifts, etc.) that must be analyzed. (Cal. Code Regs., title 2, § 18702.) For example, if the financial interest is in a source of gifts, that interest is material if the source of the gift is *any of the following*: a claimant, applicant, respondent, contracting party, or is named or identified as the subject of the proceeding; or the source of the gift is an individual that will be financially affected under other materiality standards for personal financial interests, or the official knows or has reason to know that the individual that is the source of the gift has an interest in a business entity or real property that will be financially affected under the materiality standards for business entities or real property; or the source of the gift is a nonprofit organization that will be financially affected under the materiality standards for sources of income; or the source of the gift is a business entity that will be financially affected under the materiality standards for financial

interests in business entities. ([Cal. Code Regs., title 2, § 18702.4.](#))

Regardless of whether the financial interest that is implicated is a source of gift, source of income, real property, business entity or the public official's personal finances, this step in the 4-step process usually requires a complex analysis of the existing facts and the applicable law to determine if the reasonably foreseeable financial effect is material.

If the answer to the question in Step Two is "yes," then the analysis must continue to Step Three, if the answer to the question in Step Two is "no," then the analysis can stop here.

(3) Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?

In this step, the official needs to consider whether they are affected financially in the same way that the general public is affected by the decision – this is often referred to as the "public generally" exception. ([Cal. Code Regs., tit. 2 § 18703.](#)) If the public official can demonstrate that the official's financial interest is the same as the public generally, then the official may be able to participate in the decision. The financial effect is indistinguishable from its effect on the public generally if the official can establish that a "significant segment" of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment. There are also specific rules for certain circumstances that may apply under the public generally exception including, but not limited to, decisions to set or adjust the amount of an assessment, tax, fee, or rate for water, utility or other public service or decisions to increase or decrease a general fee or charge that applies to the entire jurisdiction. ([Cal. Code Regs., tit. 2 § 18703 subd. \(e\).](#))

(4) Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, the official may not make, participate in making, or in any way attempt to use the official's position to influence the governmental decision.

If the official has a conflict of interest and there are no exceptions, including the public generally exception, that apply, the official is prohibited from making or using or attempting to use their official position to influence a government decision. ([Cal. Code Regs., tit. 2 § 18704 subd. \(a\)-\(c\).](#)) Making, a decision, or participating in a decision or using an official position to attempt to influence a decision can happen in a variety of ways including authorizing or directing an action, voting, or giving a recommendation or opinion to staff or other officials. However, making, participating in, or influencing a

governmental decision does not include an official's appearance as a member of the general public if the public official, after recusing themselves from an item due to a conflict of interest, is appearing on matters related solely to the official's personal interests, including certain interests in real property, business entities or terms of employment, among other exceptions. (Cal. Code Regs., tit. 2 § 18704 subd. (d).)

Conflicts Must Be Disclosed Even if Attending a Meeting Late or Leaving Early

State law governs what a public official must do if he or she has a disqualifying conflict of interest in an item on a council agenda. (Cal. Code Regs., tit. 2 § 18704 subd. (a)-(c).) Immediately prior to the consideration of the matter, the official must publicly identify the financial interest that gives rise to the conflict, recuse themselves from discussion and voting on the matter, and leave the room until after the matter is concluded. (Cal. Code Regs., tit. 2 § 18707.) As mentioned above, if the official has a personal interest in the agenda item as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, following the public identification of the financial interest and recusal the official may leave the dais and speak or observe from the area reserved for members of the public. (Cal. Code Regs., tit. 2 § 18707 subd. (a) par. (3)(B).) If a public official leaves a meeting in advance of the agenda item in which the official is disqualified or joins the meeting after consideration of the item, the official must publicly identify the agenda item and the financial interest prior to leaving the meeting or immediately upon joining the meeting. (Cal. Code Regs., tit. 2 § 18707 subd. (a) par. (2).)

Other Financial Conflict of Interest Laws

It is important to note that there are other conflict of interest laws, in addition to the Political Reform Act, that may be implicated when an official is considering an issue or agenda item.

- **Common law Bias Conflicts** – The common law (*i.e.*, derived from court decisions rather than statutory authority) conflict of interest is premised on the basic presumption that a “public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public.” (*Noble v. City of Palo Alto* (1928) 89 Cal.App.47, 51.) Thus, under the common law conflict of interest, courts have required public officials to disqualify themselves if the official has a personal bias or are personally affected in a nonpecuniary manner by the governmental decision. (*Clark v City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170.)

- **Government Code section 1090** – Government Code section 1090 bans self-dealing, so that officials cannot personally benefit from contracts with their agency. This law makes it illegal for officials to have financial interests in contracts that they make in their official capacities or any contract made by the board or body of which the official is a member. (Cal. Gov't. Code, § 1090.) Unlike the Political Reform Act, the prohibited interest does not need to have a “material effect” on the public official’s source of income. “Any interest, except a remote one, which would prevent the official from exercising absolute loyalty and undivided allegiance to the best interest of the state is prohibited under the statute.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 315, 328.) Simply choosing not to vote (abstaining) does not make the contract acceptable. There are certain statutory exceptions under Government Code section 1090 for “remote interests” or “non-interests,” which may allow the contract to be executed but may require the official with the interest to not participate in the making of the contract. (Cal. Gov't. Code, §§ 1091.4 & 1091.5.) Willful violations of section 1090 have severe penalties, which can include voiding of contracts, fines, as well as a ban on holding public office. (Cal. Gov't. Code, §§ 1090, 1092, 1097.)
- **Levine Act** – On January 1, 2023, Senate Bill (SB) 1439 took effect which expanded the Levine Act (Cal. Gov't. Code § 84308), to any elected or appointed officer of an agency, such as city councilmembers, special district board members, and school board members. As a result of this amendment to the Levine Act, appointed and now *elected* officers of a public agency are prohibited from accepting, soliciting, or directing campaign contributions over \$250 from any party to, or participant in, a proceeding involving a license, permit, contract, or entitlement for use before their agency. (Cal. Gov't. Code, § 84308 subd. (a) and (b).) An officer of an agency cannot make, participate in making, or in any way attempt to use the officer’s official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than \$250 within the preceding 12 months from a party or a party’s agent, or from any participant or a participant’s agent if the officer knows or has reason to know that the participant has a financial interest in the decision. (Cal. Gov't. Code, § 84308 subd. (c).) The officer may be able to return the contribution within 30 days from the time the officer knows or should have known about the contribution and still participate in the proceeding. (Cal. Gov't. Code, § 84308 subd. (d) par. (1).) Similarly, an officer may be able to cure a violation if the officer accepts, solicits, or directs a contribution of more than \$250 during the

12 months after the final decision is rendered by returning the contribution or the portion of the contribution in excess of \$250 within 14 days of accepting, soliciting or directing the contribution, whichever comes latest. (Cal. Gov't. Code, § 84308 subd. (d) par. (2).)

Parties to and participants in a proceeding must also disclose on the record if they made contributions over \$250 within the prior 12 months to any officer of the agency and are prohibited from making contributions to any officer of the agency while the proceeding is pending and for 12 months after the date a final decision is rendered. (Cal. Gov't. Code § 84308 subd. (e).) When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in this section. (Cal. Gov't Code § 84308 subd. (e) par. (3).)

Since there are many factors to consider in determining whether an official does indeed have a conflict of interest under the Political Reform Act or some other law, officials should always consult with their agency's counsel to get advice as early as possible.

The attorneys at Burke, Williams, Sorensen LLP regularly advise clients on legal matters relating to conflicts of interest and other ethical requirements. [Contact us](#) to learn more.

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