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Changes to Public Generally Exception and New Requirement for Posting of Campaign Disclosure Documents Filed in Paper Format

Amendments to FPPC Regulation 18703

The Political Reform Act (Government Code section 81000 et seq.) prohibits a public official 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*. (Cal. Gov't Code § 87100 and 87103.) The Fair Political Practices Commission ("FPPC") recently made changes to Title 2, Division 6, of the California Code of Regulations, section 18703, which explains the rules for determining whether an interest is in fact, distinguishable from the effect on the public generally. (2 Cal. Code Regs. § 18703.) This is often referred to as the "public generally" exception.

The public generally exception provides a 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" of the jurisdiction 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." Once an official determines that a significant segment of the jurisdiction will be affected by the decision, the official is permitted to take part in the decision so long as the decision does not have a unique effect on the official's interest in comparison to the significant segment.

The revisions to Regulation 18703 generally expand the exception in instances where the only relevant interest is an official's primary residence and clarifies certain situations where the public generally exception applies.

The revisions amend the "significant segment" definition to reduce the current 25% threshold to a lower, 15% threshold for residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence. This revision is aimed at addressing concerns that public officials with merely a residence are too often disqualified from broad decisions concerning matters such as community development and building

standards for flood or fire protection within their jurisdiction.

The revisions also clarify certain specific circumstances wherein the public generally exception applies, including decisions adjusting an assessment, tax, fee, or rate for water or other utility, decisions that affect residential real property limited to a specific location and decisions affecting the rights or liabilities of tenants and owners of residential rental property.

Once adopted, the amended regulation is sent to the Office of Administrative Law for filing with the Secretary of State. Generally, amendments go into effect 30 days after they are filed with the Secretary of State.

AB 2151 New Posting Requirements

AB 2151 adds Government Code section 84616 to the Political Reform Act to require local agencies to, within 72 hours of each applicable filing deadline, post on its internet website a copy of any statement, report, or other required campaign disclosure document required by Chapter 4 (Government Code section 84100 et seq.) of the Political Reform Act, that is filed with the public agency in paper format. If the final day of the 72-hour period is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday. Before posting to the agency's website, the local filing officer must redact the street name and building number of the persons or entity representatives listed on any statement, report, or document, or any bank account number required to be disclosed by the filer. Providing a link on the agency's internet website to the statement, report, or other document satisfies this subdivision. This bill also requires that the public agency retain any document posted pursuant to section 84616 for a period of four years from the date of the election associated with the filing.