

1 Amend 2 Cal. Code Regs. Section 18700 to read:

2 **§ 18700. Basic Rule; Application; Definitions; Guide to Conflict of Interest Regulations.**

3 (a) Basic Rule: ~~No~~ A public official at any level of state or local government **has a**
4 **prohibited conflict of interest and** may not make, participate in making, or in any way use or
5 attempt to use ~~his/her~~ his or her official position to influence a governmental decision **in which**
6 **when** ~~he/she~~ he or she knows or has reason to know ~~he/she~~ he or she has a **disqualifying** conflict
7 of interest financial interest. A public official has a conflict of **disqualifying financial** interest **in**
8 **the decision** if the decision will have a reasonably foreseeable material financial effect,
9 distinguishable from the effect on the public generally, one or more of his/her economic
10 interests, unless the public official can establish either: (1) that the effect is indistinguishable
11 from the effect on the public generally, or (2) a public official's participation is legally required.
12 directly on the official, or his or her immediate family, or on any **financial** interest described in
13 subdivision (c)(76)(A-F) herein. (Sections 87100, 87101, & 87103.)

14 (b) ~~To determine whether a given individual has a disqualifying conflict of interest under~~
15 ~~the Political Reform Act, proceed with the following analysis:~~

16 (1) ~~Determine whether the individual is a public official, within the meaning of the Act.~~
17 ~~(See Government Code section 82048; 2 Cal. Code Regs. § 18701.) If the individual is not a~~
18 ~~public official, he or she does not have a conflict of interest within the meaning of the Political~~
19 ~~Reform Act.~~

20 (2) ~~Determine whether the public official will be making, participating in making, or~~
21 ~~using or attempting to use his/her official position to influence a government decision. (See 2~~
22 ~~Cal. Code Regs. § 18702.) If the public official is not making, participating in making, or using~~

1 or attempting to use his/her official position to influence a government decision, then he or she
2 does not have a conflict of interest within the meaning of the Political Reform Act.

3 ~~(3) Identify the public official's economic interests. (See 2 Cal. Code Regs. § 18703.)~~

4 ~~(4) For each of the public official's economic interests, determine whether that interest is~~
5 ~~directly or indirectly involved in the governmental decision which the public official will be~~
6 ~~making, participating in making, or using or attempting to use his/her official position to~~
7 ~~influence. (See 2 Cal. Code Regs. § 18704.)~~

8 ~~(5) Determine the applicable materiality standard for each economic interest, based upon~~
9 ~~the degree of involvement determined pursuant to California Code of Regulations, title 2, section~~
10 ~~18704. (See 2 Cal. Code Regs. § 18705.)~~

11 ~~(6) Determine whether it is reasonably foreseeable that the governmental decision will~~
12 ~~have a material financial effect (as defined in California Code of Regulations, title 2, section~~
13 ~~18705) on each economic interest identified pursuant to California Code of Regulations, title 2,~~
14 ~~section 18703. (See 2 Cal. Code Regs. § 18706.) If it is not reasonably foreseeable that there will~~
15 ~~be a material financial effect on any of the public official's economic interests, he or she does not~~
16 ~~have a conflict of interest within the meaning of the Political Reform Act. If it is reasonably~~
17 ~~foreseeable that there will be a material financial effect on any of the public official's economic~~
18 ~~interests, and the official does not participate in the decision, determine whether the official may~~
19 ~~segment the decision into separate decisions to allow his or her participation in subsequent~~
20 ~~decisions. (See 2 Cal. Code Regs. § 18709.)~~

21 ~~(7) Determine if the reasonably foreseeable financial effect is distinguishable from the~~
22 ~~effect on the public generally. If the official can establish that the reasonably foreseeable~~
23 ~~material financial effect on his or her economic interest is indistinguishable from the effect on~~

1 ~~the public generally, he or she does not have a conflict of interest within the meaning of the~~
2 ~~Political Reform Act. If the reasonably foreseeable material financial effect on the public~~
3 ~~official's economic interest is distinguishable from the effect on the public generally, he or she~~
4 ~~has a conflict of interest within the meaning of the Political Reform Act. (See 2 Cal. Code Regs.~~
5 ~~§ 18707.)~~

6 ~~(8) Determine if the public official's participation is legally required despite the conflict~~
7 ~~of interest. If the official can establish that his or her participation is legally required, he or she~~
8 ~~may participate in the governmental decision despite the conflict of interest. (See 2 Cal. Code~~
9 ~~Regs. § 18708.)~~

10 (b) Application: The Act's conflict of interest prohibitions apply only to public officials
11 and only to governmental decisions that have a financial effect.

12 (c) For purposes of the Act's conflict of interest provisions, (Sections 87101-87105;
13 Regulations 18700-18706), the following definitions apply:

14 (1) "Public Official" (see Section 82048) means every member, officer, employee, or
15 consultant of a state or local government agency other than:

16 (A) A judge or court commissioner;

17 (B) A member of the Board of Governors and designated employees of the State Bar of
18 California;

19 (C) A member of the Judicial Council;

20 (D) A member of the Commission on Judicial Performance, provided that he or she is
21 subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division
22 3 of the Business and Professions Code as provided in Section 6038 of that article.

1 (E) A federal officer or employee serving in an official federal capacity on a state or local
2 government agency.

3 (2) “Member” does not include an individual who performs duties as part of a
4 committee, board, commission, group, or other body that does not have decisionmaking
5 authority.

6 (A) A committee, board, commission, group, or other body possesses decisionmaking
7 authority whenever:

8 (i) It may make a final governmental decision;

9 (ii) It may compel or prevent a governmental decision either by reason of an exclusive
10 power to initiate the decision or by reason of a veto that may not be overridden; or

11 (iii) It makes substantive recommendations and, over an extended period of time, those
12 recommendations have been regularly approved without significant amendment or modification
13 by another public official or governmental agency.

14 (B) A committee, board, commission, group, or other body does not possess
15 decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic
16 and preparing a report or recommendation for submission to another public official or
17 governmental agency that has final decisionmaking authority, and does not meet any of the
18 criteria set forth in subsection (3)(A)(i-iii), above.

19 (3) “Governmental agency” means any state or local agency or any entity or organization
20 acting as a governmental agency as determined under Regulation 18700.1.

21 (4) “Governmental decision” means any action taken by a government agency, [Option or
22 by an official acting on behalf of the agency,] that has a financial effect on any person other than
23 the governmental agency making the decision.

1 (5) “Financial effect” means an effect that provides a benefit of monetary value or
2 provides, prevents, or avoids a detriment of monetary value.

3 (6) “Financial interest” means anything or anyone listed in subparagraphs (A-E) below
4 and includes an interest in the public official’s own personal finances and those of a member of
5 his or her immediate family.

6 (A) Any business entity, as defined in Section 82005, in which the public official has a
7 direct or indirect investment worth at least \$2,000 (Section 87103(a)). For a “parent, subsidiary
8 or otherwise related business entity,” see Regulation 18700.2.

9 (B) Any real property, as determined under Regulation 18700.3, in which the public
10 official has a direct or indirect interest of at least \$2,000 (Section 87103(b).);

11 (C) Any source of income, as defined in Section 82030, amounting to a total of at least
12 \$500, provided or promised to, and received by the public official within 12 months before the
13 decision is made (Section 87103(c)). Income is “promised to” the public official if he or she has
14 a legally enforceable right to the promised income [moved from Regulation 18703.3.]. For a
15 source of income that is a business entity that is a “parent, subsidiary, or otherwise related
16 business entity”, see Regulation 18700.3.

17 (D) Any business entity, as defined in Section 82005, in which the public official is a
18 director, officer, partner, trustee, employee, or holds any position of management (Section
19 87103(d)). For a “parent, subsidiary, or otherwise related business entity,” see Regulation
20 18700.2.

21 (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts amounting to
22 a total of at least \$440 provided to, received by, or promised to the public official within 12
23 months before the decision is made (Section 87103(e); Regulation 18941(b).);

1 (F) For purposes of this paragraph (c)(8), indirect investment or interest means any
2 investment or interest owned by the spouse or dependent child of a public official, by an agent on
3 behalf of a public official, or by a business entity or trust in which the official, the official's
4 agents, spouse, and dependent children own directly, indirectly, or beneficially at least a 10-
5 percent
6 interest (Section 87103(e) see also Sections 82033 and 82034.).

7 (d) To determine whether a public official has a **disqualifying prohibited** conflict of
8 interest under the Act, proceed with the following analysis:

9 (1) Step One: Will the governmental decision have a reasonably foreseeable financial
10 effect on any of the public official's financial interests? To determine if the financial effect is
11 reasonably foreseeable, apply Regulation 18701. If the answer is no, there is no conflict of
12 interest under the Act. If the answer is yes, proceed to Step Two.

13 (2) Step Two: Will the reasonably foreseeable financial effect be material? To determine
14 if the reasonably foreseeable financial effect is material, apply Regulation 18702. If the answer is
15 no, there is no conflict **of interest** under the Act. If the answer is yes, proceed to Step Three.

16 (3) Step Three: Can the public official demonstrate that the material financial effect on
17 the public official's financial interest is indistinguishable from its effect on the public generally?
18 To determine if the material financial effect on any of the public official's financial interest is
19 indistinguishable from its effect on the public generally, apply Regulation 18703. If the answer is
20 yes, there is no conflict **of interest** under the Act. If the answer is no, proceed to Step Four.

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

1 determine if the public official is “making, participating in making, or in any way attempting to
2 use his or her official position to influence a governmental decision,” apply Regulation 18704. If
3 the public official will be called upon to make, participate in the making, or use his or her official
4 position to influence a governmental decision in which he or she has a financial interest as
5 determined under Step One through Step Three, he or she will have a prohibited conflict of
6 interest.

7 (e) Exception: Notwithstanding the provisions of Sections 87100 and 87103 and this
8 regulation, a public official may make or participate in a governmental decision in which he or
9 she has a prohibited conflict of interest if the provisions of Section 87101 and Regulation 18705
10 apply.

11 (f) Segmentation: To determine if an agency may segment a decision in order to allow a
12 public official to participate in a governmental decision by removing from consideration the
13 elements of the governmental decision in which the official would otherwise have a prohibited
14 conflict of interest, apply Regulation 18706.

15 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103,
16 Government Code.

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