



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

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)¹ 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 **July 18, 2019**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **July 16, 2019**.

BACKGROUND/OVERVIEW:

Governing Statutes. The Act's conflict of interest provisions ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. Section 87100 prohibits a public official from using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Under Section 87103(c), a public official has a financial interest in a decision within the meaning of Section 87100 if it is "reasonably foreseeable" that the decision will have a "material financial effect" on the certain enumerated interests including "[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made." (Section 87103(c).)

Existing Regulation. Regulation 18702.3 provides the materiality standards for interests in sources of income. The regulation establishes two general categories of sources of income. Subdivision (a) pertains to income from the sale of goods and services, while subdivision (b) addresses income from the sale of personal or real property. Aside from circumstances where the source of income is expressly involved in a governmental proceeding before the public official, neither subdivision establishes clear, bright-line rules for determining the materiality of a governmental decision's financial effect on a source of income.

Under subdivision (a)(2), the financial effect of a governmental decision on an official's financial interest in a source of income, where the income is derived from the sale of goods or services, is material if "[t]he source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5" Under Regulation 18702.5, however, a financial effect on personal finances is material if the individual will "receive a measurable financial benefit or loss from the decision." Regulation 18702.5 provides no definition for the term "measurable financial benefit or loss."

¹ 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.

Similarly, Regulation 18702.3(a)(3) also provides that a financial effect on a source of income that is a nonprofit organization is material where the nonprofit “will receive a measurable financial benefit or loss” Again, however, there is currently no express threshold or definition for the term “measurable financial benefit or loss.”

Regulation 18702.3 also does not provide any direction for public officials with source of income interests in government entities. Typically, money received from a government entity is not considered “income” for purposes of the Act, because “income” does not include “[s]alary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency” Thus, a public official generally will not reach the question of whether a financial effect on a governmental source of income is material. However, under certain circumstances, governmental funds received by a public official may constitute “income,” such as when an official receives funds as the result of a consulting contract. As noted, Regulation 18702.3 currently provides no guidance with respect to those uncommon scenarios.

Regulation 18702.3(c) establishes an alternate “nexus” test for materiality. That standard provides, “[a]ny reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.” The rationale for the nexus test is that when an employee earns a salary to accomplish a purpose that may be advanced by what he or she does as an official, we presume that the private employer is benefiting from the actions of the employee in his or her official capacity.

REGULATORY ACTION:

Repeal and Adopt 2 Cal. Code Regs. Section 18702.3 – Materiality Standard: Financial Interest in a Source of Income.

Amendments to Regulation 18702.3. The Commission may consider amendments to all provisions of current Regulation 18702.3, including, but not limited to, the appropriate materiality standards for economic interests in sources of income. At a minimum, Commission staff anticipates proposing the following:

- Consolidating and reorganizing Regulation 18702.3, subdivisions (a) and (b), and removing the distinction between income from the sale of goods and services and income from the sale of real or personal property.
- Establishing a bright-line materiality standard where the source of income is an individual whose personal finances will be affected by the governmental decision.
- Establishing bright-line materiality standards where the source of income is a non-profit organization.
- Including a new subdivision addressing source of income interests in government entities.
- Amending the language of the nexus test to specifically include the public official’s spouse.

SCOPE:

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues. The Commission must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state entity or program.

AUTHORITY: Section 83112 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: Sections 87100, 87102.5, 87102.6, 87102.8, and 87103.

CONTACT: Any inquiries should be made to Kevin Cornwall, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.