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To: Chair Remke, Commissioners Audero, Casher, Wasserman, and Wynne

From: Hyla P. Wagner, General Counsel
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Subject: Regulation 18750 – State and Multi-County Agency Procedures for Adopting or Amending Conflict of Interest Code.

Date: April 11, 2016

Summary

The proposed revisions are intended to make it easier and faster for state and multi-county agencies to adopt or update their conflict of interest codes. The current procedural requirements for these agencies to adopt or amend their codes are in four regulations. This proposal will consolidate the four existing regulations into a single regulation applicable to all code adoptions or amendments subject to the Commission’s approval. In addition to streamlining existing rules, this proposal will (1) describe standard code requirements, (2) encourage agencies to seek preliminary review of proposed codes or amendments, and (3) delete redundant language regarding the Commission’s procedure for review already provided in the Political Reform Act (Act).¹

Background

Section 87300 requires every agency to “adopt and promulgate a Conflict of Interest Code” that (1) designates all “positions within the agency, other than those specified in Section 87200, which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest,” and (2) identifies those interests of the designated employees that are reportable. A newly created agency is required to submit a code to its code reviewing body for approval “not later than six months after it comes into existence.” (Section 87303.) An agency must submit a code amendment to its code reviewing body for approval “within 90 days after the changed circumstances necessitating the amendments have become apparent.” (Section 87306.) Agencies must also review their existing codes every two years. (Sections 87306 & 87306.5.)

¹ The Act is set forth in Government Code sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

The Commission is the code reviewing body for all state agencies (other than agencies in the judicial branch of government), and all local government agencies with jurisdiction in more than one county, i.e., multi-county agencies. (Section 82011.) This means the Commission is responsible for reviewing codes for over 200 state agencies and 600 local agencies.

The Commission may not approve a conflict of interest code or code amendment if it fails to (1) “provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented,” (2) “provide to each affected person a clear and specific statement of his duties under the Code,” or (3) “adequately differentiate between designated employees with different powers and responsibilities.” (Section 87309.) Additionally, the review of codes by the Commission and the preparation of codes by state agencies are subject to the Administrative Procedure Act, and local agencies must prepare codes “under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views.” (Section 87311.)

Current Regulations 18750, 18750.1, 18750.2, and 18752, describe the procedures for the adoption and amendment of conflict of interest codes for state agencies and multi-county agencies subject to the Commission’s review and approval. Under current provisions, separate detailed procedures are provided for state agencies (Regulation 18750), multi-county agencies (Regulation 18750.1), state agencies exempt from the Administrative Procedures Act (Regulation 18750.2), and non-substantive amendments (Regulation 18752).

Proposed Regulatory Action

This proposal will repeal existing Regulations 18750, 18750.1, 18750.2 and 18752, consolidating these provisions into the single proposed Regulation 18750. This proposal also will describe standard code requirements, encourage agencies to seek preliminary review of proposed codes or amendments, and delete unnecessary language regarding the Commission’s procedure for review. In light of the sheer volume of codes the Commission must review, staff has been identifying ways in which to streamline and simplifying the process for both the agencies and the Commission.

Consolidating existing Regulations 18750, 18750.1, 18750.2 and 18752. Consistent with Section 87311’s requirement, existing Regulation 18750 identifies procedural rules from the Administrative Procedure Act that apply to the preparation and adoption of a code or code amendment by a state agency. With only a few exceptions, Regulations 18750.1 and 18750.2 extend similar procedural rules to state agencies and multi-county agencies not subject to the Administrative Procedure Act. Because the requirements for all agencies subject to the Commission’s approval are largely the same under existing regulations, this proposal will harmonize and streamline existing procedural requirements for all code adoptions and amendments into a single regulation.

Standard code requirements. Code requirements are identified in Section 87302 and include (1) enumerating positions that make or participate in making decisions, (2) identifying interests that must be disclosed by the positions, (3) requiring designated employees to file statements annually and when assuming and leaving office, and (4) requiring designated

employees to disqualify themselves from decisions affecting their interests. Encompassing these requirements, the Commission has adopted Regulation 18730, which provides standard code language that an agency may incorporate into their code by reference to ensure compliance.

Proposed Regulation 18750(a)(1) further clarifies standard code requirements. It states that an agency fulfills all requirements under Section 87302 if (1) the agency's code incorporates by reference the terms of a standard code provided in Regulation 18730, (2) identifies the location for filing statements, (3) provides for public inspections, and (4) separately lists designated positions and designated disclosure categories.

Preliminary review. Existing regulations suggest that a state or multi-county agency must approve its proposed code or amendment *prior* to submitting it to the Commission for approval. However, in practice, it is generally more efficient to coordinate with an agency during preliminary drafting to ensure that the agency's proposal meets the Commission's requirements prior to initiating the required public notice period. Accordingly, Commission staff has a longstanding practice of encouraging agencies to submit proposed codes and amendments for preliminary review prior to publically noticing the proposal for approval. Proposed Regulation 18750(a)(2) codifies the preliminary review procedure.

Commission review. The procedure for the Commission's review and approval of a proposed code or amendment is outlined in Section 87303. Under this section, the Commission has 90 days after receiving a proposed code to (1) approve the proposed code, (2) revise and approve the proposed code, or (3) return the proposed code to the agency for revision and resubmission within 60 days. This proposal will delete language from existing regulations duplicative of Section 87303.

An interested persons meeting was held on March 21, 2016. In response to public comment received regarding the benefits of posting proposed codes and amendments online, we added language to clarify that the public notice of a code or amendment must be made publically available such as by posting the notice on the agency's website. And in response to a comment received after the meeting, we also clarified that an agency can delegate its authority to approve its code to the agency's chair or president, chief executive officer, or chief legal counsel.

Recommendation

Staff recommends repealing current Regulations 18750, 18750.1, 18750.2, and 18752, and adopting proposed Regulation 18750, to consolidate and streamline the procedural requirements for all conflict of interest code adoptions and amendments subject to the Commission's approval.

Attachments:

Proposed Regulation 18750
Repealed Regulation 18750
Repealed Regulation 18750.1
Repealed Regulation 18750.2
Repealed Regulation 18752