

## **ATTACHMENT 2**

**CALIFORNIA GOVERNMENT CODE AND  
CALIFORNIA CODE OF REGULATIONS SECTIONS  
SUBMITTED FOR APPROVAL AS PART OF  
CALIFORNIA'S STATE IMPLEMENTATION PLAN**

*[This page intentionally blank]*

## TABLE OF CONTENTS

Government Code Section 82048 .....	A2-1
Government Code Section 87103 .....	A2-1
Government Code Section 87302 .....	A2-2
California Code of Regulations, Title 2, section 18700. Basic Rule and Guide to Conflict of Interest Regulations.....	A2-3
California Code of Regulations, Title 2, section 18701. Determining Whether a Financial Effect Is Reasonably Foreseeable. ....	A2-6

**ATTACHMENT 2**  
**California Government Code and California Code of Regulations Sections**  
**Submitted for Approval as Part of California's State Implementation Plan**

**Government Code Section 82048.**

- (a) "Public official" means every member, officer, employee or consultant of a state or local government agency.
- (b) Notwithstanding subdivision (a), "public official" does not include the following:
  - (1) A judge or court commissioner in the judicial branch of government.
  - (2) A member of the Board of Governors and designated employees of the State Bar of California.
  - (3) A member of the Judicial Council.
  - (4) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.
  - (5) A federal officer or employee serving in an official federal capacity on a state or local government agency.

**Government Code Section 87103.**

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, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, 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.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, 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.

**Government Code Section 87302.**

Each Conflict of Interest Code shall contain the following provisions:

- (a) Specific enumeration of the 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 for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. An investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position.
- (b) Requirements that each designated employee, other than those specified in Section 87200, file statements at times and under circumstances described in this section, disclosing reportable investments, business positions, interests in real property and income. The information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by Sections 87206 and 87207. The first statement filed under a Conflict of Interest Code by a designated employee shall disclose any reportable investments, business positions, interests in real property, and income. An initial statement shall be filed by each designated employee within 30 days after the effective date of the Conflict of Interest Code, disclosing investments, business positions, and interests in real property held on the effective date of the Conflict of Interest Code and income received during the 12 months before the effective date of the Conflict of Interest Code. Thereafter, each new designated employee shall file a statement within 30 days after assuming office, or if subject to State Senate confirmation, 30 days after being appointed or nominated, disclosing investments, business positions, and interests in real property held on, and income received during the 12 months before, the date of assuming office or the date of being appointed or nominated, respectively. Each designated employee shall file an annual statement, at the time specified in the Conflict of Interest Code, disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year. Every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and

- income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.
- (c) Specific provisions setting forth any circumstances under which designated employees or categories of designated employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of any decision. Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be affected materially by the decision. No designated employee shall be required to disqualify himself or herself with respect to any matter which could not legally be acted upon or decided without his or her participation.
  - (d) For any position enumerated pursuant to subdivision (a), an individual who resigns the position within 12 months following initial appointment or within 30 days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation, the individual does not make, participate in making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position. Within 30 days of the date of a notice mailed by the filing officer, the individual shall do both of the following:
    - (1) File a written resignation with the appointing power.
    - (2) File a written statement with the filing officer on a form prescribed by the commission and signed under the penalty of perjury stating that the individual, during the period between appointment and resignation, did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

**California Code of Regulations, Title 2, section 18700. Basic Rule and Guide to Conflict of Interest Regulations.**

- (a) Basic Rule: A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103.)
- (b) Application: The Act's conflict of interest prohibitions apply only to public officials and only to governmental decisions that have a financial effect.

- (c) For purposes of the Act's conflict of interest prohibitions (Sections 87100-87105; Regulations 18700-18707), the following definitions apply:
- (1) "Public Official" (see Section 82048) means every member, officer, employee, or consultant of a state or local government agency other than:
    - (A) A judge or court commissioner;
    - (B) A member of the Board of Governors and designated employees of the State Bar of California;
    - (C) A member of the Judicial Council;
    - (D) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.
    - (E) A federal officer or employee serving in an official federal capacity on a state or local government agency.
  - (2) "Member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.
    - (A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:
      - (i) It may make a final governmental decision;
      - (ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
      - (iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.
    - (B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).
  - (3) "Governmental agency" means any state or local agency or any entity or organization acting as a governmental agency.
  - (4) "Governmental decision" means any action taken by a government agency that has a financial effect on any person other than the governmental agency making the decision.
  - (5) "Financial effect" means an effect that provides a benefit of monetary value or provides, prevents, or avoids a detriment of monetary value.

- (6) "Financial interest" means anything or anyone listed in subparagraphs (A-E) and includes an interest in the public official's own personal finances and those of a member of his or her immediate family.
- (A) Any business entity, as defined in Section 82005, in which the public official has a direct or indirect investment worth at least \$2,000 (Section 87103(a)). For a "parent, subsidiary or otherwise related business entity," see Regulation 18700.2.
  - (B) Any real property in which the public official has a direct or indirect interest of at least \$2,000 (Section 87103(b));
  - (C) Any source of income, including commission income and incentive income as defined in 18700.1, amounting to a total of at least \$500, provided or promised to, and received by the public official within 12 months before the decision is made (Section 87103(c)). Income is "promised to" the public official if he or she has a legally enforceable right to the promised income. For a source of income that is a business entity that is a "parent, subsidiary, or otherwise related business entity," see Regulation 18700.2.
  - (D) Any business entity, as defined in Section 82005, in which the public official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)). For a "parent, subsidiary, or otherwise related business entity," see Regulation 18700.2.
  - (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts amounting to a total of at least \$470 provided to, received by, or promised to the public official within 12 months before the decision is made (Section 87103(e); Regulation 18941);
  - (F) For purposes of paragraph (c)(6), indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially at least a 10-percent interest (Section 87103(e) see also Sections 82033 and 82034).
- (d) To determine whether a public official has a prohibited conflict of interest under the Act, apply the following:
- (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, apply Regulation 18701. If the answer is no, there is no conflict of interest under the Act. If the answer is yes, proceed to Step Two.
  - (2) Step Two: Will the reasonably foreseeable financial effect be material? To determine if the reasonably foreseeable financial effect is material, apply Regulation 18702. If the answer is no, there is no conflict of interest under the Act. If the answer is yes, proceed to Step Three.



- (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? To determine if the material financial effect on any of the public official's financial interest is indistinguishable from its effect on the public generally, apply Regulation 18703. If the answer is yes, there is no conflict of interest under the Act. If the answer is no, proceed to Step Four.
- (4) Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision. To determine if the public official is "making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision," apply Regulation 18704. If the public official will be called upon to make, participate in the making, or use his or her official position to influence a governmental decision in which he or she has a financial interest as determined under Step One through Step Three, he or she will have a prohibited conflict of interest.
- (e) Exception: Notwithstanding the provisions of Sections 87100 and 87103 and this regulation, a public official may make or participate in a governmental decision in which he or she has a prohibited conflict of interest if the provisions of Section 87101 and Regulation 18705 apply.
- (f) Segmentation: To determine if an agency may segment a decision in order to allow a public official to participate in a governmental decision by removing from consideration the elements of the governmental decision in which the official would otherwise have a prohibited conflict of interest, apply Regulation 18706.

**California Code of Regulations, Title 2, section 18701. Determining Whether a Financial Effect Is Reasonably Foreseeable.**

- (a) Financial Interest Explicitly Involved: A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).
- (b) Financial Interest Not Explicitly Involved in Decision: A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable

financial effect on a financial interest other than an interest described in subdivision (a), the following factors should be considered. These factors are not intended to be an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines.

- (1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.
- (2) Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
- (3) Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.
- (4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.
- (5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.
- (6) 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 his or her financial interest in formulating a position.