MEETING DATE: Thursday, January 28, 2010

AGENDA ITEM #: 12 C

ITEM: ANNUAL TRAINING FOR COUNTY ADVISORY BODIES

RECOMMENDED ACTION:

Those who attended the December 7, 2009 annual Training for Advisory Bodies to the Board of Supervisors will share items of interest.
2009 Annual Training
for Advisory Bodies to the Board of Supervisors

Lara DeLaney, County Administrator’s Office
Mary Ann Mason, County Counsel’s Office

Monday, December 7, 2009
4:00 p.m. – 5:30 p.m.
Board Chambers, 651 Pine Street

Agenda

1. Welcome and Introductions
2. Review of Advisory Body Handbook
3. Scope of Authority of Advisory Bodies
4. Brown Act Requirements and the County’s Better Government Ordinance
5. Conflicts of Interest and Recusal
6. Training Requirements
7. Advisory Body Vacancies, Appointments, Recruitment
8. Reporting Requirements
9. Questions and Answers

The Clerk of the Board will provide reasonable accommodations for persons with disabilities planning to attend the meeting who contact Lara DeLaney at least 48 hours before the meeting, at (925) 335-1097. An assistive listening device is available from the Clerk, Room 106.

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Board of Supervisors less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 1st floor, during normal business hours.*
2009 Annual Training
for Advisory Bodies to
the Contra Costa County
Board of Supervisors

Lara DeLaney, County Administrator's Office
Mary Ann Mason, County Counsel's Office
December 7, 2009

Advisory Body Handbook
- Introduction: Scope, Role, Responsibilities
- Fundamentals of the Brown Act/BGO
- Selected Brown Act/BGO provisions
- Board policies on "Conflict of Interest and Open Meetings"
- FPPC's "Can I Vote" pamphlet
- Training Certification Form
- Board Reso on Appointment procedures and Responsibilities of Advisory Bodies
- Sample press release, vacancy Board Order, and appointment Board Order
- Advisory Body webpage printouts

Scope of Authority
- Unless otherwise specified by statute, advisory bodies serve at the pleasure of the Board of Supervisors in an advisory capacity only, and have no authority to create fiscal or other obligations on behalf of the County.
- Each advisory body's governing resolution specifies the body's scope of authority. Each advisory body must adhere to that scope of authority.
- Please familiarize yourself with your advisory body's governing resolution and adopted Bylaws.

Examples of Limits on Authority
- Bank Accounts and spending
- Contracting
- Setting and/or waiving of County fees
- Personnel actions
- Closed meeting sessions
- Taking positions on bills: legislative advocacy

Legislative Advocacy
- An advisory body may not take any action that would imply the County's support or opposition to legislation in the absence of, or inconsistent with, adopted Board positions.
- Only the Board of Supervisors can send position letters on a particular piece of legislation, unless a state or federally mandated advisory body has followed the specified protocol to do so on their own behalf. (See Oct. 14, 2008 Board Order.)
- As individuals, advisory body members may communicate their opinions and advocate for legislation.

Permissible Closed Sessions
- To receive legal advice on pending or threatened litigation;
- To instruct labor negotiators or real property negotiators;
- To take employment actions.

In general, advisory bodies are not eligible to hold Closed Sessions. If questions, contact the County Counsel's Office.
**Agenda Requirements**
- Publish at least 96 hours before the meeting.
- Must list name of body, time, date, and location of meeting.
- Must provide an opportunity for public comment.
- Must describe each item of business to be considered.
- Must contain information about accessibility for the disabled.
- Must contain information about public access to records.

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**New Agenda Language for Every Agenda**
Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the [name of advisory body or subcommittee] to a majority of members of the [advisory body or subcommittee] less than 96 hours prior to that meeting are available for public inspection at [address] during normal business hours.

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**On the Front Page of Every Agenda**
The (name of advisory body or subcommittee) will provide reasonable accommodations for persons with disabilities planning to participate in (name of advisory body or subcommittee) meetings who contact (name of chair or committee staff) at least 48 hours before the meeting at (telephone number of chair or staff named above).

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**Meeting Space and Accessibility**
- Meeting notice shall be clearly posted at the meeting location.
- Meeting space shall be open and accessible to the public.
- ADA (Americans with Disabilities Act) language shall be placed on the front page of every agenda.

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**Public Comment**
- Meetings must be open; all persons must be permitted to attend.
- Every agenda must provide an opportunity for public comment.
- Public must be permitted to speak on an item before or during consideration of the item.
- Public shall be given an opportunity to speak on items not on the agenda but under the jurisdiction of the body.
- Body may adopt reasonable rules limiting total amount of time for comment on issues and total amount of time per speaker.
- Body may not prohibit public criticism of body's policies, programs, procedures, services, or actions.

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**Proper Meeting Conduct**
- Be attentive and courteous to members of the public.
- Avoid cell phones, eating, chatting, reading, wandering.
- Be respectful and courteous to fellow commissioners.
- Avoid interrupting and personal remarks.
- Professionalism helps body gain respect and influence.
SERIAL MEETINGS PROHIBITED

- Advisory body members may only discuss the body's business at properly noticed meetings which the public can attend.
- The Brown Act specifically prohibits advisory body members from having face-to-face conversations, phone conversations, e-mail conversations, or conversations through staff where a majority of the body discusses or deliberates or takes action on an item in the body's jurisdiction.
- A simple discussion, even if no consensus is reached, is enough to violate the law.

Examples of Serial Meetings

- Commissioner A calls Commissioner B who calls Commissioner C, or
- Commissioner A e-mails Commissioners B and C, or
- Commissioner A has Commission staff talk with Commissioners B and C

Permissible Staff Communications

Staff may communicate with individual advisory body members outside of noticed meetings:

- to answer questions
- to provide information

Staff may not communicate one advisory body member's comments or position to another member of the advisory body.

Recusal / Conflict of Interest

- Publicly identify, orally, in detail the economic interest that creates the conflict.
- Ask that recusal and reasons be recorded in the meeting minutes.
- Leave the room before discussion of the item ensues.
- The disqualified member may not be counted towards the quorum requirement while the item is being discussed.

Two Limited Exceptions on Recusal

- Consent agenda item - after recusal, remain on the dais (or at the table), but do not participate in any way.
- Item involves personal residence or wholly-owned business - after recusal, leave the dais (or table). You may speak as a member of the public during public comment and remain in the audience for the item.

Gift Limit

- The Gift Limit applies only to persons required to file Form 700, statement of economic disclosure. These people cannot accept gifts aggregating more than $420 in a calendar year from a single source.
- Exceptions include gifts from family members, equal gift exchanges with friends, and meals in the host's home.
What is a Quorum?

A quorum is the number of members of the body who must be present for a lawful meeting.

Are “Moving Quorums” okay? No!

The Internal Operations Committee has directed that a Quorum is the majority of the total number of authorized seats on the body, not the majority of the total number of filled seats.

What to Do If There is No Quorum

- Body cannot meet unless a quorum is present.
- If no quorum, members cannot take any action except to vote to adjourn to a later date.
- Post notice of adjournment indicating the date, time, and location of the next meeting.
- Within 24 hours of adjournment, post Notice on meeting room door, and send to advisory body members and media outlets on agenda subscription list.

Brown Act / Ethics Training Certification

- Within 3 months of appointment, all advisory body appointees and staff must view and certify that they have viewed the two training programs: "The Brown Act and the Better Government Ordinance" and "Ethics Orientation for County Officials."
- These programs are available for viewing at the County's website: www.co.contra-costa.ca.us, under the Board of Supervisors page.
- Staff of advisory bodies may be provided with copies of the tapes, and the programs may be viewed on the local community access station.

The "Brown Act" program is shown on CCTV every first and third Saturday at 3:00 p.m.

The "Ethics" program is shown on CCTV every second and fourth Saturday at 3:00 p.m.

The 2007 training session is shown on CCTV every first and third Sunday at 3:00 pm.

If Comcast is your cable provider, CCTV is broadcast on Channel 27.

If Astound is your cable provider, CCTV is on Channel 32.

If AT&T U-verse is your cable provider, CCTV is on Channel 99.
AB 1234 Ethics Training

- Effective January 1, 2006, AB 1234 requires that local officials that receive compensation, salary, stipends, or expense reimbursements must receive training in public service ethics laws and principles every two years.
- The requirement applies not only to the governing body of a local agency, but also commissions, committees, boards, or other local agency bodies, whether permanent or temporary, decision-making or advisory.

Scheduled vs. Unscheduled Vacancies

- Scheduled vacancy occurs when the term for a seat expires
- No Board action is necessary to vacate seat
- No special posting is necessary
- Board can make new appointment at any time
- Recruitment should be initiated 30 days prior to term expiration
- Unscheduled vacancy occurs when appointee leaves seat before the term is expired
- Board action is necessary to vacate the seat and prompt the Clerk to post the vacancy
- New appointment may not be made until vacancy is posted for ten days.

Recruitment of New Members

- Appointing body is usually the Board of Supervisors.
- Recruitment is the responsibility of staff (if provided) and advisory bodies.
- Board's policy requires competitive recruitment.
- Board's policy is that all appointees must either reside or work in the County, unless otherwise specified by law.
- Goal is to interest men and women of diverse racial, ethnic, economic backgrounds, and who are from different geographical areas of the County.

Recommended Recruitment Process

- Issue a media advisory (sample in Handbook).
- Undertake whatever additional recruitment needed to interest a diverse group of people.
- Screen applications against eligibility criteria.
- Screen and/or interview applicants.
- Forfend nominations and forward either to the Board of Supervisors (Board Order), appropriate Board Subcommittee (memo), or Supervisory District Office (memo).

Annual Report Requirement

- Two-page report on the second Tuesday of each December (due date each December 1).
- Generally agendized as a Consent Calendar item.
- Report to be maintained for public inspection in a binder by the Clerk of the Board.
**Why Submit an Annual Report?**
- A Board of Supervisors requirement.
- The self-evaluation of prior-year activities and the establishment of new goals helps to focus the advisory body on its mission.
- An opportunity to communicate to the Board of Supervisors the accomplishments and future goals of your advisory body and justify its continuation.
- Provides public exposure to your mission and accomplishments via Board agenda and Clerk binder.

**Annual Report Format**
- Activities and accomplishments of the year. (1 page)
- Attendance of membership (1/4 page)
- Video training certification (1/4 page)
- Work Plan and goals for the coming year (1/2 page)

**Key Points to Remember...**
- With few exceptions, advisory bodies serve solely at the pleasure of the Board of Supervisors.
- Primary purpose of an advisory body is to provide citizens an opportunity to actively participate in their government and provide input and advice to the Board.
- Meetings must be adequately and publicly noticed, and open and accessible to the public.
- Advisory bodies cannot hold closed sessions.
- Appointees must recuse themselves if a conflict exists.

**Website for Advisory Body Information**
http://conra.napanet.net/maddybook/

Or... go to www.co.contra-cost.ca.us and click on “Board Advisory Bodies” under the Board of Supervisors listing on the main page.

**Question / Answer Session**

Contact:
Lara DeLaney, 335-1097
Idela@cao.cccounty.us
Date: February 10, 2009

To: All County Department Heads and Fire Chiefs

From: Silvano Marchesi, County Counsel
By: Mary Ann McNett Mason, Deputy County Counsel

Re: Recent Amendments to the Ralph M. Brown Act (Open Meeting Law)

Please provide a copy of the attached informational memorandum about amendments to the Brown Act, effective on January 1, 2009, to all of the various commissions and advisory bodies and to the individual members of those entities, for which your staff provides assistance or liaison.

MAM/am

attachment

cc: Members, Board of Supervisors, District Offices
    County Administrator
    Attn: Julie Enea, Senior Deputy County Administrator
    Lara Delaney, Senior Management Analyst
    District Attorney
    Attn: Steve Bolen, Senior Deputy District Attorney
    Clerk of the Board (Press Box)
Date: February 10, 2009

To: County Boards, Commissions, and Committees and their Administrative Officers and Secretaries

From: Silvano B. Marchesi, County Counsel
By: Mary Ann McNett Mason, Deputy County Counsel

Re: Amendment to the Ralph M. Brown Act Effective January 1, 2009

For your information, we summarize a recent amendment to the Ralph M. Brown Act, the open meeting law, as amended by Statutes of 2008, chapter 63. This amendment took effect January 1, 2009.

Government Code section 54952.2 has been amended in three significant ways. First, the definition of a “meeting” has been revised. Second, the scope of the communications that can constitute a prohibited serial meeting has been expanded. Finally, the section now identifies which staff member communications to individual board members outside of noticed public meetings are permissible and which can result in a prohibited serial meeting.¹

A. Definition of “Meeting” For Purposes of the Brown Act

A meeting of a legislative body, such as the Board of Supervisors or the Planning Commission, is any congregation of a majority of the body’s members at the same time and location, including a permitted teleconference location, “to hear, discuss, deliberate, or take action” on any item that is within the body’s subject matter jurisdiction.² All meetings must be noticed in accordance with the Brown Act and the County’s Better Government Ordinance.³

B. The Prohibition on Serial Meetings Has Been Expanded

The Brown Act now expressly provides that outside of a lawfully noticed meeting, a majority of the body shall not use a series of communications of any kind, directly or through intermediaries, either to discuss, to deliberate, or to take action on any item of business that is

¹ “Board” and “Board members” as used herein refers generically to various types of bodies: boards, committees, commissions, subcommittees, etc.

² Gov’t. Code, § 54952.2(a).

³ Gov’t. Code, § 54954.2; Ord. § 25-2.206(a).
within the subject matter jurisdiction of the body. A mere serial discussion by a majority of the
body about one of its business items is now sufficient to violate the Brown Act. For example, a
series of e-mails or telephone calls among a majority of board members about a pending a land
use matter can be an unlawful serial meeting, even if no consensus about the decision is reached
before the matter is considered at a properly noticed public meeting. With this amendment, the
Legislature specifically rejected a prior California Appellate decision holding that an unlawful
serial meeting does not occur unless over the course of the communication members of the body
develop a collective concurrence about action to be taken.5

C. Express Parameters For Informal Staff Communications With Board
Members Added

Parameters for staff interactions with board members have been clarified. The serial
meeting prohibition does not prevent an employee or official of a local agency from engaging in
separate conversations or communications outside of a noticed meeting with a majority of board
members to answer questions or to provide information about a matter in the body's subject
matter jurisdiction, as long as the staff member does not communicate one board member's
positions or comments to another board member.6 To avoid acting as an intermediary in a
prohibited serial meeting, a staff member must be very careful not to share information about one
or more board members' views or concerns with another board member. Outside of a noticed
meeting, staff should provide information or answer questions for board members on an
individual basis. In addition, staff should not send e-mail communications to a majority of board
members to request the members' response on any business matter.

MAM/am

cc: Members, Board of Supervisors
    County Administrator
    Attn: Julie Enea, Senior Deputy County Administrator
    Lara Delaney, Senior Management Analyst
    Department Heads
    District Attorney
    Attn: Steven Bolen, Senior Deputy District Attorney

4 Gov't. Code, § 54952.2 (b) (1).
6 Gov't. Code, § 54952.2 (b) (2).
Can I vote?

A Basic Overview
Of Public Officials’
Obligations Under the
Political Reform Act’s
Conflict-of-Interest Rules

California
Fair Political Practices
Commission
"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Striped of legal jargon:

➢ You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that
the outcome of the decision will have an important impact on your economic interests, and

➢ a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note...

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§ 81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC’s website, http://www.fppc.ca.gov. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — 1-800-ASK-FPPC — as far in advance as possible.
If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

➢ This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.

➢ Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.

➢ The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.

On the next page are the eight steps:
Eight steps to help you decide

Step One: Are you a “public official” within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the “public generally” exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?
Next, here is a non-technical explanation of each:

**Public Official**

**Step One — Are you a “public official,” within the meaning of the rules?**

The Act’s conflict-of-interest rules apply to “public officials” as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency’s conflict-of-interest code, you are a “public official.” If you file a Statement of Economic Interests (Form 700) each year, you are a “public official” under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency’s legal counsel or the FPPC.

**Governmental Decision**

**Step Two — Are you making, participating in making, or influencing a governmental decision?**

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the
conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make a** governmental decision (for example, by voting or making an appointment).

- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).

- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising discretion or judgment with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

**When you have a conflict — Regulation 18702.5 (special rule for section 87200 public officials)**

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at http://www.fppc.ca.gov.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-
licitly identify in detail the economic interest that creates the conflict, step down from the dais and must then leave the room. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any nonpublic information regarding the decision.

- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— The Arroyo City Council is considering widening the street in front of council member Smith’s personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.

— Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she may not sit in the public area and listen to the discussion.

— Supervisor Robertson rents a home to a county employee. The county employee is the sub-
ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him. He may not attend the closed session or obtain any non-public information from the closed session.

**Economic Interests**

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act’s conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more.

- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.
Real Property. You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more, and also in certain leasehold interests.

Sources of Income. You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) $500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse’s or registered domestic partner’s income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent of more of a business, you are considered to be receiving “pass-through” income from the business’s clients. In other words, the business’s clients may be considered sources of income to you.

Gifts. You have an economic interest in anyone, whether an individual or an organization, who has...
given you gifts which total $390 or more within 12 months prior to the decision about which you are concerned.

➢ **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by $250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.
Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations
if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC’s web site, http://www.fppc.ca.gov.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word “material” is akin to the term “important.” You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called “materiality standards,” that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your
agency counsel or the FPPC. However, to understand
the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the
governmental decision, the standard or threshold
for deeming a financial impact to be material is
stricter (i.e., lower). This is because an economic
interest that is directly involved in a governmental
decision presents a bigger conflict-of-interest risk
for the public official who holds the interest.

- On the other hand, if the economic interest is not di-
rectly involved, the materiality standard is more leni-
ent because the indirectly involved interest presents
a lesser danger of a conflict of interest.

- There are different sets of standards for the differ-
ent types of economic interests. That is, there is
one set of materiality standards for business enti-
ties, another set for real property interests, and so
on.

- The rules vary by the size and situation of the eco-
nomic interest. For example, a moment's thought
will tell you that a $20,000 impact resulting from a
governmental decision may be crucial to a small
business, but may be a drop in the bucket for a big
corporation. For example, the materiality standards
distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does “sufficiently likely” mean? Put another way, how “likely” is “likely enough?” The Political Reform Act uses the words “reasonably foreseeable.” The FPPC has interpreted these words to mean “substantially likely.” Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are
met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"Public Generally" Exception

Step Seven — If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-
ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the “public generally” exception can be found on the FPPC website at http://www.fppc.ca.gov under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

FPPC 18 (revised 7/05)
➢ Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.

➢ Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.

➢ Understand the “big picture” of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.

➢ Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.

➢ Don’t try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the “big picture.” You’ll then be able to look up or ask about the particular rules you need to apply to any given case.

➢ Don’t be afraid to ask for advice. It is available from your agency’s legal counsel and from the FPPC.
How To Contact Us:

Mail:
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Website:
www.fppc.ca.gov

Telephone:
- Toll-free advice line: 1-866-ASK-FPPC
  (1-866-275-3772)
- Regular line: 1-916-322-5660
- Enforcement hotline: 1-800-561-1961

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