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To: Chair Miadich, Commissioners Cardenas, Hatch, and Wilson

From: Dave Bainbridge, General Counsel, Legal Division
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Subject: Update of Commission Regulations Governing Statements and Reports to Improve their Clarity and Guidance Regarding Electronic Filing and Officials Who Hold Multiple Positions

Date: November 9, 2020

Summary of Proposed Actions

Staff proposes an update of the Commission's regulations governing the filing of statements of economic interests to provide greater clarity and guidance with respect to processes associated with the electronic filing of those statements. Among other changes, the proposed update would revise filing officers and filing officials' respective duties with respect to these statements by providing separate processes for the review of statements submitted in paper format and those submitted electronically, and would expressly provide that a statement electronically filed through the Commission's electronic filing system or an electronic filing system that has been approved by the Commission is an original statement.

In order to reduce duplicative filings and to improve staff efficiency, the proposed update would authorize public officials who hold multiple positions subject to filing requirements to file an expanded statement of economic interests for those positions, subject to specified conditions and requirements. The proposed update would also revise processes for certain specified officials' filing of statements to better comport those processes with the capabilities of approved electronic filing systems, and make other technical, non-substantive changes.

Background & Proposed Update

Section 81010 sets forth a filing officer's duties with respect to reports and statements required by the Act, including statements of economic interest, and requires the filing officer to: supply the necessary forms and manuals prescribed by the Commission (subdivision (a)), determine whether required documents have been filed and whether those documents conform on their face with the Act's requirements (subdivision (b)), notify persons who have failed to file as required by the Act (subdivision (c)), report apparent violations of the Act (subdivision (d)), and compile a current list of all filed reports and statements (subdivision (e)).

Adopt Regulations 18115, 18115.1, and 18115.2

Sections 87202 and 87203 govern the filing of statements of economic interests by certain specified public officials, including officials specified in Section 87200 (Section 87202(a) and Section 87203) and elected state officers (Section 87202(b)).

Section 87300 provides that every agency is required to adopt and promulgate a Conflict of Interest Code pursuant to the Act, a Conflict of Interest Code shall have the force of law, and a violation of a Conflict of Interest Code shall be deemed a violation of the Act. Section 87302 sets forth the required contents of a Conflict of Interest Code, and generally governs the filing of a designated employee's statements of economic interests (subdivision (b)). Section 87302.6, however, governs the filing of statements by a member of a board or commission of a newly formed agency.

Section 87500 sets forth processes for the filing of statements of economic interests by statewide elected officers, candidates for statewide elective office, members of the Legislature, members of certain specified State boards or commissions (including the Commission), certain specified high-level State agency officials, certain high-level county and city officials, and designated employees of the Legislature and other specified agencies, among others.

Pursuant to Section 81010, existing Regulation 18115 sets forth filing officers and filing officials' respective duties in regard to statements of economic interests. That regulation, however, only addresses filing officer and filing official duties with respect to statements filed in paper format and does not expressly address filing officer and filing official duties regarding the electronic filing of those statements.

In order to provide greater clarity as to the distinct filing officer and filing official duties applicable to a statement of economic interests submitted in paper format and a statement submitted electronically, the proposed update would:

- Repeal existing Regulation 18115 and add new Regulation 18115, which would set forth filing officer and filing official duties applicable to both statements filed in paper format and those filed electronically. New Regulation 18115 would incorporate the provisions of existing Regulation 18115 applicable to both types of statements and modify several of those provisions to improve compliance through greater clarity.
- In addition, to improve staff efficiency and accuracy in determining whether an agency's filers have fulfilled applicable filing obligations, new Regulation 18115 would require:
 - Filing officers to compile and maintain current lists of all statements required to be filed with the agency and all those actually filed (new Regulation 18115(a)(5)), and filing officials to compile and maintain current lists of all statements required to be forwarded to the filing officer and all those actually forwarded (new Regulation 18115(b)(4)).
 - Filing officials of agencies for which the Commission is the filing officer to update filer information within the Commission's electronic filing system, as well as the agency's

approved electronic filing system if any. (New Regulation 18115(b)(3).)

- The annual roster of the names and positions of every person whose statements are required to be forwarded to the filing officer to be submitted by the filing official to the filing officer by December 1, rather than the former deadline of February 1.
- Add new Regulation 18115.1, which would list filing officer and filing official duties regarding a statement filed in paper format.
- Add new Regulation 18115.2, which would list filing officer and filing official duties with respect to an electronically filed statement, and expressly provide in subdivision (c) that a statement filed electronically through the Commission’s electronic filing system or an approved electronic filing system is an original statement.

Adopt Regulation 18723.1

Sections 87202 through 87204 govern the filing of statements of economic interest by a public official whose position is specified in Section 87200 or a candidate for any office specified therein. Sections 87302, 87302.3, and 87302.6 govern the filing of statements by designated employees, candidates for any elective office designated in a conflict of interest code, and members of boards or commissions of newly created agencies, respectively. Regulation 18730 sets forth the provisions required to be included in an agency’s conflict of interest code, and footnote 1 of Regulation 18730(b)(3)(C) authorizes a designated employee required to file a statement under any other agency’s conflict of interest code, or under Article 2 of the Act for a different jurisdiction, to file an expanded statement covering reportable interests in both jurisdictions.

New Regulation 18723.1(a) would define “Expanded Statement of Economic Interests” and other terms for purposes of the regulation’s provisions, and would require an expanded statement to disclose all reportable interests for all jurisdictions and list all positions for which it is filed, except in limited circumstances discussed below.

To reduce redundant filing obligations which do not provide additional disclosure, new Regulation 18723.1(c) would authorize, but not require, an official who holds multiple positions subject to disclosure requirements to file an expanded statement for each position, rather than a separate and distinct statement for each position, and would specify processes for filing such a statement.

New Regulation 18723.1(c)(4) would only authorize an official who holds multiple positions to file an expanded assuming office statement for positions the official assumes on the same day, or an expanded leaving office statement for positions the official leaves on the same day. If the Commission’s electronic filing system or an agency’s approved electronic filing system is not capable of processing an expanded statement, new Regulation 18723.1(e) would require the expanded statement to be submitted in paper format. To improve filing official and staff efficiency, new Regulation 18723.1(f) would expressly provide that a redundant expanded statement need not be forwarded to the Commission.

During the September Commission meeting’s prenotice discussion of the proposed update, Commissioner Hatch suggested that an official that takes advantage of this new provision be required to list the various positions covered by the statement. Currently, the statement of economic interests form requires that an official filing for multiple positions list each position on the form, or an attachment, but the regulations do not explicitly require the listing of each position.

New Regulation 18723.1(a) has been updated to explicitly require an official who files an expanded statement of economic interests to list all positions for which the statement is submitted. However, under Regulation 18723.1(b), a statewide elected officer who holds multiple positions would not be required to list any additional positions on the officer’s expanded statement.¹ Statewide elected officers, who often serve on numerous boards, commissions, or other decision-making bodies, are generally well known for the statewide office. A member of the public looking for a statewide elected officer’s expanded statement can easily locate on the Commission’s website the officer’s statement for the statewide elected position, which provides full disclosure throughout the state.

Amend Regulation 18730

The proposed update would strike footnote 1 of Regulation 18730(b)(3)(C), as new Regulation 18723.1 is intended to be the sole provision governing the filing of an expanded statement by a public official who holds multiple positions subject to reporting requirements.

Amend Regulation 18732.5

Existing Regulation 18732.5 specifies the manner in which a statement of economic interests required to be filed with an abolished agency or a to-be-abolished agency shall be handled in regard to filing, processing, and retention. Subdivision (f) of that regulation requires any agency required to receive a statement under the regulation to perform all filing officer duties prescribed in existing Regulation 18115.

The proposed update would amend existing Regulation 18732.5(f) by revising the cross reference to Regulation 18115, instead referring to proposed new Regulations 18115, 18115.1, and 18115.2, collectively. The proposed update would also make other technical, non-substantive changes to existing Regulation 18732.5.

Amend Regulation 18735

Existing Regulation 18735(b) specifies the manner in which a designated employee who transfers to the position of board member, commissioner, head of an agency, executive director, or other chief executive officer within the same agency is required to file statements of economic interests after assuming office, and requires that former designated employee to amend his prior statement, as specified, rather than file both a leaving office statement for the former position and an assuming office statement for the new position. Approved electronic filing systems, however, are currently incapable of administering the filing process set forth in existing Regulation 18735(b).

¹ Statewide elected officials are not required to file statements for positions designated under Section 87300 because Section 82019(b)(1) provides that an “elected state officer,” including a “statewide elected officer,” is not a “designated employee.”

To resolve this problem, the proposed update would strike existing Regulation 18735(b) and replace it with new Regulation 18735(b), which would instead require such an official, who transfers from a designated position to a specified executive position within the same agency, to file both a leaving office statement and an assuming office statement under Sections 87202(a), 87204, or 87302(b) as applicable.

Existing Regulation 18735(e) authorizes a designated employee of the Legislature who holds a position with the same disclosure requirements as a member of the Legislature and who leaves that designated position to become a member of the Legislature to file an annual statement, as specified, in lieu of filing both a leaving office statement and an assuming office statement. Approved electronic filing systems, however, are currently incapable of administering the filing process set forth in existing Regulation 18735(e).

To address this issue, the proposed update would amend existing Regulation 18735(e) to instead require such an official, who leaves a specified designated position to become a member of the Legislature, to file a leaving office statement under Section 87302(b) and an assuming office statement under Section 87202. The proposed update would also require a member of the Legislature who leaves office and becomes a designated employee of the Legislature to file a leaving office statement pursuant to Section 87204 and an assuming office statement pursuant to Section 87302(b). Technical and non-substantive changes would also be made to existing Regulation 18735.

Amend Regulation 18754

Section 87302.6 requires a member of a board or commission of a newly created agency to file an assuming office statement of economic interests at the same time and in the same manner as a public official specified in Section 87200, as provided in Section 87202, and to file subsequent statements pursuant to Section 87302 once the agency adopts an approved Conflict of Interest Code.

Existing Regulation 18754 governs the filing of statements of economic interests by a member of a board or commission of a newly created agency under Section 87302.6, authorizes such a member's leaving office statement to serve as the member's annual statement in certain circumstances (subdivision (b)(3)(B)), and deems that such a member who completes a term of office and begins a term of the same office or another such office in the same jurisdiction does not assume or leave office for the purposes of filing statements (subdivision (b)(4)).

The proposed update would amend Regulation 18754 to align its provisions with the capabilities of approved electronic filing systems by instead requiring a member of a board or commission of a newly created agency to file statements pursuant to Sections 87202 through 87204 or Section 87302(b), as applicable.

Currently, the Commission interprets the provisions of Regulation 18754 to apply to both members of boards and commissions of newly created agencies (i.e., those subject to Section 87302.6) as well as members of newly created boards and commissions of existing agencies. In order to ensure this interpretation's consistency with the Act, proposed new Regulation 18754(b) would expressly apply the provisions of Regulation 18754 to members of newly created boards and commissions of existing agencies, except that such a member would be required to file an assuming office statement under Section 87302(b) rather than Section 87202.

Summary

The proposed update would overhaul Commission Regulations governing the filing of statements of economic interests to provide greater clarity and guidance; establish distinct processes for electronically filed statements; authorize the filing of expanded statements by public officials who hold multiple positions with filing obligations, subject to specified conditions; ensure Commission Regulations' provisions pertaining to statements align with the capabilities of approved electronic filing systems; and make other technical non-substantive changes. Staff will update the Instructions for Form 700 to comport with changes made by the proposed update and prepare a fact sheet explaining those changes and associated new processes if the Commission adopts the proposed update.

Attachments:

Proposed Repeal of Regulation 18115

Proposed Adoption of New Regulation 18115

Proposed Adoption of New Regulation 18115.1

Proposed Adoption of New Regulation 18115.2

Proposed Adoption of New Regulation 18723.1

Proposed Amendment of Regulation 18730

Proposed Amendment of Regulation 18732.5

Proposed Amendment of Regulation 18735

Proposed Amendment of Regulation 18754