

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18705. Legally Required Participation.**

(a) A public official who has a financial interest in a decision may establish that the official is legally required to make or to participate in the making of a governmental decision within the meaning of Section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, the official shall state the existence of the potential conflict as follows:

(1) The public official shall disclose the existence of the conflict and describe with particularity the nature of the economic interest. "Particularity" as used in this regulation shall be satisfied if the official discloses:

(A) whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans, or gifts;

(B) if the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact. For income, loans or gifts, the official shall disclose the person or entity that is the source.

(2) The public official or another officer or employee of the agency shall give a summary description of the circumstances under which the official believes the conflict may arise.

(3) Either the public official or another officer or employee of the agency shall disclose the legal basis for concluding that there is no alternative source of decision.

(4) The disclosures required by this regulation shall be made in the following manner:

(A) If the governmental decision is made during an open session of a public meeting, the disclosures shall be made orally before the decision is made, by either the public official or by another officer or employee of the agency. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

(B) If the governmental decision is made during a closed session of a public meeting, the disclosures shall be made orally during the open session either before the body goes into closed session or immediately after the closed session. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

(C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s)

shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Section 87100, whether or not such other members are actually present at the time of the disqualification.

(3) Require participation by the smallest number of officials with a conflict that are “legally required” in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, the official is selected for the duration of the proceedings in all related matters until the official's participation is no longer legally required, or the need for invoking the exception no longer exists.

(d) For purposes of this section, a “quorum” shall constitute the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the “quorum” shall be that minimum number of members needed for that adoption.

COMMENT: Nothing in the provisions of subsection (b)(4)(B) is intended to cause an agency or public official to reveal the confidences of a closed session contemplated by law. For example, under the Brown Act (Sections 54950 et seq.) a city council may enter a closed session to discuss personnel matters and need not publicly disclose the name of the employee who is the subject of the meeting. (Section 54957.) This regulation does not require a city council person who is

legally required to participate in that closed session to disclose that employee's name when the council member makes the record required by this regulation.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003 and 87101, Government Code.

### **HISTORY**

1. New section filed 1-24-78; effective thirtieth day thereafter (Register 78, No. 4).
2. Amendment filed 6-4-82; effective thirtieth day thereafter (Register 82, No. 23).
3. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
4. Editorial correction of History 3 (Register 2000, No. 25).
5. New subsection (b)(1) designator, repealer of subsection (c)(1), and subsection renumbering filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
6. Amendment filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).
7. Amendment of section heading and section filed 2-2-2015; operative 3-4-2015 pursuant to title 2, section 18312(e)(1) of the California Code of Regulations. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking

requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 6).

8. Change without regulatory effect renumbering former section 18705 to section 18702 and renumbering former section 18708 to section 18705, including amendment of section, filed 4-27-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18).

9. Amendment of subsections (a)-(b), (b)(2) and (c)(3) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).