

California Fair Political Practices Commission
MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda
From: Zackery P. Morazzini, General Counsel
William J. Lenkeit, Senior Commission Counsel
Re: Proposed Amendments to Conflicts of Interest Regulations
Date: August 13, 2012

Item number 26 on the agenda presents the first phase of staff's efforts to revise the Act's conflict of interest regulations. It is but one piece of the overall puzzle, and like all puzzle pieces it must be coordinated with the other pieces in order to fit. For that reason, while the proposed amendments are presented here for adoption, staff proposes that the Commission postpone the implementation of this regulation until some of the other pieces are developed and in place. This is especially relevant with respect to the interrelationship between materiality and foreseeability.

As the current proposed regulation stands, it may not be compatible with the current materiality standards. The second phase of this project will be to develop proposed amendments to the materiality regulations. Presently, it is staff's intent to flip the order of these two regulations so that the foreseeability regulation precedes the materiality regulation, as it seems that once the question of whether a financial effect will be material is examined, one has already determined that the financial effect is foreseeable. These two regulations will need to be synchronized

The only problem so far, based on public comment received, is that it may be necessary to add some clarifying language, or possible exceptions, to cover the way certain agencies do business. Specifically, one state agency has expressed concern over the "is a named party in" at line nine of the proposed regulation, as their proceedings identify "named parties" to include certain persons who are asked to provide comment on the action, without necessarily being involved in the action. There may be additionally concerns that need to be addressed after examining the materiality regulations.

Accordingly, staff's intent is to ask the Commission to adopt the proposed language set forth in subdivisions (a) and (b) on a tentative basis pending the drafting and approval of future related amendments. Staff will ask that subdivision (c) be adopted and implemented immediately, in order to rescind prior advice that "reasonably foreseeable means substantially likely" and to establish the Commission position that a financial effect need not be likely to be reasonably foreseeable. In addition, staff will ask that Regulation 18706.1 also be implemented immediately, as it is just a renumbering from current Regulation 18706(c).