

**ITEM 6**  
**ADOPTION OF COMMISSION ORDER TO ADOPT PROPOSED**  
**REGULATORY ACTION**  
**AMENDMENTS TO CONFLICT OF INTEREST CODE**

PROPOSED AMENDMENTS TO  
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5  
ARTICLE 9  
SECTION 1189.10

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In the Matter of:  
Amendments to California Code of  
Regulations, Title 2, Division 2, Chapter 2.5,  
Article 9, Section 1189.10

No. 22-01  
ORDER TO INITIATE RULEMAKING  
PROCEEDINGS  
*Amendments to Conflict of Interest Code*

Pursuant to California Code of Regulations, title 2, section 1188.1, the Commission on State Mandates (Commission) hereby adopts this order to institute rulemaking proceedings in accordance with Government Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

**PROPOSED REGULATORY ACTION.** The Commission proposes revisions in section 1189.10 of the California Code of Regulations, Title 2, Division 2, Chapter 2.5, Article 9.

The purpose of this rulemaking is to update the Commission’s conflict of interest code to: (1) add, delete, and revise designated positions and specify disclosure categories for those positions in order to reflect changes to the Commission’s workforce and assigned duties; (2) clarify the statement of economic interest (Form 700) filing obligations of Commission members and designees; and (3) add a new disclosure category (Category 4), which lists the economic interests in any source which contracts with the Commission for the provision of goods and which must be reported by any designated position subject to this category

**AUTHORITY AND REFERENCE.** Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations and Government code section 87306 authorizes the Commission to amend its conflict-of-interest code.

**WRITTEN COMMENT PERIOD.** Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on May 23, 2022**. The Commission will consider only comments received at the Commission’s office by that time. Commenters are strongly encouraged to submit their written comments electronically if possible (to prevent the spread of COVID-19) via the Commission website “dropbox” at: <https://www.csm.ca.gov/dropbox.php>. Written comments may also be submitted to:

Jill Magee, Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Phone: (916) 323-3562

**PUBLIC HEARING.** The Commission will hold a hearing on May 27, 2022, if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than May 9, 2022.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Heather Halsey, Executive Director

**CALIFORNIA CODE OF REGULATIONS**

**TITLE 2. ADMINISTRATION**

**DIVISION 2. FINANCIAL OPERATIONS**

**CHAPTER 2.5. COMMISSION ON STATE MANDATES**

**Article 9. Conflict-of-Interest Code for the Commission on State Mandates**

**§ 1189.10. General Provisions.**

The Political Reform Act (Government Code Sections 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict-of-interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency’s code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix, designating positions and establishing disclosure categories shall constitute the conflict-of-interest code of the Commission on State Mandates (Commission).

Individuals holding designated positions shall file their statements of economic interests with the Commission, which will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) Upon receipt of the statements for the Commission members, their alternates, and the Executive Director, the Commission shall make and retain a copy and forward the originals to the Fair Political Practices Commission. All other statements will be retained by the Commission.

Note: Authority cited: Sections 87300, 87301, 87302, 87304 and 87306, Government Code.  
Reference: Sections 81008, 82019, 87206, 87207, 87300, 87301, 87302, 87304 and 87306, Government Code.

**Appendix**

<i>Designated Positions</i>	<i>Disclosure Categories</i>
Members and alternates of the Commission on State Mandates	1
Executive Director	1
Chief Legal Counsel (Career Executive Assignment)	1
<u>Attorney III</u>	<u>1</u>
Attorney ( <u>All Levels</u> )	1
Senior Legal Analyst	2, 3
Staff Services Manager I, II	2, 3
Staff Services Analyst	2, 3
Associate Governmental Program Analyst	2, 3
<u>Associate Budget Analyst</u>	<u>2, 3</u>
Graduate Legal Assistant	1
<u>Information Technology Specialist (All Levels)</u>	<u>2</u>

1	<del>Senior Information Systems Analyst</del>	<del>2</del>
2	<del>Staff Information Systems Analyst</del>	<del>2</del>
3	<u>Office Technician</u>	4
4	Consultants/New Positions*	

5 *Disclosure Categories*

6 Category 1 designated positions must disclose all investments, and business positions in business  
7 entities, interests in real property, and income, including gifts, loans, and travel payments, from  
8 any source.

9 Category 2 designated positions shall report all investments, business positions in any business  
10 entity, interests in real property, and income, including gifts, loans, and travel payments, from  
11 any source of the type which has contracted, or in the future may contract, with the Commission  
12 to provide services, supplies, materials, machinery or equipment.

13 Category 3 designated positions shall report all business positions and income, including gifts,  
14 loans, and travel payments, from any school district, local governmental agency or special  
15 district which has received, or in the future may receive, state reimbursement under article XIII  
16 B, section 6 of the California Constitution.

17 Category 4 designated positions shall report all investments, business positions in any business  
18 entity, and income, including gifts, loans, and travel payments, from any source of the type  
19 which has contracted, or in the future may contract, with the Commission to provide supplies,  
20 materials, machinery or equipment.

21 \*Consultants and new positions shall be included in the list of designated positions and shall  
22 disclose pursuant to the broadest disclosure category in the code, subject to the following  
23 limitation:

24 The executive director may determine in writing that a particular consultant or new position,  
25 although a "designated position," is hired to perform a range of duties that is limited in scope and  
26 thus is not required to fully comply with the disclosure requirements in this section. Such written  
27 determination shall include a description of the consultant's or new position's duties and, based  
28 upon that description, a statement of the extent of disclosure requirements. The executive  
29 director's determination is a public record and shall be retained for public inspection in the same  
30 manner and location as this conflict-of-interest code. (Gov. Code § 81008.)

31 Members of the Commission on State Mandates

32 Elected state officers (State Treasurer and State Controller), and the Director of Finance who  
33 serve on the Commission on State Mandates are not required to file a statement of economic  
34 interests under this conflict-of-interest code. Elected state officers are excepted from filing under  
35 Government Code Section 82019, and the Director of Finance is excepted from filing under  
36 California Code of Regulations, Title 2, Section 18730(b)(3). However, all other members and  
37 all designees must file a statement of economic interests under this conflict-of-interest code with  
38 the Commission.

TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 2.5. COMMISSION ON STATE MANDATES

**NOTICE OF INTENTION TO AMEND CONFLICT OF INTEREST CODE  
OF THE COMMISSION ON STATE MANDATES**

NOTICE IS HEREBY GIVEN that the Commission on State Mandates (Commission), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict of interest code.

The Commission proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Commission has not scheduled a public hearing for this proposed action. However, if it receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period by May 9, 2022, the Commission will conduct a public hearing on this proposed action on May 27, 2022, and will notify all persons of the date, time, and location of the hearing pursuant to Government Code section 11346.8(a).

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period opens upon publication in the Notice Register on **April 8, 2022 and closes at 5:00 p.m. on May 23, 2022**. The Commission will consider only comments received at the Commission offices by that time. Commenters are strongly encouraged to submit their written comments electronically if possible (to prevent the spread of COVID-19) via the Commission website “dropbox” at: <https://www.csm.ca.gov/dropbox.php>. Written comments and all inquiries may also be submitted to:

Jill Magee, Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Phone: (916) 323-3562

**AUTHORITY AND REFERENCE**

Authority: Government Code sections 17527(g), 87306. Reference: Government Code sections 11123, 11346.4, 11347, 11347.1, and 17500 et seq.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Commission on State Mandates (Commission) is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving county applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6).

The Political Reform Act (Gov. Code, §81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes that specify financial disclosure categories for officials and employees who participate in governmental decision-making.

The Commission proposes to amend its conflict of interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of law and no other alternative would do so and be less burdensome to affected persons.

The purpose of this rulemaking is to update the Commission's conflict of interest code to add, delete, and revise designated positions and specify disclosure categories for those positions in order to reflect changes to the Commission's workforce and assigned duties; clarify the statement of economic interest (Form 700) filing obligations of Commission members and designees; and add a new disclosure category (Category 4), which lists the economic interests in any source which contracts with the Commission for the provision of goods and which must be reported by any designated position subject to this category. The Commission has prepared a written explanation of the reasons for the new and amended designated positions and disclosure categories (Initial Statement of Reasons), which is included in the rulemaking package. The Commission proposes amending the Appendix to Section 1189.10 in Article 9 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5.

#### Anticipated Benefits of the Proposed Regulation

Accurately reflecting the disclosure obligations of Commission members and designees, employees, and consultants increases the Commission's transparency and accountability to the public. Adding a new disclosure category ensures the appropriate degree of disclosure while also protecting the right to privacy of Commission officials and employees.

#### Consistency and Compatibility with Existing State Regulations

After conducting a review of existing regulations, the Commission has concluded that California Code of Regulations, title 2, sections 1189.10 and 1189.11 are the only regulations concerning the Commission's conflict of interest code. Therefore, the proposed regulations are consistent and compatible with existing state regulations.

### **DESCRIPTION OF PROPOSED REGULATIONS**

#### **I. Add, Delete, and Revise Designated Positions in the Appendix to the Conflict of Interest Code in Section 1189.10.**

##### Section 1189.10. General Provisions and Appendix of the Conflict of Interest Code.

##### *Specific Purpose of the Regulation*

Section 1189.10 of the regulations contains the general provisions of the Commission's Conflict of Interest Code and an appendix. The appendix identifies the Commission member, designee, employee, and consultant positions required to file statements of economic interest with the FPPC and establishes disclosure categories for each position.

The proposed amendments add, delete, and revise designated positions and specify disclosure categories for those positions in order to reflect changes to the Commission's workforce and assigned duties, as required by Government Code sections 87302 and 87306(a).

Revise Attorney Positions. In January 2020, the Commission reclassified one of its Attorney III positions as an Attorney IV position. The Attorney IV makes and participates in making decisions which foreseeably have a material effect on economic interests and is therefore required to file a statement of economic interest with FPPC. The Attorney IV is assigned to the broadest disclosure category (Category 1).

Because all positions within the Attorney classification are subject to the broadest disclosure category (Category 1), it is appropriate to consolidate the Attorney I, Attorney III, and Attorney IV positions into one designated position listing in the appendix as “Attorney (All Levels).”

Add Associate Budget Analyst. The Associate Budget Analyst is a newly-created position, with duties similar to, but more specialized than, the Associate Governmental Program Analyst – Procurement. This position is added as a designated position with disclosure categories that are the same as for the Associate Governmental Program Analyst (Categories 2 and 3), based on the assigned duties.

Replace Information Systems Analyst with Information Technology Specialist. The Information Systems Analyst classifications (Senior Information Systems Analyst, Staff Information Systems Analyst) were abolished and replaced with the Information Technology Specialist classifications. The Information Technology Specialist maintains the same duties as the Information Systems Analyst, including IT procurement duties. Additionally, the Commission will have more than one level of this classification on Commission staff and performing IT procurement duties. Therefore, it is appropriate for all levels of the Information Technology Specialist to have the same disclosure category (Category 2) as the former Information Systems Analyst position.

Add Office Technician. The Office Technician position is added as a designated position because the Office Technician participates in making decisions on behalf of the Commission pertaining to the procurement of goods. While an office technician typically does not perform job duties that require making or participating in making governmental decisions, the Commission’s small size and organizational structure require the Office Technician to participate in decision-making pertaining to the procurement of goods on behalf of the Commission. Specifically, the Office Technician has been assigned the role of “Purchase Order Receiving Processor” in the Financial Information System for California (FI\$Cal).

The Office Technician is assigned to Category 4, which is proposed to be added to the Commission’s disclosure categories as part of these amendments.

### *Proposed Changes*

Attorney III is deleted and Attorney is revised to specify that the designated position includes all levels.

Associate Budget Analyst is added as a designated position with assigned disclosure categories 2 and 3.

The Senior Information Systems Analyst and Staff Information Systems Analyst are deleted and replaced with Information Technology Specialist (all levels) with assigned disclosure category 2.

Office Technician is added as a designated position with assigned disclosure category 4.

### *Necessity and Anticipated Benefits*

The proposed amendments are necessary to reflect changes to State employee classifications and to the Commission staffing to accurately reflect those positions that make or participate in the making of governmental decisions, as required by Government Code sections 87302 and 87306(a).

**II. Clarify the Form 700 Filing Obligations of Commission Members and Designees in Section 1189.10.**

Section 1189.10. General Provisions and Appendix of the Conflict of Interest Code.

*Specific Purpose of the Regulation*

The purpose of the proposed amendments is to clarify the statement of economic interest (Form 700) filing obligations of Commission members and their designees. The Commission's conflict of interest code lists all members and alternates as designated positions and assigns disclosure category 1 (the Commission's broadest disclosure category). The Commission is made up of seven members, including the Treasurer and Controller.<sup>1</sup> Because the Treasurer and Controller are elected officers and file the Form 700 directly with the FPPC, they are not required to file under the Commission's conflict of interest code. Similarly, California Code of Regulations, section 18730(b)(3) exempts the Director of Finance from filing a statement of economic interest under the Commission's conflict of interest code. The proposed amendments also clarify that all other Commission members and all member designees are required to file a Form 700 with the Commission under its conflict of interest code.

*Proposed Changes*

The proposed amendments add the following explanation to the appendix to section 1189.10:

Members of the Commission on State Mandates

Elected state officers (State Treasurer and State Controller), and the Director of Finance who serve on the Commission on State Mandates are not required to file a statement of economic interests under this conflict-of-interest code. Elected state officers are excepted from filing under Government Code Section 82019, and the Director of Finance is excepted from filing under California Code of Regulations, Title 2, Section 18730(b)(3). However, all other members and all designees must file a statement of economic interests under this conflict-of-interest code with the Commission.

*Necessity and Anticipated Benefits*

The proposed amendments are necessary to make clear which Commission members are and are not required to file statements of economic interest under the Commission's conflict of interest code.

**III. Add Disclosure Category 4 to Section 1189.10.**

Section 1189.10. General Provisions and Appendix of the Conflict of Interest Code.

*Specific Purpose of the Regulation*

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<sup>1</sup> Government Code section 17525(a).



The proposed amendment adds a new disclosure category (Category 4), which lists the economic interests in any source which contracts with the Commission for the provision of goods and which must be reported by any designated position subject to this category. Because the Office Technician participates in making procurement decisions on behalf of the Commission which pertain to goods only, it is necessary to add a disclosure category that is similar to Category 2 but that does not include economic interests in sources that provide services to the Commission or require disclosure of interests in real property.

*Proposed Changes*

The proposed amendment adds Category 4 to the list of disclosure categories in the conflict of interest code appendix. Category 4 is identical to Category 2, with two exceptions: (1) interests in real property are *not* included; and (2) source type does *not* include services. The proposed text reads as follows:

Category 4 designated positions shall report all investments, business positions in any business entity, and income, including gifts, loans, and travel payments, from any source of the type which has contracted, or in the future may contract, with the Commission to provide supplies, materials, machinery or equipment.

*Necessity and Anticipated Benefits*

The proposed amendment is necessary to reflect the economic interests that must be disclosed by the Office Technician position, a newly designated position, as required by Government Code sections 87302 and 87306(a).

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED ON TO DEVELOP REGULATIONS**

Commission staff did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of this regulation. The Commission relied upon the statutes and cases cited in the authority and reference sections of the regulation.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Commission has made the following initial determinations:

Mandate on local agencies and school district:	None
Cost or savings to any state agency:	None
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:	None
Other non-discretionary cost or savings imposed on local agencies:	None
Cost or savings in federal funding to the state:	None
Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:	None
Significant effect on housing costs:	None

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### Results of the Economic Impact Analysis/Assessment

The Commission concludes that the proposal will: (1) not create or eliminate jobs within California; (2) not create new businesses or eliminate existing businesses within California; and (3) not affect the expansion of businesses currently doing business within California.

#### Small Business Determination

Because the Commission has no jurisdiction over small businesses and small businesses are not parties before the Commission, the proposed regulatory action will have no impact on small businesses.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13) and California Code of Regulations, title 2, section 18750(a)(3)(B), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Jill Magee, Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Telephone: (916) 323-3562  
(jill.magee@csm.ca.gov)

The backup contact person for these inquiries is:

Heidi Palchik, Assistant Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Telephone: (916) 323-3562  
(heidi.palchik@csm.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information on which the rulemaking is based to Ms. Jill Magee (see contact information above) or download these documents from the Commission's website at <https://csm.ca.gov/rulemaking.php>.

**AVAILABILITY OF STATEMENT OF REASONS,  
AND TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process on the Commission's website and at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings.

Copies may be obtained on the Commission's website (see below) or by contacting Ms. Jill Magee (see contact information above). All persons on the Commission's interested persons mailing list will be provided a copy of the rulemaking file by making it available on the Commission's website and providing notice of how to locate it.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT AND  
DOCUMENTS RELIED ON**

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) and any documents relied on available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations or documents relied on to the attention of Ms. Jill Magee (see contact information above) or download them from the rulemaking page on the Commission's website. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Intention to Amend Conflict of Interest Code, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Commission's website at <https://csm.ca.gov/rulemaking.php>.

**INITIAL STATEMENT OF REASONS**  
**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 2. ADMINISTRATION**  
**DIVISION 2. FINANCIAL OPERATIONS**  
**CHAPTER 2.5. COMMISSION ON STATE MANDATES**  
**AMENDMENTS TO CONFLICT OF INTEREST CODE**  
**ARTICLE 9**  
**SECTION 1189.10 GENERAL PROVISIONS AND APPENDIX**  
**SPECIFIC PURPOSE OF THE REGULATION**

The Commission on State Mandates (Commission) is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving county applications for a finding of significant financial distress. (Welf. & Inst. Code, § 17000.6.)

The Political Reform Act (Gov. Code, § 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes that specify financial disclosure categories for officials and employees who participate in governmental decision-making. A conflict of interest code includes an appendix that: (1) designates those positions within the agency “which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest” and that are therefore required to file a statement of economic interest with the Fair Political Practices Commission (FPPC); and (2) establishes the categories of economic interests to be disclosed for each position. (Gov. Code, § 87302.) The FPPC’s regulations contain a standard conflict of interest code, which state agencies can incorporate by reference into their own regulations. (Cal. Code Regs., tit. 2, § 18730.) The Commission has adopted the FPPC’s standard conflict of interest code as its own under section 1189.10 of the Commission’s regulations, along with an appendix, which enumerates the designated member, employee, and consultant positions and establishes disclosure categories.

The purpose of this rulemaking is to update the Commission’s conflict of interest code to add, delete, and revise designated positions and specify disclosure categories for those positions in order to reflect changes to the State’s employee classifications and the Commission’s workforce and assigned duties; clarify the statement of economic interest (Form 700) filing obligations of Commission members and designees; and add a new disclosure category (Category 4), which lists the economic interests in any source which contracts with the Commission for the provision of goods and which must be reported by any designated position subject to this category.

Therefore, the Commission proposes amending section 1189.10 and Appendix of the California Code of Regulations, Division 2, Title 2, Chapter 2.5, Article 9.

**I. Add, Delete, and Revise Designated Positions in the Appendix to the Conflict of Interest Code in Section 1189.10.**

Section 1189.10. General Provisions and Appendix of the Conflict of Interest Code.

*Specific Purpose of the Regulation*

Section 1189.10 of the regulations contains the general provisions of the Commission’s Conflict of Interest Code and an appendix. The appendix identifies the Commission member, designee, employee, and consultant positions required to file statements of economic interest with the FPPC and establishes disclosure categories for each position.

The proposed amendments add, delete, and revise designated positions and specify disclosure categories for those positions in order to reflect changes to the Commission’s workforce and assigned duties, as required by Government Code sections 87302 and 87306(a).<sup>1</sup>

Revise Attorney Positions. In January 2020, the Commission reclassified one of its Attorney III positions as an Attorney IV position. An employee holding the Attorney IV position makes and participates in making decisions which foreseeably have a material effect on economic interests and is therefore required to file a statement of economic interest with FPPC. The Attorney IV is assigned to the broadest disclosure category, Category 1, which states as follows:

Category 1 designated positions must disclose all investments, and business positions in business entities, interests in real property, and income, including gifts, loans, and travel payments, from any source.

The Attorney IV reports to the Chief Legal Counsel and may be relied upon to directly advise the Executive Director and the Commission and to act as Chief Legal Counsel in the Chief Legal Counsel’s absence. The Attorney IV is responsible for the most complex and sensitive legal work for the Commission and may serve in a lead capacity in assigned project areas, reviewing the work product of other attorneys and providing training and consultation to Commission staff, as well as staff of state and local government agencies. Given the breadth of the Attorney IV job duties, full disclosure of personal financial interests is necessary.

Because all positions within the Attorney classification are subject to disclosure category 1, it is appropriate to consolidate the Attorney I, Attorney III, and Attorney IV positions into one designated position listing in the appendix as “Attorney (All Levels).”

Add Associate Budget Analyst. The Associate Budget Analyst is a newly-created position, with duties similar to, but more specialized than, the Associate Governmental Program Analyst – Procurement. This position is being designated with the same disclosure categories as for the Associate Governmental Program Analyst (Categories 2 and 3), based on the assigned duties.

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<sup>1</sup> Government Code section 87302 requires that each position within an agency, other than those specified in section 87200, that involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest, be designated in the agency’s conflict of interest code and that the specific types of financial interests that each position must report be similarly enumerated. Government Code section 87306 requires an agency to amend its conflict of interest code when change is necessitated by changed circumstances, including the creation of new positions which must be designated in the conflict of interest code and relevant changes to the duties assigned to existing positions.

Replace Information Systems Analyst with Information Technology Specialist. The Information Systems Analyst classification (Senior Information Systems Analyst, Staff Information Systems Analyst) was abolished and replaced with the Information Technology Specialist classification. The Information Technology Specialist maintains the same duties as the Information Systems Analyst, including IT procurement. Additionally the Commission will have more than one level of this classification. Therefore, it is appropriate for all levels of the Information Technology Specialist to have the same disclosure category (Category 2) as the former Information Systems Analyst classification.

Add Office Technician. The Office Technician position is added as a designated position because the Office Technician participates in making decisions on behalf of the Commission pertaining to the procurement of goods. While an office technician typically does not perform job duties that require making or participating in making governmental decisions, the Commission's small size and organizational structure require the Office Technician to participate in decision-making pertaining to the procurement of goods on behalf of the Commission. Specifically, the Office Technician has been assigned the role of "Purchase Order Receiving Processor" in the Financial Information System for California (FI\$Cal).

The Office Technician is assigned to Category 4. Category 4, which is proposed to be added to the Commission's disclosure categories as part of these amendments, reads as follows:

Category 4 designated positions shall report all investments, business positions in any business entity, and income, including gifts, loans, and travel payments, from any source of the type which has contracted, or in the future may contract, with the Commission to provide supplies, materials, machinery or equipment.

The Office Technician reports to the Assistant Executive Director (Staff Services Manager II) and participates in the determination of whether contracts for goods received by the Commission have been satisfied by receipting all purchased goods (i.e., receiving, inspecting, and returning items, preparing a written inventory of the number and condition of items received to determine whether the contract has been satisfactorily fulfilled) and creating receipts in FI\$Cal.

#### *Proposed Changes*

Attorney III is deleted and Attorney is revised to specify that the designated position includes all levels.

Associate Budget Analyst is added as a designated position with assigned disclosure categories 2 and 3.

The Senior Information Systems Analyst and Staff Information Systems Analyst are deleted and replaced with Information Technology Specialist (all levels) with assigned disclosure category 2.

Office Technician is added as a designated position with assigned disclosure category 4.

#### *Necessity and Anticipated Benefits*

The proposed amendments are necessary to reflect changes to the Commission staff and to accurately reflect those positions that make or participate in the making of governmental decisions, as required by Government Code sections 87302 and 87306(a).

## **II. Clarify the Form 700 Filing Obligations of Commission Members and Designees in Section 1189.10.**

### Section 1189.10. General Provisions and Appendix of the Conflict of Interest Code.

#### *Specific Purpose of the Regulation*

Section 1189.10 of the regulations contains the general provisions of the Commission's conflict of interest code and an appendix. The appendix identifies the Commission member, designee, employee, and consultant positions required to file statements of economic interest with the FPPC and establishes disclosure categories for each position.

The purpose of the proposed amendments is to clarify the statement of economic interest (Form 700) filing obligations of Commission members and their designees. The Commission's conflict of interest code lists all members and alternates as designated positions and assigns disclosure category 1 (the Commission's broadest disclosure category). The Commission is made up of seven members, including the Treasurer and Controller.<sup>2</sup> Because the Treasurer and Controller are elected officers and file the Form 700 directly with the FPPC, they are not required to file under the Commission's conflict of interest code. Similarly, California Code of Regulations, Section 18730(b)(3) exempts the Director of Finance from filing a statement of economic interest under the Commission's conflict of interest code. The proposed amendments also clarify that all other Commission members and all member designees are required to file a Form 700 with the Commission under its conflict of interest code.

#### *Proposed Changes*

The proposed amendments add the following explanation to the appendix to section 1189.10:

#### Members of the Commission on State Mandates

Elected state officers (State Treasurer and State Controller), and the Director of Finance who serve on the Commission on State Mandates are not required to file a statement of economic interests under this conflict-of-interest code. Elected state officers are excepted from filing under Government Code Section 82019, and the Director of Finance is excepted from filing under California Code of Regulations, Title 2, Section 18730(b)(3). However, all other members and all designees must file a statement of economic interests under this conflict-of-interest code with the Commission.

#### *Necessity and Anticipated Benefits*

The proposed amendments are necessary to make clear which Commission members are and are not required to file statements of economic interest under the Commission's conflict of interest code.

## **III. Add Disclosure Category 4 to Section 1189.10.**

### Section 1189.10. General Provisions and Appendix of the Conflict of Interest Code.

#### *Specific Purpose of the Regulation*

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<sup>2</sup> Government Code section 17525(a).

Section 1189.10 of the regulations contains the general provisions of the Commission's conflict of interest code and an appendix. The appendix identifies the Commission member, designee, employee, and consultant positions required to file statements of economic interest with the FPPC and establishes disclosure categories for each position.

The proposed amendment adds a new disclosure category (Category 4), which lists the economic interests in any source which contracts with the Commission for the provision of goods and which must be reported by any designated position subject to this category. Because the Office Technician participates in making procurement decisions on behalf of the Commission which pertain to goods only, it is necessary to add a disclosure category that is similar to Category 2 but that does not include economic interests in sources that provide services to the Commission or require disclosure of interests in real property.

#### *Proposed Changes*

The proposed amendment adds Category 4 to the list of disclosure categories in the conflict of interest code appendix. Category 4 is identical to Category 2, with two exceptions: (1) interests in real property are *not* included; and (2) source type does *not* include services. The proposed text reads as follows:

Category 4 designated positions shall report all investments, business positions in any business entity, and income, including gifts, loans, and travel payments, from any source of the type which has contracted, or in the future may contract, with the Commission to provide supplies, materials, machinery or equipment.

#### *Necessity and Anticipated Benefits*

The proposed amendment is necessary to reflect the economic interests that must be disclosed by the Office Technician position, a newly designated position, as required by Government Code sections 87302 and 87306(a).

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON TO DEVELOP REGULATIONS**

Commission staff did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of this regulation. The Commission relied upon the statutes and cases cited in the authority and reference sections of the regulation.

#### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

##### Creation or Elimination of Jobs within the State of California

The regulation is designed to update the Commission's list of designated positions, clarify the filing obligations of Commission members and designees, and add a disclosure category (Category 4). No jobs in California will be created or eliminated as a result of this regulation.

##### Creation of New or Elimination of Existing Businesses within the State of California

The Commission has no jurisdiction over small or any other businesses and businesses are not parties before the Commission. Therefore, no new businesses in California will be created or existing businesses eliminated.

##### Expansion of Businesses or Elimination of Existing Businesses within the State of California



The Commission has no jurisdiction over small or any other businesses and businesses are not parties before the Commission. Therefore, no existing businesses in California will be expanded or eliminated.

### Benefits of the Regulations

The regulations are designed to update the list of Commission positions required to file statements of economic interests and clarify which Commission members are exempt from filing under the Commission's conflict of interest code. By accurately reflecting all Commission positions that make or participate in making decisions which foreseeably have a material effect on economic interests and which must file statements of economic interest with FPPC, the regulations will increase the Commission's transparency and accountability to the public. By adding a disclosure category, the regulations will ensure that the Commission's disclosure categories are narrowly tailored to ensure the appropriate degree of disclosure while also protecting the right to privacy of Commission officials and employees.

### **REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives have been presented to or considered by the Commission.

### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL OR OTHER BUSINESSES**

The Commission has no jurisdiction over small or any other businesses and businesses are not parties before the Commission. Therefore, there is no adverse impact on small or other businesses.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

There are no businesses that are parties or interested parties in matters before the Commission.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

In the Matter of:  
Amendments to California Code of  
Regulations, Title 2, Division 2, Chapter 2.5,  
Article 9, Section 1189.10

Rulemaking No. 22-01  
ORDER TO ADOPT PROPOSED  
REGULATORY ACTION  
*Amendments to Conflict of Interest Code*

On July 22, 2022, at a duly noticed public hearing, the Commission on State Mandates (Commission) adopted the proposed regulatory action after close of the public comment period.

PROPOSED REGULATORY ACTION. The Commission proposes revisions to section 1189.10 of the California Code of Regulations, Title 2, Division 2, Chapter 2.5, Article 9 with a proposed effective date of 30 days following endorsement by the Secretary of State.

The purpose of this rulemaking is to update the Commission’s conflict of interest code to: (1) add, delete, and revise designated positions and specify disclosure categories for those positions in order to reflect changes to the Commission’s workforce and assigned duties; (2) clarify the statement of economic interest (Form 700) filing obligations of Commission members and designees; and (3) add a new disclosure category (Category 4), which lists the economic interests in any source which contracts with the Commission for the provision of goods and which must be reported by any designated position subject to this category.

AUTHORITY AND REFERENCE. Government Code section 17527(g) authorizes the Commission to adopt the proposed regulations and Government code section 87306 authorizes the Commission to amend its conflict of interest code.

Date: \_\_\_\_\_ By: \_\_\_\_\_

Heather Halsey, Executive Director