



Conflicts

Special Issues for Workforce Development Boards

Applicable Sources of Law on Conflicts

- ▶ Government Code section 1090, *et seq.*
 - ▶ Applies only to decisions about government contracts. Does not apply if no compensation or other consideration.
- ▶ The Political Reform Act, Government Code section 87100, *et seq.*
 - ▶ Applies to all governmental decisions in which an official has reason to know they have a financial interest.
 - ▶ Title 2, Division 6, Sections 18700-18720 of the California Code of Regulations apply and are a useful source of guidance.
- ▶ Case law
- ▶ Opinions of the Attorney General
- ▶ Opinions of the Fair Political Practices Commission
- ▶ The law is complex and comprehensive

Who Is Subject to These Rules?

- ▶ All members of the Workforce Development Board.
 - ▶ Government Code section 1090, subdivision (a): “. . . county . . . officers or employees”
 - ▶ Government Code section 87100: “A public official at any level of state or local government”

What happens if the rules are violated?

- ▶ Possible jail time. (Gov. Code, §§ 1097, 91000, subd. (a).)
- ▶ Criminal fines. (Gov. Code, §§ 1097, 91000, subd. (b).)
- ▶ Permanent disqualification from office. (Gov. Code, §§ 1097, 91002.)
- ▶ Civil penalties. (Gov. Code, § 91004.)
- ▶ Contracts are void. (Gov. Code, § 1092.)
- ▶ Other actions are voidable. (Gov. Code, § 91003.)
- ▶ Don't do it.

What to do in the Case of a Potential Conflict

- ▶ When in doubt, ask.
- ▶ Contact County Counsel as soon as you are aware of the potential conflict
 - ▶ Andrew C. Hamilton, (661) 868-3815, ahamilton@kerncounty.com
 - ▶ Research takes time
- ▶ California law allows you to request advice on conflicts directly from the Fair Political Practices Commission: <https://www.fppc.ca.gov/contact-us/advice/>. (Gov. Code, §§ 1097.1, subd. (c)(2), 83114.)
- ▶ Do not wait until the vote. It is already too late; you will already have violated the law by participating in the discussion.

Government Code section 1090

Concerning Contracts

The General Rule of Government Code section 1090

- ▶ The general rule is that “. . . county . . . officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall . . . county . . . officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity” (Gov. Code, § 1090, subd. (a).)
- ▶ The term “financially interested” is defined broadly and includes direct and indirect interests, so long as the board member is connected to the contract.

Special Rule for Workforce Development Boards (Gov. Code, § 1091.2)

- ▶ If
 - ▶ the contract or grant **directly** relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents,
- ▶ Then
 - ▶ the member must recuse themselves from the discussion and vote.
- ▶ If you do not follow this procedure, then the general rule of Section 1090 applies.

The Political Reform Act

Concerning all governmental decisions

The General Rule of the Political Reform Act (“PRA”)

- ▶ “A public official has a disqualifying financial interest if the decision will have a **reasonably foreseeable material financial effect, distinguishable from the effect on the public generally**, directly on the official, or the official’s immediate family, or on any financial interest” (Cal. Code Regs., tit. 2, § 18700, subd. (a).)

What is a “financial interest” under the PRA?

- ▶ A **business entity (other than a nonprofit)** in which the member has a **direct or indirect investment worth \$2,000 or more** (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- ▶ Real property in which the member has an interest worth \$2,000 or more. (Section 87103(b).)
- ▶ A **source of income** (including a nonprofit) totaling \$500 or more in value provided or promised to, or received by, the member within the 12 months prior to the time when the decision is made. (Section 87103(c).)
- ▶ A giver of a gift or gifts totaling \$500 or more in value provided or promised to, or received by, the member within the 12 months prior to the time when the decision is made. (Section 87103(e).)
- ▶ The member’s personal finances and those of “immediate family,” defined in Section 82029 as the spouse and dependent children. (Section 87103.)

What is reasonably foreseeable?

- ▶ “In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.”
(Cal. Code Regs., tit. 2, § 18701, subd. (b).)
- ▶ This standard is to be read broadly.

What is a material effect on a financial interest in a business?

- ▶ Official has a financial interest in a business that is “a named party in, or the subject of, the decision” (Cal. Code Regs., tit. 2, § 18702.1, subd. (a)(1).)
- ▶ “The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than:” \$1,000,000 or 5% of gross revenue. (Cal. Code Regs., tit. 2, § 18702.1, subd. (a)(2).)
- ▶ “The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:” \$250,000 or 1% of the entity's annual gross revenues. (Cal. Code Regs., tit. 2, § 18702.1, subd. (a)(3).)
- ▶ The entity owns property that is the subject of the decision.

What is a material effect on a financial interest in a source of income?

- ▶ “The source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party.” (Cal. Code Regs., tit. 2, § 18702.3, subd. (a)(1).)
- ▶ “The source is a nonprofit organization and . . . [t]he decision may result in an increase or decrease of the organization's annual gross receipts” of more than \$1,000,000 or 5% of gross revenue. (Cal. Code Regs., tit. 2, § 18702.3, subd. (a)(3).)
- ▶ “The source is a nonprofit organization and” \$250,000 or 1% of the entity's annual gross revenues. (Cal. Code Regs., tit. 2, § 18702.1, subd. (a)(3).)
- ▶ “Under Regulation 18703(e)(7), an official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on the official.” Cal. Code Regs., tit. 2, § 18702.3



Particular Scenarios and Pitfalls

What industry professionals should be thinking about while serving on the Workforce Development Board

The vote relates to a *contract* with an entity that you represent (profit, nonprofit, or governmental)

- ▶ You are disqualified under section 1090 if the grant or contract directly relates to the entity you represent.
- ▶ Under the Political Reform Act, you may also be disqualified if you receive income or have an ownership interest.
- ▶ ETR may still enter the contract, but you may not participate in the discussion or vote.
- ▶ Certain exceptions apply. Contact counsel.

The vote is *not* for a contract but does relate to a nonprofit that you represent

- ▶ Section 1090 would not disqualify you because there it is not a contract.
- ▶ There may be a conflict under the Political Reform Act **if** you receive compensation from the nonprofit **and**:
 - ▶ The decision could increase or decrease the nonprofit's annual gross receipts or value.
 - ▶ The decision may cause the nonprofit to incur or avoid additional expenses or to reduce or eliminate expenses.
- ▶ If you do not receive compensation from the nonprofit, then there is no disqualifying conflict.

The vote is *not* for a contract but does relate to a governmental agency that you represent

- ▶ Section 1090 would not disqualify you because there it is not a contract.
- ▶ You are likely not disqualified under the Political Reform Act.
 - ▶ You cannot have an ownership interest in a public entity, so there can be no no ownership conflict.
 - ▶ Salary from a governmental agency does not qualify as a financial interest. (Gov. Code, § 82030, subd. (b)(2).)

What to do if you are disqualified

- ▶ Do not participate in the discussion. It is safer to leave the meeting, though not necessarily required.
- ▶ Disclose the conflict. Whether you are merely abstaining or are disqualified makes a difference and affects the quorum.
- ▶ Do not vote or attempt to influence the vote.

Certain circumstances may allow you to vote even if you are disqualified

- ▶ The Rule of Necessity applies in limited circumstances.
- ▶ These rules are complex. Contact County Counsel to discuss.

Resources on Conflicts

- ▶ Fact Sheet Library: <https://www.fppc.ca.gov/learn/fact-sheet-library/>
- ▶ Training Opportunities: <https://www.fppc.ca.gov/learn/training-and-outreach/>