

Memorandum

To: Chair and Commissioners
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Date: August 30, 2016

From: Jennifer Martin-Gallardo, Attorney
Office of the Chief Counsel

Subject: **Amendments to Conflict of Interest Code**

Background

The Political Reform Act requires state agencies to have a conflict of interest code. (Government Code, section 87300.) The Energy Commission's conflict of interest code identifies all agency officials and employees who participate in making governmental decisions, and requires these "designated positions" to report certain financial interests depending on their level of authority and the type of work they do. The Energy Commission's conflict of interest code can be found at Title 20, California Code of Regulations, sections 2401 and 2402. The code was last updated on May 6, 2016.

If the agency has added positions, eliminated positions, or modified its organizational structure, the agency's conflict of interest code must be amended according to the procedures set forth in Title 2, California Code of Regulations, section 18750 (§18750).

Unlike the regular rulemaking process, a conflict of interest code is amended using a much simpler "File and Print" process. Under this process, it is the Fair Political Practices Commission (FPPC) who reviews and approves the amendments, not the Office of Administrative Law (OAL). OAL's role is limited to publishing public notices required under §18750, and then filing the FPPC-approved code promptly with the Secretary of State without further review. The Secretary of State endorses the FPPC-approved code, and the updated code becomes effective 30 days from the date of endorsement.

The existing code has been reviewed, and has been amended to accurately reflect the currently-existing positions that make or participate in making governmental decisions and assigns appropriate disclosure categories to those positions. The FPPC has completed its preliminary review of these proposed amendments and has authorized the Energy Commission to notice the proposed amendments for public comment.

Proposed Action

Once the Energy Commission approves the proposed amendments and authorizes the Executive Director to sign certain documents, staff can complete the remaining steps required by §18750.

After Energy Commission approval, the next steps of the process will be as follows:

1. The Energy Commission will file Form 400 (Section A only – no signature required) with OAL in order to publish the Notice of Intention to Amend the Conflict of Interest Code of

the Energy Commission. This Notice establishes a 45-day comment period on the proposed amendments.

2. The Energy Commission will post the same Notice to the Intranet for Energy Commission officers and employees to review and provide written comment.
3. At the close of the comment period, the Energy Commission will send to the FPPC:
 - a. the proposed amendments,
 - b. any written comments received, and
 - c. the signed Declaration of the Chief Executive Officer.
4. The FPPC will review the proposed amendments and any written comments and either approve the amendments or return the proposed amendments to the Energy Commission for further revision.
5. Once approved by the FPPC, the FPPC will return the approved code to the Energy Commission.
6. The Energy Commission will then file Form 400 (Section B – with Executive Director’s signature) and the FPPC-approved code with OAL.
7. OAL will forward the FPPC-approved code and the Form 400 to the Secretary of State for endorsement.
8. The Secretary of State will return the official documents to OAL.
9. OAL will then send the official documents back to the Energy Commission.
10. The Energy Commission will send the FPPC a copy of the official notification indicating the endorsement date.
11. The Amended Code will be effective 30 days after endorsement by the Secretary of State.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. However, an activity is subject to CEQA if it is a “project” that will result in a direct or reasonably foreseeable indirect physical change in the environment (Cal. Code Regs., tit. 14, §15378.) Amending the Conflict of Interest Code will not result in any direct or indirect physical change in the environment, and is therefore not a “project” subject to CEQA.