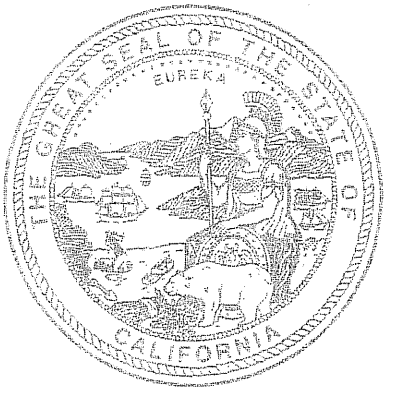
Your Duty To File

A Basic Overview of State Economic Disclosure Law And Reporting Requirements For Public Officials



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A Basic Overview of State Economic Disclosure Law And Reporting Requirements

Introduction

The Political Reform Act of 1974 (Gov. Code sections 81000-91014) requires many state and local public officials and employees to disclose certain personal financial holdings. The Act, which frequently has been amended, began as a ballot initiative approved by over 70 percent of California voters in the wake of the Watergate political scandals.

One of the Act's stated purposes declares:

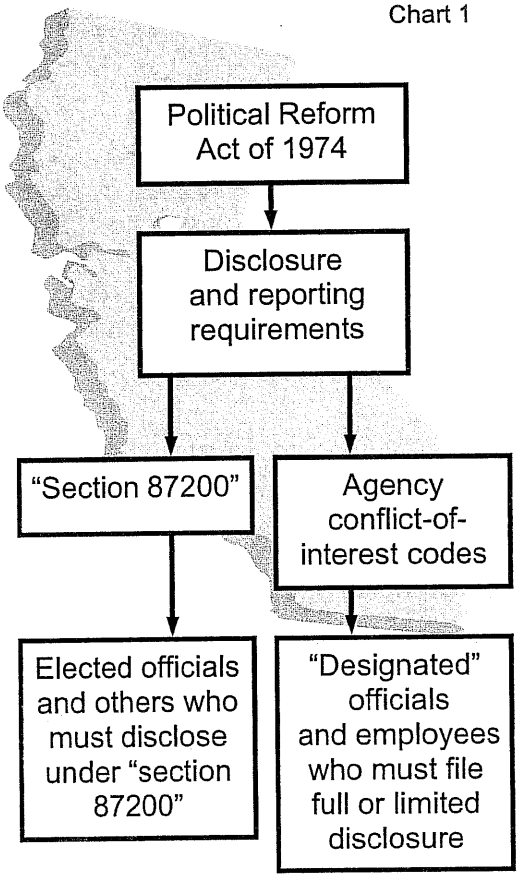
> *Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided. (Cal. Gov't. Code section 81002(c).)*

In its findings and declarations, the Act adds:

> *Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Cal. Gov't. Code section 81001(b).)*

The Act and its practical implementation have a broad reach across California

Chart 1



government. Many tens of thousands of public workers, ranging from the governor to local department heads to board and commission members, are required to file public, personal financial disclosure reports known as "statements of economic interests."

The Act establishes a complex, *decentralized* system of managing this disclosure in which each state and local government agency is required to adopt and implement a separate conflict-of-interest code. The administration of this decentralized system is divided between the Fair Political Practices Commission and re-

sponsible officials at more than 7,000 state and local agencies.

Employees and officeholders at virtually all state and local agencies, as well as candidates for public office, use the Fair Political Practices Commission's *form 700* to file their statements of economic interests. The statements are sometimes informally referred to as "SEIs," "700s" or "conflict-of-interest statements." The form is available from your agency or in an interactive version on the FPPC web site. Form 700 amendment schedules, also available from your agency and the web site, are used to file amendments to a previously filed statement.

Most of these forms are not filed directly with the FPPC. Rather, they are filed with the agency's filing officer or filing official, or, in the case of candidates, with election offices or local clerk offices. In some cases, the agency will forward the original form to the FPPC while retaining a copy.

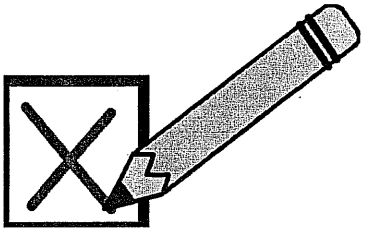
Filers must sign the form 700 under penalty of perjury (see section 81004 of the Act). Once filed, the form is a public document and must be made available to the public on request (section 81008). Public officials are generally not required to list their home addresses or home telephone numbers on the form.

The forms alert public officials about their own economic interests and potential areas of conflict in relation to their duties, and provide information to members of the public who may monitor official actions for any conflicts.

While sometimes popularly called "conflict-of-interest statements," the forms list only personal financial interests and don't in themselves disclose any conflicts of interests. Any conflict of interest under the Political Reform Act can only come about if a public official makes or participates in making a government decision that has a reasonably foreseeable material financial effect on the official's personal financial interests. Also, the law does not require all relevant personal financial interests (such as ownership of a personal residence in most cases) to be disclosed on the statement of economic interests.

The form 700 includes extensive instructions on how to fill it out. Your agency or the FPPC can provide individual help if you have further questions about the form, or where and when to file it.

The FPPC and agencies have the authority to levy penalties when a statement of economic interests is not filed on time. The FPPC also has the authority to levy administrative fines of up to $5,000 per violation of the Political Reform Act, or to seek civil penalties in the courts. The FPPC does not have the power to bring criminal charges but may refer cases to another law enforcement authority such as a district attorney.



Who must disclose?

The Act establishes two categories of public officials and employees who must disclose their personal financial interests. See Chart 1 on Page 1 for a basic diagram of how the law works.

I. Officials required to disclose under section 87200 of the Government Code

Section 87200 contains a specific list of officials, including high-ranking elected officeholders, who are subject to the most extensive disclosure requirements under the Act. These officials are listed in Chart 2, found in the right column of this page.

Officials specified in section 87200, and candidates for the elective offices specified in section 87200, must file form 700 periodically to disclose certain investments, interests in real property, sources of income, gifts, loans and business positions. These officials are sometimes informally referred to as "87200 filers."

II. Officials and employees required to disclose under section 87300

Every state and local government agency is required to adopt a "conflict-of-interest code" under the Act (see Cal. Gov't. Code section 87300). The Act lists the provisions required for such codes (section 87302) and requires that each code be approved by a "code reviewing body" (section 87303).

Chart 2 — Officials required to file disclosure statements under section 87200 of the Cal. Gov't. Code

State Offices:
Governor
Lieutenant governor
Attorney general
Controller
Insurance commissioner
Secretary of state
Treasurer
Members of the state legislature
Superintendent of public instruction
State Board of Equalization members
Public utilities commissioners
State energy resources conservation and development commissioners
State coastal commissioners
Elected CalPERS board members
Fair Political Practices Commission members
State public officials who manage public investments

Judicial Offices:
Supreme, appellate and superior court judges
Court commissioners
Retired and pro-tem judges, part-time court commissioners

County and city offices:
Members of boards of supervisors
Mayors and members of city councils
Chief administrative officers
District attorneys
County counsels
City attorneys
City managers
Planning commissioners
County and city treasurers
County and city public officials who manage public investments

The law requires this decentralized system. Section 87301 states:

> *It is the policy of this act that Conflict of Interest Codes shall be formulated at the most decentralized level possible, but without precluding intra-departmental review. Any question of the level of a department which should be deemed an "agency" for purposes of Section 87300 shall be resolved by the code reviewing body.*

When an agency adopts or amends its conflict-of-interest code, how does it determine which agency positions are covered under the code and which are not?

Each agency conflict-of-interest code must designate, or include, the employee positions within that agency *"which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest" of the employee (section 87302(a)).*

These officials and employees must file form 700 periodically and disclose certain investments, interests in real property, sources of income, gifts, loans and business positions. These filers are sometimes informally referred to as "designated employees" or "code filers."

In some cases, consultants to government agencies are required to file statements of economic interests under agency conflict-of-interest codes. Generally speaking, consultants who perform the duties of a government employee over a significant period of time, or who make or participate — without significant intervening review — in the making of government decisions, may be required to file (See FPPC Regulation 18701).

Every state and local government official, employee and consultant <u>must</u> refrain from making or participating in a government decision that has a reasonably foreseeable material financial effect on his or her personal financial interests, <u>regardless of whether the individual is required to file a statement of economic interests</u>.

Unlike the officials who must disclose under section 87200 of the Act, certain employees designated under agency conflict-of-interest codes may have to make only limited disclosures of their financial interests. The amount of disclosure will depend upon their duties. In general, those employees in positions with broader decision-making authority will have to provide broader disclosure of their personal financial interests.

Agencies must amend their conflict-of-interest codes when necessary to add or delete designated positions and disclosure categories. Conflict-of-interest codes are reviewed every two years. If an employee believes the amount of disclosure required for his or her position should be revised, those concerns can be addressed by the agency, including during the review process.

The FPPC reviews conflict-of-interest codes for all state agencies and all multi-

county agencies – approximately 1,000 codes. Codes adopted by other local agencies are reviewed by the appropriate county board of supervisors or city council, depending upon the jurisdiction of the agency (see section 82011).

The FPPC has adopted regulations to assist agencies in adopting conflict-of-interest codes. All state agencies and most local agencies now use a regulation (FPPC Regulation 18730) as the body of their individual conflict-of-interest codes, with each agency adding its individual list of designated employees and the types of disclosure required of different employee positions. This regulation can be found on the FPPC web site, *www.fppc.ca.gov.* FPPC staff members also provide assistance or training on conflict-of-interest codes to local and state agencies and code-reviewing bodies. Check the FPPC web site or call 1-866-ASK-FPPC for a schedule of upcoming training seminars.

Chart 3 — Examples of where form 700 is filed:

- City Councilperson Rodriguez must disclose under section 87200 of the Political Reform Act. She files her form 700 with the city clerk (filing *official*), who retains a copy and forwards the original to the FPPC (filing *officer*). The city clerk also receives and retains forms filed by employees of city agencies who have been designated in the city's conflict-of-interest code. For the employees' forms, the city clerk is the filing *officer.*

- State Senator Smith is an official specified in Gov. Code section 87200. She files her form 700 with the secretary of the senate (filing official), who retains a copy and forwards the original to the FPPC (filing officer).

- The Department of Social Services is a state agency and has adopted a conflict-of-interest code designating those positions within the agency that must file form 700. The code requires the forms to be filed with the agency's personnel division. However, the code also states that the personnel division will retain a copy of the forms filed by the director and chief deputy director and forward the originals to the FPPC. The personnel division is the filing *officer* for forms filed by the employees and is the filing *official* for the director and chief deputy director. The FPPC is the filing *officer* for the director and chief deputy director.

- Chief Jones occupies a position designated by the conflict-of-interest code adopted by the Siskiyou County Fire Services District, a local government agency. The forms from Jones and all other employees designated by the code are filed with and retained by the district.

An outline of the disclosure process — Chart 4

1. Two types of filers:

— "87200 filers" whose positions are listed in Gov. code section 87200

— "Designated officials" — state and local government agencies are required to adopt a conflict-of-interest code and designate decision makers who file disclosure statements

2. Types of statements filed on form 700:

— Assuming office/initial

— Annual

— Leaving Office

— Candidate

— Amended statements

3. Places to file the form:

— Section 87200 filers file with their state, city or county agency, which in most cases retains a copy and forwards the original to the FPPC

— "Designated officials" file their forms with their agency

1) Most of these originals retained by agency
2) Some originals forwarded to the FPPC (such as state department heads, board and commission members, selected multi-county agencies) with copies retained by the agency
3) Senate and Assembly staff members file directly with the FPPC

— Candidate statements are filed with the appropriate election official, such as the local registrar of voters or clerk

4. Filing officers and filing officials

— Filing *officer* retains original statements

1) Supplies forms, notifies filers
2) Logs statements, notifies non-filers
3) Reviews statements and requests amendments
4) Imposes late filing penalties
5) Provides public access

— Filing *official* retains copy and forwards original to filing officer

1) Supplies forms, notifies filers
2) Sends names of filers to filing officers
3) Logs forms sent to filing officer
4) Provides public access to copies of forms

Where do I file my form 700?

The Act mandates a decentralized system for filing, reviewing and retaining the form 700 statements of economic interests. This system is specified in section 87500 of the Government Code. Examples can be found in Chart 3 on Page 5, and the process is outlined in Chart 4 on Page 6.

Candidates file their statements of economic interests with their election official, such as their registrar of voters or city clerk.

The vast majority of public officials and employees file their form 700 with a filing *officer* at their own agency. This person reviews, logs and files the statement, provides public access to the form and performs other duties.

In most other cases, public officials and employees file their statement with a filing *official* at their agency, who acts as an intermediary and, after making a copy, forwards the original statement to the FPPC or to a county filing officer.

The FPPC receives – and is the filing officer for – approximately 20,000 statements of economic interest filed on an intermediary basis with other agencies. These statements include the officials specified in section 87200 as well as the following:

- designated employees of the state senate and state assembly
- members appointed to state boards and commissions
- state department heads (agency secretaries, directors and chief deputy directors of state agencies)
- employees of certain multi-county agencies

Regulation 18115 explains the respective roles of filing officers and filing officials. Briefly, filing officers assess fines for late-filed statements, review all statements for facial compliance, perform an in-depth review of some statements, and refer problems to the FPPC for potential enforcement actions. The FPPC now has an expedited and streamlined enforcement program for late-filed statements of economic interests.

Deadlines for filing statements of economic interests (form 700)

Candidates for certain elected positions must file a candidate statement prior to their election. Each type of statement has a specified "reporting period" (such as a calendar year) and is filed on the form 700 statement of economic interests.

Upon assuming his or her public office or job, an official first files an "assuming office" or "initial" statement of economic interests. After that, the official or employee files an annual statement each year until he or she leaves office, at which time a leaving office statement must be filed.

Candidate statements: Candidates for elective offices specified in section 87200 must file form 700 no later than the deadline for filing a declaration of candidacy to appear on a ballot. State and local elec-

tions occur throughout the year, and filing times vary. Some local conflict-of-interest codes may require candidates for other elective offices (such as school board or city clerk) to file candidate statements. Most do not have this requirement.

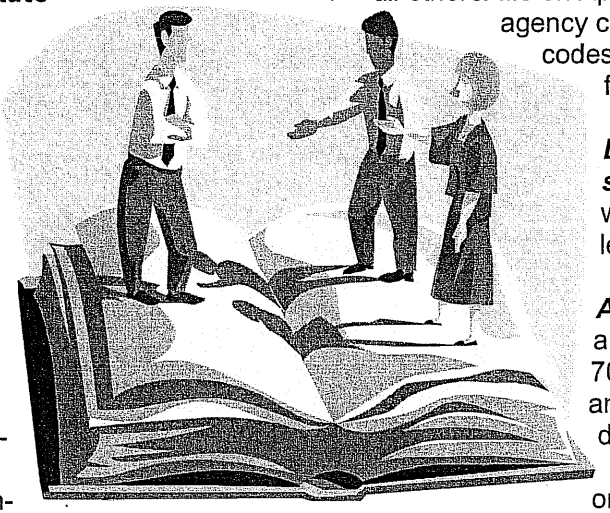
Assuming Office Statements:

- *elected officials:* file 30 days after assuming office.
- *appointed officials under section 87200:* file 30 days after assuming office or 10 days after appointment or nomination if subject to state Senate or judicial confirmation.
- *other appointed officials:* file 30 days after assuming office or 30 days after appointment or nomination if subject to state Senate confirmation.

Initial statements (officials whose positions are added to a new or amended conflict of interest code): file 30 days after the effective date of the conflict-of-interest code or amendment to an existing code.

Annual Statements:

- *elected state officers; judges and court commissioners; members of state boards and commissions specified in section 87200:* file on March 1.
- elected CalPERS board members: file on April 1.
- *all others:* file on April 1. (Some local agency conflict-of-interest codes may specify a different date.)



Leaving office statements: file within 30 days of leaving office.

Amendments: an amendment to a form 700 may be filed at any time—there is no deadline. A filer may submit more than one amendment.

Expanded Statements: many officials hold more than one position covered under the Act and may combine all of their filing obligations on one form, with a copy containing an original signature filed with each agency.

Exceptions:

There are several exceptions to the filing deadlines:

- Elected state officers (newly elected) may not be required to file assuming office statements. They file a candidate

statement, then the next annual statement.

- An official who completes a term of office and, within 30 days, begins a new term in the same office is not required to file a leaving or assuming office statement (such as when an elected official is reelected to the same office).

- An official who leaves an office and, within 30 days, assumes another position with the same agency, or in the same jurisdiction (such as when a city planning commissioner is elected mayor) is not required to file a leaving or assuming office statement.

- An official who assumes office between October 1 and December 31, and who properly files an assuming office statement, is not required to file the next annual statement, but will wait until the following year.

- A candidate who has filed an assuming office or an annual statement within 60 days prior to filing a declaration of candidacy is not required to file a candidate statement.

- Certain statements may be combined. For example, if an official who normally files an annual statement on March 1 leaves office between January 1 and February 28, he or she can combine the annual and leaving office statements, as long as the statement is filed by March 1.

- Retired judges who serve part-time, *pro tempore* judges, and part-time court commissioners are required to file form 700 only if they serve 30 days or more in a calendar year.

- Any deadline that falls on a Saturday, Sunday or official state holiday is automatically moved to the next business day.

Important note

This Fair Political Practices Commission fact sheet discusses provisions of California's Political Reform Act relating to economic disclosure and reporting requirements for public officials. While we hope you find the information helpful, ***you should not rely on the fact sheet alone to ensure compliance with the Act.*** If you have any questions, consult the Act and FPPC regulations, your agency's filing official or legal counsel, or call the FPPC's toll-free help line at 1-866-ASK-FPPC (1-866-275-3772). This fact sheet, the Act, regulations and other important information are on our web site, *www.fppc.ca.gov.*

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