



Alameda County Employees' Retirement Association  
*BOARD OF RETIREMENT*

*GOVERNANCE COMMITTEE/BOARD MEETING*  
*NOTICE and AGENDA*

**ACERA MISSION:**

**To provide ACERA members and employers with flexible, cost-effective, participant-oriented benefits through prudent investment management and superior member services.**

**August 21, 2025  
1:00 p.m.**

LOCATION AND TELECONFERENCE	COMMITTEE MEMBERS	
<b>ACERA</b> <b>C.G. "BUD" QUIST BOARD ROOM</b> <b>475 14TH STREET, 10TH FLOOR</b> <b>OAKLAND, CALIFORNIA 94612-1916</b> <b>MAIN LINE: 510.628.3000</b> <b>FAX: 510.268.9574</b>  <b>The public can observe the meeting and offer public comment by using the below Webinar ID and Passcode after clicking on the below link or calling the below call-in number.</b>  <b>Link: <a href="https://zoom.us/join">https://zoom.us/join</a></b> <b>Call-In: 1 (669) 900-6833 US</b> <b>Webinar ID: 879 6337 8479</b> <b>Passcode: 699406</b> <b>For help joining a Zoom meeting, see:</b> <b><a href="https://support.zoom.us/hc/en-us/articles/201362193">https://support.zoom.us/hc/en-us/articles/201362193</a></b>	<b>GEORGE WOOD, CHAIR</b>	<b>ELECTED GENERAL</b>
	<b>ELIZABETH ROGERS, VICE CHAIR</b>	<b>ELECTED RETIRED</b>
	<b>OPHELIA B. BASGAL</b>	<b>APPOINTED</b>
	<b>ROSS CLIPPINGER</b>	<b>ELECTED SAFETY</b>
	<b>HENRY LEVY</b>	<b>TREASURER</b>

The Alternate Retired Member votes in the absence of the Elected Retired Member, or, if the Elected Retired Member is present, then votes if both Elected General Members, or the Safety Member and an Elected General Member, are absent.

The Alternate Safety Member votes in the absence of the Elected Safety Member, either of the two Elected General Members, or both the Retired and Alternate Retired Members.

This is a meeting of the Governance Committee if a quorum of the Governance Committee attends, and it is a meeting of the Board if a quorum of the Board attends. This is a joint meeting of the Governance Committee and the Board if a quorum of each attends.

Board and Committee agendas and minutes, and all documents distributed to the Board or a Committee in connection with a public meeting (unless exempt from disclosure), are available online at [www.acera.org](http://www.acera.org) and also may be inspected at 475 14th Street, 10th Floor, Oakland, CA 94612-1916.

Public comments are limited to four minutes per person in total. The order of agenda items is subject to change without notice.

*Note regarding accommodations:* If you require reasonable accommodations or modifications for a disability, please contact ACERA between 9:00 a.m. and 5:00 p.m. at least 72 hours prior to the meeting at [accommodation@acera.org](mailto:accommodation@acera.org) or at 510-628-3000.

# ***GOVERNANCE COMMITTEE / BOARD MEETING***

NOTICE and AGENDA, Page 2 of 3 –August 21, 2025

**Call to Order:** 1:00 p.m.

## **Roll Call**

**Public Input (Time Limit: 4 minutes per speaker)**

## **Action Items: Matters for Discussion and Possible Motion by the Committee**

### **1. Review of the *Board and Committee Operations Policy***

#### **Staff Recommendation**

The Committee recommend to the Board that the *Board and Committee Operations Policy* continues to be necessary and appropriate and that the Board revise the Policy per the redline included in the agenda backup materials.

– Jeff Rieger, Chief Counsel

### **2. Review of the *Conflict of Interest Code***

#### **Staff Recommendation**

The Committee recommend to the Board that it revise the *Conflict of Interest Code* per the redline included in the agenda backup materials, subject to Board of Supervisor approval as the code reviewing body.

– Jeff Rieger, Chief Counsel

### **3. Review of the *Remote Access to Meeting Policy***

#### **Staff Recommendation**

The Committee recommend to the Board that the *Remote Access to Meeting Policy* continues to be necessary and appropriate and that the Board revise the Policy per the redline included in the agenda backup materials.

– Jeff Rieger, Chief Counsel

## ***GOVERNANCE COMMITTEE / BOARD MEETING***

NOTICE and AGENDA, Page 3 of 3 –August 21, 2025

### **4. Review of the *Board Policy Development Process***

#### **Staff Recommendation**

The Committee recommend to the Board that the *Board Policy Development Process* continues to be necessary and appropriate and the Board affirm the Policy without revision.

– Jeff Rieger, Chief Counsel

### **5. Review of the *Conflict of Interest Policy***

#### **Staff Recommendation**

The Committee recommend to the Board that the *Conflict of Interest Policy* continues to be necessary and appropriate and that the Board affirm the Policy without revision.

– Jeff Rieger, Chief Counsel

### **Trustee Input**

#### **Establishment of Next Meeting**

TBD

### **Adjournment**



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*Office of the Chief Counsel*

To: Governance Committee  
From: Jeff Rieger, Chief Counsel  
Meeting: August 21, 2025  
Subject: **Policy Review**

A handwritten signature in blue ink, appearing to be "MR", is written over the "From:" and "Meeting:" lines of the header.

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At this meeting the Committee will review four policies under the normal three-year cycle and the Board's Conflict of Interest Code. Staff's recommended revisions are described below and the Committee may suggest other revisions it deems appropriate.

***Board and Committee Operations Policy***

Staff recommends elimination of the CEO Evaluation Committee as a standing committee. Under the Board's CEO Evaluation Policy, the full Board evaluates the CEO, so there is no need for a CEO Evaluation Committee, which has not met in many years. Staff also recommends correcting a typographical error (change "Board" to "Committee") on page 4.

***Conflict of Interest Code***

The Conflict of Interest Code establishes the Form 700 disclosure obligations for ACERA. Staff recommends that two positions be added to the Conflict of Interest Code.

First, after the Code was last amended ACERA established a new position of "Senior Investment Officer." The employees in those positions are already in Category 1 as "Investment Officers" so this change has no practical impact, but listing the new position in the Conflict of Interest Code will eliminate any possible ambiguity.

Second, after the Code was last amended, ACERA created the position of "Cybersecurity Analyst." The CEO has determined it is appropriate for the Cybersecurity Analyst to be designated as Category 2. Earlier this year, the employee occupying that position filed a Form 700 for 2024, based on the CEO's authority regarding "New Positions," but the Code should include that new position so that filing obligations are clear in future years.

The Conflict of Interest Code revisions will not be effective until the Board of Supervisors approves the changes as this Board's "code reviewing body."

***Remote Access To Meetings Policy***

The proposed revisions account for changes the Legislature made regarding when certain rules related to remote attendance were or are set to expire. Other minor revisions are recommended for clarity.

***Board Policy Development Process***

Staff recommends that the Board affirm this Policy with no revisions.

***Conflict of Interest Policy***

Staff recommends that the Board affirm this Policy with no revisions.





# *Board and Committee Operations Policy*

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## **I. Purpose**

The ACERA Board and Committee Operations Policy (“Policy”) provides ACERA Trustees (“Members”) and Staff with guidelines for ensuring that Board and Committee meetings will be conducted as efficiently and effectively as possible.

## **II. Policy Guidelines**

### **A. Governing Law and Rules Of Order**

1. The noticing and agendas of all Board and Committee meetings shall conform to the requirements of the Ralph M. Brown Act, Government Code Section 54950, et seq. (the “Brown Act”).
2. Board and Committee meetings shall be guided by the principles embodied in the most current edition of Robert’s Rules of Order (Robert’s Rules). It will be assumed that the Chair of a meeting has acted with unanimous consent, with all procedural objections waived, unless a Member raises a procedural objection before the Board or Committee takes action on the matter for which the procedural objection could have been raised. When a Member timely raises a procedural objection, ACERA’s Chief Counsel will resolve that objection according to Robert’s Rules.
3. In the event of a conflict between the Brown Act and Robert’s Rules, the Brown Act shall prevail.

### **B. Agendas – Posting**

1. A written agenda conforming to the Brown Act shall be prepared for all regular Board and Committee meetings and shall normally be distributed to all Members, posted at ACERA’s offices and on ACERA’s website at least one week before the meeting.
2. When distribution and posting cannot reasonably be accomplished at least one week before the meeting, it will occur at least 72 hours before the meeting, per the Brown Act.

3. Agendas for special meetings shall be posted at least 24 hours before the meeting and special notices shall be provided as required by Section 54956 of the Brown Act.
4. The general rule is that substantive matters within the Board or Committee's jurisdiction that are not on the posted agenda may not be discussed at a meeting. Some limited exceptions may apply from time to time and the Chief Counsel will advise the Board as to the applicability of such limited exceptions.
5. Outside of a properly noticed meeting, a majority of Members of the Board or a Committee shall not use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the Board or Committee.

C. Board Meetings Agenda Content

The Board Meeting Agenda will generally include the following topics as necessary:

1. Call to Order
2. Roll Call
3. Public Comment
4. Consent Calendar
  - a. Report on Service Retirements
  - b. List of Deferred Retirements
  - c. List of Deceased Members
  - d. Approve Requests for up to 130 Bi-Weekly Payments to Re-Deposit Contributions and Gain Credit
  - e. Approve Uncontested Staff Recommendations on Disability Retirements and Death Benefits
  - f. Approve Uncontested Hearing Officer Recommendations for Disability Retirements and Death Benefits

- g. Approve Minutes of Board and Committee Meetings
- h. Miscellaneous
- 5. Contested Disability Retirements and Death Benefits
- 6. Committee Reports, Recommendations and Motions
- 7. New Business
- 8. Conference Reports
- 9. Announcements
- 10. Board Input
- 11. Establishment of Next Meeting
- 12. Closed Session
- 13. Report on Action Taken in Closed Session
- 14. Adjournment

The Board Chair may alter the agenda and order of business to the extent authorized by the Brown Act. If a Member objects to an alteration of the order of business, a two-thirds vote of the voting Members is required for the Board Chair to alter the order of business.

D. Committee Meetings Agenda Content

Committee Meeting will generally include the following topics:

- 1. Call to Order
- 2. Roll Call
- 3. Public Comment
- 4. Action Items
- 5. Information Items

6. Trustee Remarks
7. Future Discussion Items
8. Establishment of Next Meeting
9. Adjournment

The Committee Chair may alter the agenda and order of business for Committee meetings to the extent authorized by the Brown Act. If a Member objects to an alteration of the order of business, a two-thirds vote of the voting Members is required for the Board Committee Chair to alter the order of business.

E. Board And Committee Officers

At the first regular meeting in January, the Board shall elect one of its Members Chair, one of its Members Vice Chair, and one of its Members Second Vice Chair. The term shall be for either one year, or until their successors are duly elected and qualified.

1. The Chief Executive Officer (CEO) shall serve as Secretary to the Board.
2. The Chair of the Board shall:
  - a. Appoint Members to all ACERA standing and ad hoc Board Committees and in making such appointments shall whenever possible, appoint both elected and appointed Members to each Committee. The Chair may consider the need to:
    - 1) Maintain continuity in Committee membership,
    - 2) Rotate the composition of Committees to provide Members with diversified experience,
    - 3) Reflect a Member's area of interest and/or skill set, and
    - 4) Minimize conflicts of interest.
  - b. Remove and replace Committee Members so appointed;
  - c. Appoint a Chair and Vice Chair for each Committee of the Board;
  - d. Coordinate the preparation of the Board agenda with the CEO;

- e. Chair meetings of the Board;
  - f. Communicate with external parties in cooperation with the CEO;
  - g. Coordinate the process for annually evaluating the performance of the CEO as prescribed in applicable Board policies;
  - h. Coordinate the process in the event that the Board evaluates its own performance;
  - i. Serve as a member of all Committees if any Committee member is absent.
3. If the Board Chair is unavailable or unable to carry out his or her duties, the First Vice Chair shall assume duties of Board Chair. If the First Vice Chair is unavailable or unable to carry out his/her duties, the Second Vice Chair shall assume the duties of the First Vice Chair.
4. In the event that an officer of the Board becomes ineligible or unable to complete his or her term, the following action shall be taken:
- a. If said officer is the Chair, then the Vice Chair shall assume the Chair's position for the balance of the Chair's term, and a new Vice Chair shall be elected at the next regularly scheduled meeting;
  - b. If said officer is the Vice Chair, then the Board shall elect a new Vice Chair at the next regularly scheduled meeting; and
  - c. If said officer is the Second Vice Chair, then the Board shall elect a new Second Vice Chair at the next regularly scheduled meeting.
5. Officers may be removed from the Chair, Vice Chair, and Second Vice Chair positions by a two-thirds ( $\frac{2}{3}$ ) vote of the entire Board (i.e., six members).

F. Committee Procedures

- 1. Standing Committees exist to assist the Board in fulfilling its charter and to apply more concentrated attention to specialized topics that impact the Board's effective management of ACERA. All actions taken by standing and ad hoc Committees are

deemed to be advisory and must be approved by the Board before becoming effective.

2. The CEO shall assign a staff member to each standing and ad hoc Committee to serve as Staff Liaison and primary contact for the Committee Chair and Committee Members with respect to the work of the Committee.
3. At their first meetings each year, the Retiree, Investment, and Operations Committees shall establish a schedule of meetings for the rest of the year. The other Committees will establish meetings as needed.
4. The Committee Chair may cancel or reschedule a meeting if it is apparent that there will not be a quorum or there are insufficient issues to warrant a meeting. Attempts will be made to provide all Committee Members with at least one week's notice of the cancelled or rescheduled meeting.
5. Each Committee (including ad hoc Committees upon creation) shall, in consultation with its Staff Liaison, adopt a charter outlining its purpose, responsibilities and meeting frequency.
6. Each year, staff liaisons shall prepare a draft work plan for the following year containing proposed monthly agenda items for their standing Committees and incorporating ACERA's ongoing cyclical workload requirements and any budget and business plan instructions received. A proposed work plan shall be submitted to each Committee at the first or second scheduled meeting of the New Year for review and modifications. Committee work plans can be modified throughout the year as needed.
7. Each Committee Chair shall be responsible for:
  - a. The efficient operation of the Committee,
  - b. Facilitation of the work outlined in the Committee Charter and prioritized in the Committee work plan,
  - c. Retaining focus primarily on policy and oversight while allowing management to carry out the day-to-day implementation of Board and Committee policy, and

d. Coordinate Committee activities with the Staff Liaison.

8. In the event a Committee Chair is absent or the position is vacant, the Committee Vice Chair shall preside over meetings of the designated Committee. In the event the Committee Chair and Vice Chair are both absent the Board Chair, or a Board Vice Chair will preside over the designated Committee. If the Committee Chair and/or Vice Chair positions are vacant, the Board Chair shall appoint a new permanent Committee Chair and/or Vice Chair.

G. Quorum and Voting

1. The Board is composed of nine (9) Members, plus an Alternate Safety Member, and an Alternate Retired Member. A majority of the Members of the Board constitutes a quorum and a quorum of the Board is required to take action.
2. Committees shall be composed of no more than five (5) Members, except the Investment Committee and the CEO Succession Committee which shall be composed of the full Board. A majority of the Members of a Committee constitutes a quorum of that Committee and a quorum is required for the Committee to take action.
3. Any motion passed or business transacted at a Board or Committee meeting must be approved by a majority of the Members present and voting, except as otherwise provided by law. A Member who abstains is not considered present and voting, but remains present for purposes of a quorum.
4. For the purposes of determining the voting rights of the Alternate Seventh Member and the Alternate Eighth Member, a Member can be “absent” for a particular agenda item. A Member who leaves the boardroom during an in-person meeting or who disconnects from a video-conference meeting is “absent” for that agenda item. Alternatively, a Member can irrevocably declare themselves “absent” with respect to a particular agenda item for the purpose of allowing the appropriate Alternate to vote in their place.
5. The Alternate Seventh Safety Member shall be counted towards a quorum and may vote only in the event the following Members are absent:
  - a. Second Member, or

- b. Third Member; or
  - c. Seventh Member; or
  - d. Both the Eighth and the Alternate Eighth Members.
6. The Alternate Eighth Retired Member shall be counted towards a quorum and may vote only in the event the following members are absent:
- a. Eighth Member; or
  - b. Both the Second and Third Members; or
  - c. Both the Second and Seventh Members; or
  - d. Both the Third and Seventh Members.<sup>1</sup>

H. Public Comment

- 1. Every agenda for a regular Board or Committee meeting shall provide members of the public an opportunity to address the Board or Committee at each meeting on any item under the subject matter jurisdiction of the body. Public Comment appears on the agenda immediately after Roll Call, but it is within the meeting Chair's discretion to allow or require public comment on particular agenda items when those items are discussed by the Board or Committee.
- 2. With respect to any agenda item, the public shall be given the opportunity to comment before or during the Board or Committee's consideration of the item, including closed session items prior to adjournment into closed session.
- 3. Where a member of the public raises an issue not on the agenda, no debate or action may be taken at that meeting. However, Members of the Board or Committee or staff present may
  - a. provide a brief response or ask a question,

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<sup>1</sup> If two of the Second, Third and Seventh Members are absent from a meeting, they are both still considered absent even if the Alternate Seventh Member is present and voting. Thus, if two of those members are absent, the Alternate Seventh Member and the Alternate Eighth Member may vote.



- b. provide a reference to staff or other resources for factual information, or
  - c. direct staff to place the issue on a future agenda.
- 4. The duration of any public comment shall normally be no longer than four minutes per speaker per meeting, but the Chair of the meeting may allow for longer public comment.
- 5. At a Board meeting the Board Chair need not allow public comment on an item that was already considered at a Committee meeting at which public comment was allowed if the Committee has made a recommendation that is before the Board.
- 6. The meeting Chair normally will not allow more than 40 minutes of public comment on each agenda item. The meeting Chair may increase that time limitation. If there is an item for which there appears to be many individuals who wish to comment, the Chair will determine how many individuals want to make a public comment on the item before public comment is taken. If there will be more than 10 individuals who want to make a public comment, the Chair may limit the time for each public comment as follows:
  - 11-13 individuals will get 3 minutes each.
  - 14-20 individuals will get 2 minutes each.
  - 21-26 individuals will get 90 seconds each.
  - 27-40 individuals will get 1 minute each.
  - No more public comment after 40 individuals have spoken.
  - The order of public comments will be determined first by sign-up sheet in the Board Room and then by order of virtual hands raised on Zoom or similar remote attendance platform.
- 7. In all cases, the meeting Chair must allow twice the allotted time for a non-English speaker who utilizes a translator, unless simultaneous translation equipment is available in which case the normal time limits apply.

I. Attendance And Participation At Board And Committee Meetings

1. Members agree to make every reasonable effort to attend all meetings of the Board and of Committees on which they serve. All Members are free, but not obligated, to attend any Committee meeting. All Members may participate in Committee deliberations, but only Committee Members may vote on matters before the Committee, unless a quorum of the Board is present, and then Board voting rules apply.
2. If a quorum of the Board attends and participates in a Committee meeting as more than observers, the meeting will be a full Board meeting. The following Committee rules will nevertheless continue to operate for those meetings:
  - a. The Committee Chair will continue to run the meeting.
  - b. The actions of the Committee will still be subject to approval by the full Board.
3. Alternate Members
  - a. An Alternate Member shall have the same responsibilities and access to a closed session of the Board or a closed session of a Committee, as a Board Member whether or not the Second, Third, Seventh or Eighth Board Members are present.
  - b. Alternate Members may replace absent Committee Members, participate in Committee meetings and vote on motions, in accordance with Board rules on replacing absent members.
  - c. Alternate Members may not hold office on the Board or Committees. An Alternate Member, who replaces an absent Board Member who is also an officer, does not become an officer as a result.
4. Compensation and Reimbursement
  - a. Eligibility for compensation for the Fourth, Fifth, Sixth, Eighth (including Alternate), and Ninth Members (Cal. Gov. Code §§31521, 31520.5) for Committee attendance does not require membership on the Committee.
  - b. Reimbursement to employers of Elected Members. (See Voluntary Elected Member Employer Reimbursement Policy.)

J. Minutes

1. The Secretary is responsible for preparation of the Board minutes and the Staff Liaison is responsible for Committee minutes.
2. The person responsible for minutes shall record the following in the minutes:
  - a. The time and place of each meeting of the Board or Committee.
  - b. The names of Members present.
  - c. All official acts taken listing the motion and the first and second (a first and second may, but need not, be listed for actions taken in closed session).
  - d. The individual votes of every Members present for all actions taken.
  - e. Describe with sufficient detail any actions taken by the board or Committee including pertinent discussions.
  - f. Brief references to non-action or information items; and
  - g. Include direct instructions to Staff by the Chair.
3. Approval of Minutes
  - a. If a Committee meets in at least ten days before a Board meeting, the Staff Liaison and Committee Chair will finalize the Committee minutes in sufficient time to be distributed to the Board no later than three days before the next scheduled Board meeting.
  - b. If a Committee meets less than ten days before the next Board meeting, the Committee Chair will provide a summary of the Committee meeting to the Board at the Board meeting that week. The minutes will be presented to the Board for review and adoption at the next scheduled Board meeting.
  - c. Staff Liaison will present draft minutes to the Committee Chair at least three days before they must be presented to the Board, according to the deadlines

stated above. If the Committee Chair does not respond, the Staff Liaison will distribute the draft minutes to the Board, according to the deadlines above.

K. Pattern And Dates Of Board Meetings

1. Regular meetings of the Board of Retirement shall be held on the third (3rd) Thursday of each month at 2:00 p.m. at ACERA's office in Oakland, California. The Board Chair may approve any revisions to the date, time, or venue.
2. Special meetings of the Board of Retirement may be called at any time by the Chair or a majority of all the Members of the Board subject to the provisions of Government Code Section 54956. Notice of not less than twenty-four (24) hours shall be given to each Board Member, media outlets requesting notice, and provided on the ACERA website.
3. In the fall of each year, ACERA may hold its Board of Retirement Offsite Retreat which may include an evaluation of the budget and Business Plan for the current and following years, discussion with senior management staff and such educational and informational presentations as deemed appropriate.

L. Standing Committees

The Standing Committees of the Board are as follows:

1. Retirees
2. Investment
3. Governance
4. Operations
5. Actuarial
6. Audit

~~7. CEO Evaluation~~

M. Ad Hoc Committees

1. The Board may approve the establishment of temporary ad hoc Committees to gather information and make recommendations to the Board or a Committee on specific subject matters. The Board Chair shall appoint the Chair and Members of ad hoc Committees. Ad hoc Committees shall have no more than four (4) Members and, if they are otherwise compliant with the Brown Act, shall not be required to comply with the agenda requirements of this Policy. Board Members not appointed to an ad hoc Committee are not permitted to attend meetings of the ad hoc Committee or discuss any of the issues addressed by the ad hoc committee with any members of the ad hoc committee.
2. At the beginning of each calendar year, the Board shall assess the need for all existing ad hoc Committees and formally dissolve any ad hoc Committees deemed unnecessary.

### III. Policy Review

The Governance Committee shall review the Board and Committee Operations policy at least every three (3) years to ensure that it remains relevant and appropriate.

### IV. Policy History

- A. The Board adopted this policy on February 15, 2018.
- B. The Board reviewed and revised this Policy on April 21, 2022.<sup>2</sup>
- C. The Board revised Section II(H) on April 20, 2023.
- ~~E.D.~~ The Board deleted a CEO Evaluation Committee from Section II(L) on August 21, 2025.

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<sup>2</sup> The Board Operations Policy was adopted on November 18, 1999; and renewed, with revisions, on August 15, 2001; March 8, 2005; November 9, 2006; March 19, 2009; August 18, 2011; April 17, 2014; and November 17, 2016. The Committee Operations Policy was adopted on August 15, 2002; and renewed, with revisions, on November 9, 2006; March 19, 2009; August 18, 2011; and April 17, 2014; and, without revisions, on July 21, 2016. The ACERA Board Officers Policy was renewed, with revisions, on December 6, 2006. The Board Operations Policy, the Committee Operations Policy, and the ACERA Board Officers policy were combined into the Board and Committee Operations Policy, which was adopted by the Board of Retirement on February 15, 2018. The Board reviewed and affirmed this Policy, with revisions, on June 21, 2018. The Board of Retirement renewed the Board and Committee Operations Policy, with revisions, on August 15, 2019.



# ACERA Conflict of Interest Code

The Political Reform Act (Government Code Section 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 California Code of Regulations Section 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.

Individuals holding designated positions shall timely file their statements of economic interests (Form 700) with the ACERA Chief Counsel or his or her designee (475 14th Street, Suite 1000, Oakland, CA 94612) who shall serve as the Filing Officer for ACERA. Filings may be made through DocuSign. All statements will be retained by ACERA and are available for public inspection and reproduction.

## Designated Positions and Disclosure Categories

Category 1: These ACERA positions must disclose all financial interests called for in the Form 700:

Investment Operations Officer	Chief Counsel
Investment Officer	Associate Counsel
Assistant Chief Executive Officer	<a href="#">Senior Investment Officer</a>

Category 2: These ACERA positions must disclose the financial interests called for in the Form 700, but only to the extent it is reasonably foreseeable that an ACERA decision might impact such financial interests (for example, a financial interest in a business that currently provides, or may in the future, provide goods or services to ACERA).

Fiscal Services Officer	Chief of Internal Audit
Retirement Benefits Manager	Communications Manager
Chief Technology Officer	Human Resources Officer
<a href="#">Cybersecurity Analyst</a>	

New Positions and Consultants: Consultants and newly created positions that make or participate in the making of ACERA decisions that may foreseeably have a material effect on any financial interest must disclose all financial interests called for in the Form 700 (Category 1). The Chief Executive Officer may set disclosure requirements that are tailored to positions with a limited range of duties pursuant to 2 CCR § 18734. Any such limited disclosure requirements determined by the CEO shall be in writing and are public records.

**Conflict of Interest Code Appendix: Agency Positions that Manage Public  
Investments for Purposes of Section 87200 of the Government Code**

Trustee

Chief Executive Officer

Chief Investment Officer

# *Remote Access to Meetings Policy*

## I. Purpose

To provide guidance to the Board of Retirement (Board) and Staff when Trustees wish to appear at Board and Standing Committee meetings from a remote location.

## II. Assumptions

- A. The Board is subject to California's open meeting law that applies to local agencies, the Brown Act, Gov't Code §54950 et seq.
- B. Gov't Code §54953~~(b)~~ permits the Board to hold a teleconference meeting if the Board follows certain requirements
- C. The Board finds that providing teleconference meetings can benefit the public, the Board and its Standing Committees and therefore teleconferencing should be available to facilitate Trustees' participation in Board and Standing Committee meetings.
- D. This Policy does not limit the Board's authority under applicable law. The Board may apply all legal authority that relates to the requirements for a teleconference meeting that are operative at the time of the meeting without amending this Policy.

## III. Policy Guidelines

- A. Unless the exception described in Section III(E) below applies, at least a quorum of the Board or Standing Committee must be within Alameda County during a teleconference meeting.
- B. Unless one of the exceptions described in Sections III(E) or III(F) below applies, each Trustee appearing from a remote location is responsible for ensuring that:
  - 1. The agenda is properly posted at the site at least 72 hours before the meeting in a location that is accessible to the public. Weekend hours may be included to satisfy this requirement, but the agenda must be accessible to the public for the entire 72-hour period. Thus, the agenda may need be posted both outside a main entrance (visible outside an office building) and outside the room in which the Trustee will teleconference. Such agendas must remain visible until the meeting is completed.



2. Members of the public can access the site during the meeting (even if the location is a hotel room, cruise ship cabin or a residence) and the site is ADA compliant.
  3. Teleconference equipment is working, with a speaker reasonably loud enough for attendees to hear.
  4. Members of the public who wish to make a public comment may do so.
- C. Unless one of the exceptions described in Sections III(E) or III(F) below applies, each remote location must be identified in the notice and agenda of the meeting including:
1. The identity of the Trustee appearing at that location.
  2. The street address and any room, apartment, suite or office number.
  3. The agenda must provide the opportunity for the public to address the Board or Standing Committee at each location.
- D. All votes during a teleconference meeting must be taken by roll call, even if only one Trustee is participating video/telephone.
- E. Gov't Code §54953(e) eliminates the requirements stated in Sections III(A-C) above during a proclaimed state of emergency if the Board makes certain findings relating to the protection of the health and safety of meeting attendees (roll call votes are still required). ~~As of April 20, 2023, Section 54953(e) is set to be repealed on January 1, 2024.~~ When the Board holds a teleconference meeting pursuant to Section 54953(e), the notice and agenda will prominently state as on the first page of the agenda: "THIS MEETING WILL BE CONDUCTED VIA TELECONFERENCE [GOV'T CODE § 54953(e)].
- F. Gov't Code §54953(f) eliminates the requirements stated in Sections III(B-C) above when one or more Trustees appear remotely under "emergency circumstances" or for "just cause" (as defined in the statute), if at least a quorum the Board participates in person in the Boardroom or other appropriate physical location open to the public. As of ~~April 20-August 21,~~ 2023~~5~~, these exceptions are set to be repealed on January 1, 2026. ACERA will provide the means by which the public can remotely hear, watch and participate in the meeting and the agenda will explain how to do so. When a Trustee attends remotely, the Trustee must;
1. Publicly disclose at the meeting before any action is taken the general reason for the remote attendance; whether any other individuals 18 years of age or older are

present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

2. Participate through both audio and visual technology.
3. Contact the ACERA Chief Executive Officer or Chief Counsel as soon as the desire to utilize these exceptions arises. The Chief Counsel will ensure compliance with the limitations on the use of these exceptions. A memorandum that explains the how those limitations operate for ACERA is attached hereto as Exhibit A.

#### IV. Policy Review

The Governance Committee shall review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

#### V. Policy History

- A. The Board adopted this policy on November 21, 2019.
- B. The Board revised this Policy on August 18, 2022.
- C. The Board added Section III(F) and made other minor technical amendments to this Policy on April 20, 2023.
- ~~C.D.~~ The Board revised this Policy on August 21, 2025.



# *Board Policy Development Process*

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## I. Purpose

A fundamental role of the Board is to establish policies guiding critical aspects of Board governance and ACERA's operations. This Policy provides a process for development, approval and review of Board policies, thus reducing the risk of duplication or unnecessary proliferation of Board policies.

## II. Guidelines

- A. Board policies shall provide guidance to the Board and senior management and are intended to provide benefits, and mitigate risks, to ACERA.
- B. Board policies will be developed only if each of the following conditions is met:
  - 1. The issue in question poses substantial risk or benefit to ACERA;
  - 2. The issue is expected to recur regularly (i.e., it is generic in nature);
  - 3. The issue is within the Board's responsibility to effectively administer ACERA, including Board governance or high-level oversight of administrative functions; and
  - 4. A Chief Executive Officer administrative procedure or process would not suffice.

## III. Policy Development

- A. The need for a potential Board policy may be identified by the Board, a Committee or ACERA staff.
- B. If the topic of the policy falls into the jurisdiction of a standing committee, that committee will evaluate and develop the policy. If the issue does not clearly fall under the jurisdiction of another standing committee, the Governance Committee will evaluate and develop the policy.

- C. If the staff identifies the need for a Board policy, staff should bring a request for a policy to the relevant committee and shall provide the following information:
  - 1. A brief description of the policy issue;
  - 2. An explanation as to why the trustee or senior manager believes that a Board policy is needed (per Section II.B. above) or whether a CEO administrative policy would suffice;
  - 3. The broad objective or purpose that will be served by such a policy; and
  - 4. Confirmation that no existing Board policy already addresses the broad risk(s) posed by the issue under consideration. No other policy addresses the need.
- D. If a Committee determines that the policy is needed, the Committee and staff shall draft the policy for Committee and Board review and approval.

#### IV. Policy Review Process

- A. Policies shall be reviewed every three years unless the policy provides otherwise or there is a change in the law or circumstances or as requested of the relevant committee by a Trustee or Trustees at a sooner time.
- B. The Committees assigned to the policy shall consider the following when reviewing Board policies:
  - 1. Does the policy continue to be necessary?
  - 2. Does the policy continue to be appropriate in meeting the needs of ACERA?
  - 3. Does the policy require revisions due to changes in the law, current practices or any other relevant reasons?
- C. The Committee reviewing the policy will recommend to the Board that the specified policy continues to be necessary and appropriate, and recommend any revisions as warranted.
- D. The Board will consider and may approve the recommendations of the Committee.

## V. Policy Modifications

This Policy shall be reviewed by the Governance Committee at least every three years. The Committee shall make recommendations to the Board concerning any improvements or modifications it deems necessary.

## VI. Policy History

- A. The Board affirmed this Policy, with non-substantive revisions, on August 18, 2022<sup>1</sup>.

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<sup>1</sup> The Board adopted the Board Policy Development Process on August 19, 1999. The Board reviewed and affirmed this Policy, without revisions, on October 19, 2006, and March 19, 2009. The Board reviewed and affirmed this Policy, with revisions, on August 18, 2011; December 19, 2013; December 17, 2015; November 9, 2017; and August 15, 2019.



# *Conflict of Interest Policy*

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## **I. Purpose**

This Policy provides ACERA Trustees and Staff with guidelines for carrying out their fiduciary duties and mitigating the risk of an actual or perceived conflict of interest. For purposes of this Policy, a conflict of interest is defined as any matter that could reasonably be expected to interfere with the obligations of Trustees and Staff to prudently discharge their duties to the system solely in the interest of, and for the exclusive purpose of providing benefits to, ACERA members and their beneficiaries.

## **II. Governing Law and Policy**

- A. The Political Reform Act of 1974 (Gov't Code §§81000), regulations of the Fair Political Practices Commission ("FPPC") (2 Cal. Code of Regs. §§18104 et seq.), Gov't Code §§1090 et seq., and any amendments to these laws, are incorporated into this Policy by reference.
- B. The Board's Conflict of Interest Code, attached hereto as Exhibit A, is incorporated into this Policy by reference.
- C. Attached hereto as Exhibit B is an ACERA Legal Office memorandum that provides more detailed guidance about conflicts of interest in specific situations.

## **III. Assumptions**

- A. With respect to ACERA activities, the duty of an ACERA Trustee or Staff members to ACERA's members and beneficiaries shall take precedence over any other duty.
- B. A perceived conflict of interest can pose as great a risk to ACERA as an actual conflict of interest. Thus, perceived conflicts should be treated as actual conflicts of interest.
- C. Safeguarding the ACERA trust for members and beneficiaries is paramount. Conflicts of interest, bribes, gifts, or favors that elevate private gains over the duty of Trustees and Staff to members and beneficiaries are unacceptable.
- D. It is not possible to identify and address in a policy all the methods by which Trustees or Staff may take actions that benefit them or third parties rather than members and beneficiaries. A policy therefore should consist of general guidelines and principles that will provide Trustees and Staff with direction as situations arise.

- E. In situations where law or policy is unclear, the best interests of members and beneficiaries must be served. Trustees and Staff shall act in good faith and exercise sound judgment.
- F. When interacting with existing or potential service providers, Trustees and Staff must establish and maintain an independent relationship to ensure they remain objective when conducting ACERA's affairs.

#### IV. Policy Guidelines

- A. Trustees and Staff shall **not**:
  - 1. Accept or solicit any gift, favor, behested payment or service that may reasonably tend to influence or be perceived to influence the individual in the discharge of his or her official duties or that the individual knows, or should know, is being offered with the intent to influence the individual's official conduct.
  - 2. Fail to adhere to applicable law and FPPC regulations regarding gift disclosure requirements and gift value limits.
  - 3. Request behested payments on behalf of any non-profit or charitable organization from any person or entity that is doing business with ACERA.
  - 4. Accept other employment or engage in a business or professional activity that the individual might reasonably expect would require or induce him or her to disclose confidential information acquired by reason of his or her official position.
  - 5. Engage in or accept other employment or compensation that could reasonably be expected to adversely impact the individual's independence of judgment and duty of loyalty in the performance of his or her official duties.
  - 6. Make personal investments that could reasonably be expected to create a conflict between the individual's private interests and the interests of the members and beneficiaries.
  - 7. Solicit, accept, or agree to accept any benefit for having exercised the individual's official powers or for having performed his or her official duties in favor of another.
  - 8. Transact any business in the individual's official capacity with any entity or person in which he or she has an economic interest, unless authorized by law.
  - 9. Appear before the Board while acting as an advocate for himself or herself or any other person, group, or entity, without fully disclosing his or her relationship and recusing himself or herself from the Board deliberations and voting.

10. Represent any business entity before the Board or senior management in return for any form of compensation.
  11. Represent, directly or indirectly, any business entity or individuals in any proceeding against the interests of ACERA or in any litigation in which the Plan is a party.
  12. Use the individual's official position to secure a special privilege or exemption for oneself or others that could be perceived as or is an actual conflict of interest under the intent of this policy.
  13. Use the individual's official position to secure confidential ACERA information for any purpose other than the exercise of official duties.
  14. Disclose any confidential information gained by one's position concerning the property, operations, policies, or affairs of ACERA, or use confidential information for pecuniary gain.
- B. When the Board is in, or about to enter into, the process of selecting a vendor, the Board, Staff and individual Trustees shall not accept any social invitations, gifts, favors or services from vendors, nor solicit any behested payments where it is reasonably foreseeable that the vendor is, or may reasonably be expected to be a candidate in the selection process, even if such acceptance would be permitted at other times.
- C. When an actual or perceived conflict of interest exists, Trustees and Staff shall fully disclose said conflict and abstain from participating in Board deliberations concerning the matter and in any way, except to the extent their participation is legally required for the decision to be made as allowed by applicable law and regulations.
- D. To facilitate compliance with this policy, Trustees and Staff may pay for their own expenses when interacting with existing or potential service providers, and in turn may be reimbursed or compensated for those expenses by ACERA, if allowable under applicable reimbursement policies. Receipts shall be obtained when ordinarily given and claims shall be submitted to the Chief Executive Officer or his or her designee for reimbursement.
- E. The ACERA Legal Office will maintain and provide to the Board Trustees, contemporaneous with the Form 700 materials, an annual report, listing the individuals and entities with whom ACERA is contracting for services, to assist the Trustees and Staff with disclosure and/or recusal obligations relating to their own economic interests, including those of their immediate family members.



## V. Conflict of Interest/Form 700 Statement of Economic Interests

A. Trustees and Designated Employees shall complete and file conflict of interest/Statement of Economic Interests – Form 700 with the Legal Department as follows:

1. Initial Statements. Each person already in a position when it is designated by an amendment to the Conflict of Interest Code for ACERA shall file an initial statement within 30 days after the effective date of the amendment.
2. Assuming Office Statements. All persons assuming designated positions after the effective date of the Conflict of Interest Code for ACERA shall file statements within 30 days after assuming the designated positions.
3. Annual Statements. Due no later than April 1.
4. Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

## VI. Biennial Ethics Training

Under Government Code §53234 et seq., ACERA Trustees must receive at least two hours of training in general ethics principles and ethics laws relevant to public service every two years. Each Trustee shall attend ethics training at least once every two years and new Trustees shall attend no later than one year from the first day of service with ACERA, per Gov't Code §53235.1 The ACERA Legal Department will maintain records indicating the date ethics training was completed and the entity that provided the training.

## VII. Policy Review

The Governance Committee shall review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

## VIII. Policy History

The Board reviewed and affirmed this policy, with revisions, on November 17, 2022.<sup>1</sup>

The Board revised Section IV(A)(3) on July 20, 2023.

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<sup>1</sup> The Board adopted this policy on November 18, 1999. Previous amendment dates all with revisions: August 15, 2002; August 16, 2007; June 17, 2010; September 19, 2013; June 18, 2015; November 17, 2016; December 20, 2018 and November 21, 2019.

# Exhibit A



# ACERA Conflict of Interest Code

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The Political Reform Act (Government Code Section 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 California Code of Regulations Section 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.

Individuals holding designated positions shall timely file their statements of economic interests (Form 700) with the ACERA Chief Counsel or his or her designee (475 14th Street, Suite 1000, Oakland, CA 94612) who shall serve as the Filing Officer for ACERA. Filings may be made through DocuSign. All statements will be retained by ACERA and are available for public inspection and reproduction.

## **Designated Positions and Disclosure Categories**

Category 1: These ACERA positions must disclose all financial interests called for in the Form 700:

Investment Operations Officer	Chief Counsel
Investment Officer	Associate Counsel
Assistant Chief Executive Officer	

Category 2: These ACERA positions must disclose the financial interests called for in the Form 700, but only to the extent it is reasonably foreseeable that an ACERA decision might impact such financial interests (for example, a financial interest in a business that currently provides, or may in the future, provide goods or services to ACERA).

Fiscal Services Officer	Chief of Internal Audit
Retirement Benefits Manager	Communications Manager
Chief Technology Officer	Human Resources Officer

New Positions and Consultants: Consultants and newly created positions that make or participate in the making of ACERA decisions that may foreseeably have a material effect on any financial interest must disclose all financial interests called for in the Form 700 (Category 1). The Chief Executive Officer may set disclosure requirements that are tailored to positions with a limited range of duties pursuant to 2 CCR § 18734. Any such limited disclosure requirements determined by the CEO shall be in writing and are public records.

## **Conflict of Interest Code Appendix: Agency Positions that Manage Public Investments for Purposes of Section 87200 of the Government Code**

Trustee

Chief Executive Officer

Chief Investment Officer

# Exhibit B



To: Members of the Board of Retirement

From: Jeff Rieger, Chief Counsel

Meeting: December 17, 2020

Subject: **Conflicts of Interest**

A handwritten signature in black ink, appearing to be "JR", written over the "From:" line.

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#### INTRODUCTION

California has strong conflict-of-interest laws to ensure that public officials make decisions based on the public interest rather than public officials' own interests. This memorandum discusses two important California conflict-of-interest laws, the Political Reform Act and Gov't Code § 1090, as they apply to ACERA trustees.<sup>1</sup> The key points are:

- Diligently identify the financial interests of you and your immediate family
- Consider interests in businesses, real property and sources of gifts/income
- Financial interests that may seem "small" can cause conflict of interest violations
- With a disqualifying financial interest, you cannot influence the decision at all
- The penalties for conflict-of-interest violations can be substantial
- Good intentions will not shield you from all liability
- When in doubt, seek legal counsel and proceed with caution

#### POLITICAL REFORM ACT

California's primary conflict-of-interest law is the Political Reform Act. The basic rule is in Gov't Code § 87100:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

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<sup>1</sup> This memorandum focuses on the Political Reform Act and Gov't Code § 1090, but there are many other laws relating to conflicts of interests, such as limitations on post-governmental employment, incompatible offices, incompatible activities, restrictions and limitations on gifts, free travel and honoraria, and financial disclosure requirements (Form 700s). The California Attorney General prepared a guide to help navigate these laws, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf>, and trustees should seek legal counsel, as necessary.

ACERA trustees and executive staff are “public officials” in “local government” and ACERA decisions are “government decisions.” Thus, when ACERA trustees (and executive staff) are conducting ACERA business, conflict-of-interest questions will turn on whether the individual “knows or has reason to know he [or she] has a financial interest” in the decision. On that question, Gov’t Code § 87103 provides:

A public official has a financial interest in a decision ... if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$500, subject to incremental increases] or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. ...

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

To determine if there is a prohibited conflict of interest, apply this three-question test:

**1. Is it reasonably foreseeable that the governmental decision will have a financial effect on any of your financial interests?**

If a financial interest is a named party in, or the subject of, an ACERA decision, the law presumes that the decision’s effect on that financial interest is reasonably foreseeable.

In all other cases, what is “reasonable foreseeable” turns on the facts and circumstances. A financial effect need not be “likely” to be “reasonably foreseeable.” Rather, if the financial

effect is a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. See 2 CCR § 18701 (attached).

Practical Advice: If you determine ACERA is making a decision that may effect your financial interests, that potential effect is “reasonable foreseeable” enough that you should seek legal counsel.

## **2. Will the reasonably foreseeable financial effect be material?**

The FPPC provides guidelines for different types of financial interests to determine if a financial interest is “material.” 2 CCR §§ 18702.1 (business entity), 18702.2 (real property), 18702.3 (source of income), 18702.4 (source of gift), 18702.5 (personal finances). Regulations attached.

Practical Advice: Seek legal counsel if a financial interest surpasses the threshold amounts listed in Gov’t Code § 87103: \$500 for an effect on personal finances, immediate family finances, sources of income and sources of gifts; and \$2,000 for an effect on a business entity or real property. In some cases, recusal will be unnecessary, but without going through the analysis, you should assume that a financial interest above those threshold amounts is potentially problematic.

## **3. Is the material financial effect distinguishable from its effect on the public generally?**

A financial interest is not a disqualifying conflict of interest if the ACERA decision will effect a significant segment of the public and the effect on the trustee’s interest is not unique compared to the effect on the significant segment. FPPC regulations provide guidance on what constitutes a “significant segment of the public,” which are not crafted for retirement plan trustees, but can be consulted for guidance based on the facts of a particular case. See 2 CCR § 18703 (attached).

Practical Advice: If a decision effects all active members substantially the same, all retired members substantially the same or all members of a tier substantially the same, recusal is not necessary for active member trustees or retired member trustees. When a decision effects a smaller segment of the membership (or effects a trustee’s financial interest uniquely), active member trustees and retired member trustees should seek legal counsel.

If the answer to each of the above three questions is “yes,” then, absent a rare exception, you have a conflict of interest and you must (1) publicly identify the financial interest in detail sufficient for the public to understand, (2) recuse yourself from the vote, (3) leave the room during the discussion of the item,<sup>2</sup> and (4) not do anything to influence the decision behind the scenes. See Gov’t Code § 87105.

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<sup>2</sup> Gov’t Code § 87105(a)(4) states that an otherwise recused official “may speak on the issue during the time that the general public speaks on the issue.”



### GOV'T CODE § 1090

Gov't Code § 1090 is based on the same fundamental principles as the conflict-of-interest provisions in the Political Reform Act, but the two laws differ in several important ways:

- Some Gov't Code § 1090 violations may not violate the Political Reform Act
- Some Political Reform Act violations may not violate Gov't Code § 1090
- Gov't Code § 1090 applies only to "contracts"
- Gov't Code § 1090 sometimes absolutely prohibits the contract, even with recusal
- A violation of Gov't Code § 1090 can be prosecuted as a felony

Section 1090 provides that public officials "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." A public official also may not aid or abet another in violating section 1090.

Although section 1090 applies only to "contracts," courts interpret "contract" broadly. The contract need not be in writing or comport with technical requirements that may apply for a contract to be binding in some circumstances. Courts "disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts. However devious and winding the trail may be which connects the officer with the forbidden contract, if it can be followed and the connection made, a conflict of interest is established." *People v. Honig* (1996) 48 Cal.App.4th 289, 315.

Gov't Code § 1090 starts with a broad prohibition of any financial interest. If an exception does not apply, the Board cannot enter into the contract, even if the interested trustee does not vote. Then, Gov't Code § 1091 establishes "remote interest" exceptions and Gov't Code § 1091.5 establishes "non-interest" exceptions.

"Remote Interests": ACERA can enter into the contract, but only if the trustee discloses the interest, recuses from making of the contract, and the Board authorizes the contract without the vote of the interested trustee. There are many "remote interest" exceptions, but most will never apply to ACERA trustees. See Gov't Code § 1091 (attached).

"Non-Interests": The trustee does not need to recuse, although in some cases the trustee must publicly disclose the "non-interest." There are numerous "non-interest" exceptions, but only a few are likely to apply to ACERA trustees. See Gov't Code § 1091.5 (attached).

### PENALTIES

Potential penalties for violations of the Political Reform Act and/or Gov't Code § 1090:

- Forfeiture of financial gain
- Attorneys' fees to party that established the violation
- Administrative fines of up to \$5,000 fine per violation

- Civil/Criminal fines of up to the greater of \$10,000 or three times amount involved
- Disqualification from elective office
- Up to misdemeanor for Political Reform Act violations
- Up to felony for willful Gov't Code § 1090 violations

The most severe penalties are for willful violations, but less severe penalties can apply even when the trustee operated in good faith. The law assumes that a financial interest influenced the decision.

#### **EXAMPLES**

##### **Agreement Between ACERA and Participating Employer**

A trustee who is an employee of that participating employer (e.g., the County) may participate, so long as the employer has not promised the trustees special treatment for voting or influencing the vote in a particular way. Gov't Code § 1091.5(a)(9); 2 CCR § 18702.3(d) and § 18703(e)(7). This is true even if the agreement results in increased benefits for the trustee, so long as the trustee receives the same benefits as significant segment of other employees. Gov't Code § 1091.5(a)(3); *Lexin v. Superior Court* (2010) 47 Cal.4th 1050.

##### **Agreement Between ACERA and a Trustee's Employing Department**

A trustee employed by the department must identify the employment relationship and fully recuse from the process. Gov't Code § 1091(b)(13); Gov't Code § 1091.5(a)(9).

##### **Trustee is One of 50 Overpaid ACERA Retirees Subject to a Correction Process**

The trustee who received overpayments should not participate in the decision about how to correct the error. If ACERA had made the overpayments to a larger portion of ACERA retirees, the trustee might be able to participate, but 50 members is likely too small of a group to allow the trustee's participation. 2 CCR § 18702.5(b)(1) and § 18703.

##### **Setting Employer and Employee Contributions**

Active employee trustees may participate in setting employer contributions, even though the decision will effect the finances of their employers. 2 CCR § 18702.3(d) and § 18703 (e)(7). They also may participate in setting employee contributions, even though the decision will effect their personal finances. 2 CCR § 18702.5(b)(1).

##### **Same Manager of Trustees' Investment and Potential ACERA Investment**

In most cases, it will not be reasonably foreseeable that adding money to one investment fund will result in greater returns for a different investment fund, even if the funds have the same manager. 2 CCR § 18701. Further, if the trustee's financial interest is in mutual funds, ETFs and other similar diversified investment vehicles, such investments usually do not cause violations of conflict-of-interest laws. Gov't Code § 82034; 2 CCR §18237. Trustees are encouraged to seek legal counsel, however, out of an abundance of caution.

**Trustee or Spouse Invested in Same Investment Fund in Which ACERA May Invest**

Seek legal counsel. This may or may not be a conflict of interest, depending on circumstances. Gov't Code § 82034; 2 CCR §§ 18237, 18701 and 18702.1.

**Trustee or Spouse Invested in Potential ACERA Vendor**

Seek legal counsel. This may or may not be a conflict of interest, depending on circumstances. 2 CCR §§ 18701 and 18702.1; 1091.5 (a)(1).

**Trustee or Spouse is Employee, Officer or on Board of Potential ACERA Vendor**

Seek legal counsel. This may or may not be a conflict of interest, depending on circumstances. Gov't Code § 87103(d); 2 CCR §§ 18701, 18702.1; Gov't Code § 1090.

**Trustee and ACERA Managed Fund Hold Stock in Same Publicly-Traded Company**

This is not a conflict of interest, because it is not reasonably foreseeable that the selection of the fund will result in an investment in a particular stock or that such investment will increase the value of that stock. 2 CCR § 18701.

**Trustee or Spouse Applies for Disability Retirement**

A trustee must recuse from any decision that uniquely effects the benefits of the trustee or the trustee's immediate family. 2 CCR § 18702.5.

**Trustee's Work Colleague Applies for Disability Retirement**

This is not a conflict of interest under the Political Reform Act and there is no "contract" involved under Gov't Code § 1090. If a trustee cannot impartially analyze an application, as a good fiduciary the trustee should not vote on the application, but recusal is not required under the conflict of interest rules.



**State of California**

**GOVERNMENT CODE**

**Section 87100**

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87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

(Added June 4, 1974, by initiative Proposition 9.)

**State of California**

**GOVERNMENT CODE**

**Section 87103**

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87103. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

(Amended by Stats. 2000, Ch. 130, Sec. 7. Effective January 1, 2001. Note: This section was added on June 4, 1974, by initiative Prop. 9. )

**State of California**

**GOVERNMENT CODE**

**Section 87105**

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87105. (a) A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

(1) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

(2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

(3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

(4) Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue.

(b) This section does not apply to Members of the Legislature.

(Added by Stats. 2002, Ch. 233, Sec. 1. Effective January 1, 2003.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18701. Determining Whether a Financial Effect Is Reasonably Foreseeable.**

(a) Financial Interest Explicitly Involved: A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).

(b) Financial Interest Not Explicitly Involved in Decision: A financial effect need not be likely to be considered 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. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest other than an interest described in subdivision (a), the following factors should be considered. These factors are not intended to be an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines.

(1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

(2) Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

(3) Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.

(4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.

(5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

(6) Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.



(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18702.1. Materiality Standard: Financial Interest in a Business Entity.**

(a) The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity is material if any of the following criteria are met:

(1) Explicitly Involved. The entity is a named party in, or the subject of, the decision, including any decision in which the entity:

(A) Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the entity with the official's agency;

(B) Offers to sell a product or service to the agency;

(C) Bids on, or enters into, a contract with the agency, or is identified as a subcontractor on a bid or contract with the agency;

(D) Is the named or intended manufacturer or vendor of any products to be purchased by the agency with an aggregate cost of \$1,000 or more in any 12-month period;

(E) Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the agency;

(F) Is the subject of any inspection, action, or proceeding under the regulatory authority of the agency; or

(G) Is subject to an action taken by the agency that is directed at the entity.

(2) Gross Revenues and Assets or Liabilities. 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:

(A) \$1,000,000; or

(B) Five percent of the entity's annual gross revenues and the increase or decrease is at least \$10,000.

(3) Expenses. 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:

(A) \$250,000; or

(B) One percent of the entity's annual gross revenues and the change in expenses is at least \$2,500.

(4) Real Property. The official knows or has reason to know that the entity has an interest in real property and:

(A) The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or

(B) There is clear and convincing evidence the decision would have a substantial effect on the property.

(b) Exception: Small Shareholder. If the official's only interest in the entity is an investment interest with a value of \$25,000 or less, and if that investment interest is less than one percent of the entity's shares, the decision's effect on the official's investment interest in the entity is only material under subdivisions (a)(2)-(3) or (a)(4)(B) of this regulation.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

Regulations of the Fair Political Practice Commission, Title 2, Division 6, California Coda of Regulations)

**§ 18702.2. Materiality Standard: Financial Interest in Real Property.**

(a) The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision:

(1) Involves the adoption of or amendment to a development plan or criteria applying to the parcel;

(2) Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries;

(3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;

(4) Authorizes the sale, purchase, or lease of the parcel;

(5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property;

(6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services;

(7) Involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property; or

(8) Involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

(A) Development potential;

(B) Income producing potential;

(C) Highest and best use;

(D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or

(E) Market value.

(b) The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.

(c) Leasehold Interests. The reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

(1) Change the termination date of the lease;

(2) Increase or decrease the potential rental value of the property;

(3) Change the official's actual or legally allowable use of the property; or

(4) Impact the official's use and enjoyment of the property.

(d) Exceptions. The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is not material if:

(1) The decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(2) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

(A) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is a financial interest to the public official, or by a person representing either the public official or a financial interest to the public official.

(B) The decision requires a further decision or decisions by the public official's agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

(C) The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and economic interests of the official are not singled out.

(D) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

(e) Definitions. The definitions below apply to this regulation:

(1) A decision “solely concerns the adoption or amendment of a general plan” when the decision, in the manner described in Sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement of development policies, maps, diagrams, and texts, or any other component setting forth objectives, principles, standards, and plan proposals, as described in Sections 65302 and 65303.

(2) “General plan” means “general plan” as used in Sections 65300, et seq.

(3) “Specific plan” or its equivalent means a plan adopted by the jurisdiction to meet the purposes described in Sections 65450, et seq.

(4) Real property in which an official has a financial interest does not include any common area as part of the official's ownership interest in a common interest development as defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq.)

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18702.3. Materiality Standard: Financial Interest in a Source of Income.**

(a) The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a source of income is material if any of the following criteria are met:

(1) The source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party.

(2) The source is an individual and:

(A) The decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by \$1,000 or more; or

(B) The official knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the materiality standards in Regulation 18702.1; or

(C) The official knows or has reason to know that the individual has an interest in real property and:

(i) The property is a named party in, or the subject of, the decision as defined in Regulations 18701(a) and 18702.2(a)(1) through (6); or

(ii) There is clear and convincing evidence the decision would have a substantial effect on the property.

(3) The source is a nonprofit organization and one of the following applies:

(A) The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than:

(i) \$1,000,000; or

(ii) Five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000.

(B) The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:

(i) \$250,000; or

(ii) One percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500.

(C) The official knows or has reason to know that the organization has an interest in real property and:

(i) The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or

(ii) There is clear and convincing evidence the decision would have a substantial effect on the property.

(4) The source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1.

(b) Nexus. Any reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal.

(c) Exception: Income from Retail Sales of a Business Entity. For purposes of applying Section 87103.5:



(1) The retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public, and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction.

(2) Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business. An official is unable to recognize a significant monetary difference when:

(A) The business is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or

(B) The business has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer.

(d) Government Entities. Where a government entity qualifies as a source of income as defined in Section 82030, including where a public official is paid by the entity as a consultant or contractor, this Regulation does not apply. 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.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18702.4. Materiality Standard: Financial Interest in Source of Gift.**

The financial effect of a governmental decision on the source of a gift to a public official, as identified in Section 87103(e), is material if:

(a) The source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding; or

(b) The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively; or

(c) The source is a nonprofit organization that will be financially affected under the materiality standards applied to a nonprofit source of income interest in Regulation 18702.3; or

(d) The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18702.5. Materiality Standard: Financial Interest in an Official's Personal Finances.**

(a) A governmental decision's reasonably foreseeable financial effect on a public official's financial interest in his or her personal finances or those of immediate family, also referred to as a "personal financial effect," is material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision.

(b) Notwithstanding subdivision (a), a personal financial effect is not material if the decision would:

(1) Affect only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency unless the decision is to appoint (other than an appointing decision permitted under subdivision (b)(2) and (3)), hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family member is the only person in the job classification or position.

(2) Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meetings of the group or body aggregating \$500 or more in any 12-month period, the

effect on the official's personal finances is material unless the appointing body posts all of the following on its website:

(A) A list of each appointed position and its term.

(B) The amount of the stipend for each appointed position.

(C) The name of the official who has been appointed to the position.

(D) The name of any official who has been appointed to be an alternate for the position.

(3) Appoint the official to be an officer of the governing body of which the official is already a member, such as a decision to appoint a city councilmember to be the city's mayor.

(4) Establish or change the benefits or retirement plan of the official or the official's immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group.

(5) Result in the payment of any travel expenses incurred by the official or the official's immediate family member while attending a meeting as an authorized representative of an agency.

(6) Permit the official's use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official's duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty.

(7) Result in the official's receipt of any personal reward from the official's use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official's approved travel expenses and is no different from the reward offered to the public.

(c) If the decision would have a reasonably foreseeable financial effect on the official's financial interest in a business entity or real property, any related effect on the official's personal finances is not considered separately. The financial effect on the business entity or real property is analyzed only under the respective materiality standards in Regulations 18702.1 and 18702.2. Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18703. Public Generally.**

(a) General Rule. A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.

(b) A significant segment of the public is at least 25 percent of:

(1) All businesses or non-profit entities within the official's jurisdiction;

(2) All real property, commercial real property, or residential real property within the official's jurisdiction; or

(3) All individuals within the official's jurisdiction.

(c) A unique effect on a public official's financial interest includes a disproportionate effect on:

(1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.

(2) An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.

(3) An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.

(4) An official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

(5) A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.

(6) An official's personal finances or those of his or her immediate family.

(d) "Jurisdiction" means the jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected.

(e) Specific Rules for Special Circumstances. The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally if the official establishes:

(1) Public Services and Utilities. The decision establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate.

(2) General Use or Licensing Fees. The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction.

(3) Limited Neighborhood Effects. The decision affects residential real property limited to a specific location, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public

safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

(4) Rental Properties. The decision affects all renters of residential property within the official's jurisdiction and only interests resulting from the official's leasehold interest in his or her residence are affected.

(5) Required Representative Interest. The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented and there is no unique effect on the official's interest.

(6) State of Emergency. The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency and there is no unique effect on the official's interest.

(7) Governmental Entities. The decision affects a federal, state, or local governmental entity in which the official has an interest and there is no unique effect on the official's interest.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.



**State of California**

**GOVERNMENT CODE**

**Section 1090**

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1090. (a) Members of the Legislature, state, county, district, judicial district, and city 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 state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(Amended by Stats. 2014, Ch. 483, Sec. 1. (SB 952) Effective January 1, 2015.)

**State of California**

**GOVERNMENT CODE**

**Section 1091**

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1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, architect, or planner employed by a consulting engineering, architectural, or planning firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.

(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.

(C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.

(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.

(C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.

(D) The contract implements a program authorized by the Public Utilities Commission.

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

(Amended by Stats. 2015, Ch. 495, Sec. 1. (SB 704) Effective January 1, 2016.)

**State of California**

**GOVERNMENT CODE**

**Section 1091.5**

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1091.5. (a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of, or a person having less than a 10-percent ownership interest in, a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower, depositor, debtor, or creditor.

(12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, “agreement” includes contracts and grants, and “park,” “natural lands,” and “historical resources” shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

(13) That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:

(A) The loan product or program is or may be originated by any lender approved by the agency.

(B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.

(14) That of a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the board of which the officer or employee is a member, on the same terms and conditions as if he or she were not a member of the body or board. For purposes of this paragraph, "public services" includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(Amended by Stats. 2013, Ch. 650, Sec. 1. (AB 1090) Effective January 1, 2014.)