AB 1234 Ethics Training

A Presentation By
Daniel J. Schroeder
Neumiller & Beardslee
2012

AB 1234

2005 Legislature adopted AB 1234 requiring at least 2 hours of ethics training every 2 years in the following areas:

- Government Transparency laws- The Brown Act;
- Financial conflict of interests;
- Gifts (including Agency Raffles, Gift Exchanges, Honoraria) and use of public funds for personal or political use;
- Bias/fairness;

The Ralph M. Brown Act Government Code Section 54950 – 54963

- The Ralph M. Brown Act is California's open meetings law. It grants the public the right to attend and observe the process of government and establishes procedures that local government agencies must follow.

Public Policy

- Government Code section 54950. Declaration of Public Policy

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Analysis

Analysis of the Brown Act is Done by Asking 5 Basic Questions

1) To whom does the Act apply?
2) When does the Act Apply?
3) What is the procedure for holding a meeting?
4) What are the rights of the public?
5) What are the penalties for violating the Act?

1. To Whom Does the Brown Act Apply?

- The Act applies to "legislative bodies" of "local agencies."
  - The definition of legislative bodies means the governing body of a local agency.
  - The definition of a local agency includes a county, city, special districts, municipal corporations, and political subdivisions of the state.

1. To Whom Does the Brown Act Apply? (con't)

- The definition of "legislative bodies," however, is very broad. The Act applies to all of the following:
  - The County Board of Supervisors, City Councils, and Board of Trustees ("Elected Officials");
  - Committees containing a quorum of the members of the Elected Officials;

1. To Whom Does the Brown Act Apply? (con't)

- Standing committees with ongoing jurisdiction created by the Elected Officials;
- Ad hoc committees created by Elected Officials containing non-Elected Officials;
- Newly elected members of the legislative body prior to assuming office.

2. When Does the Brown Act Apply?

- The Brown Act applies to "meetings of any legislative body." What is a "*meeting*" under the Act?
  - Any gathering, whether formal or informal, of a quorum of the members of a legislative body to
    - transact,
    - hear,
    - deliberate, or
    - discuss ANY District business.
  - Looking for actions designed to obtain a collective concurrence on an issue.

2. When Does the Brown Act Apply? (con't)

- Examples of "formal" meetings:
  - Regular Board meetings
  - Special Board meetings
  - Committee meetings
- Examples of "informal" meetings:
  - Telephone discussions
  - E-mails, including cc and bcc's.
  - Discussions after a board/council/committee meetings.

2. When Does the Brown Act Apply? (con't)

- *Informal Meetings* – Informal meetings are a violation of the Brown Act. All "meetings" MUST be formal.
- *Unofficial Meetings* - Unofficial meetings are a violation of the Brown Act. All "meetings" MUST be official.

2. When Does the Brown Act Apply? (con't)

- What gatherings are exempt from the definition of a "meeting" :
  - Individual contacts with constituents and third parties, as long as there is no discussion of the positions of other Elected Officials;
  - Attendance at seminars, and conferences, providing that the legislative body's business is not discussed, among a majority of the members of the "legislative body," other than as part of the scheduled program;

2. When Does the Brown Act Apply? (con't)

- Attendance at a publicly noticed meetings of another body of the local agency, e.g. City or County, provided the legislative body's business is not discussed, except as part of the scheduled meeting;
- Attendance of a majority of the legislative body at an open and noticed standing committee of the legislative body, provided that members of that body who are not members of the standing committee attend only as observers;
- Attendance at purely social or ceremonial occasions, provided that the legislative body's business is not discussed among a majority of the members of the "legislative body."

2. When Does the Brown Act Apply? (con't)
Unofficial" Meetings

WARNING!: The definition of a meeting is construed broadly to things you might not think are meetings.

- Mining for information, e.g. asking staff what other Elected Officials are saying.
- Serial meetings, e.g. a phone tree;
- Hub meetings, e.g. "I'll check with everyone; and
- E-mails.

2. When Does the Brown Act Apply? (con't)
Types of Formal Meetings

- Every "meeting" of a legislative body must fall into one of the following categories to comply with the Brown Act:

  - *Regular Meetings* which are held at a preset time and place;

  - *Special Meetings* which are held for a specific purpose;

2. When Does the Brown Act Apply? (con't)

Types of Formal Meetings (cont.)

- *Emergency Meetings* which are only held when something 1) severely impairs public health and safety, or 2) a crippling disaster impairs the public health and/or safety;
- *Standing Committee Meetings*.

3. What is the Procedure for Holding a Public Meeting?

- Proper meeting notice MUST be timely posted prior to any meeting to alert the public to the meeting
  - Regular meeting notice requirements
    - 72 hour notice by posting/mail/website
    - Time/Date/Location
    - List of items to be discussed that an average person could understand.

3. What is the Procedure for Holding a Public Meeting? (con't)

- Special meeting notice requirements
  - 24 hour notice by posting/mail/website
  - Time/Date/Location
  - List of items to be discussed that an average person could understand

3. What is the Procedure for Holding a Public Meeting? (con't)

- Emergency meeting notice requirements
  - Notice (no agenda)
  - Contact local press via telephone at least 1 hour before meeting if possible.
  - Post unique minutes for 10 days

3. What is the Procedure for Holding a Public Meeting? (con't)

- No action or discussion may be taken on any item not on the agenda, except that
  - Members of the legislative body or staff may, but are not required to, respond briefly to general public comments or ask questions for clarification
  - Members of the legislative body may make a brief announcement or make a brief report on his or her own activities.

3. What is the Procedure for Holding a Public Meeting? (con't)

- Members of the legislative body may provide a reference to staff, request staff to report back on a matter at a subsequent meeting, or take actions to direct staff to place a matter on a future agenda.
- These exceptions are not a license for the legislative body to discuss or take action the item.

3. What is the Procedure for Holding a Public Meeting? (con't)

- Late Agenda Items
  - Issue discovered after agenda posted
  - Immediate action needed
  - 2/3rds of the legislative body or unanimous vote if not all members present

Once added as a late agenda item, it is treated as any other agenda item

3. What is the Procedure for Holding a Public Meeting? (con't)

- All meetings must be held in the jurisdictional boundaries of the legislative body or at its principal office.
- All matters must be discussed in open session unless the law specifically allows the matter to be discussed in "closed session."

3. What is the Procedure for Holding a Public Meeting? (con't) Closed Session Items

- Even if the Brown Act allows an item to be addressed in closed session, the legislative body is not required to hold a closed session.
- What matters may be addressed in closed session:
  - Conference with real property negotiators
  - Conference with legal counsel regarding threatened/existing litigation and liability claims.
  - Threat to public service or facilities

3. What is the Procedure for Holding a Public Meeting? (con't)
Closed Session Items

- Public employee appointment, performance evaluation, and discipline/dismissal/release
- Conference with Labor Negotiators
- Report involving a trade secret.
- Certain Hearings
- Others by specific statute (e.g. student expulsion hearings).

3. What is the Procedure for Holding a Public Meeting? (con't)
Closed Session Items (cont. . .)

- Closed session procedure:
  - Closed session items MUST be property identified on the agenda.
    - Wording is provided in Government Code Section 54954.5
  - Open meeting disclosure requirements can simply reference to the item number in the agenda.
    - There may be specific information required depending on the item. (e.g. anticipated litigation)
  - Public right to comment before adjourning into closed session.
  - Who may attend closed sessions?
    - Elected officials and ONLY necessary staff/counsel/agents.
    - No "observers" or guests.

3. What is the Procedure for Holding a Public Meeting? (con't)
Closed Session Items (cont. . .)

- Public report of action taken in closed session.
  - Immediately upon returning to open session.
  - Only disclosable actions must be announced in open session right after adjourning closed session.
    - What action must be disclosed – Government Code Section 54957.1
    - Examples
- Confidentiality of closed session.
  - Violations include:
    - Injunction
    - Referral to the grand jury
    - Censure

4. What are the Rights of the Public under the Brown Act?

- The public has the right to attend all meetings of a legislative body of a local agency, except closed sessions;
- All open meetings shall meet the protections and prohibitions of the Americans with Disabilities Act;
- No one can be required to sign an attendance list or register in order to attend or speak at an open meeting; nor does an attendee need to identify himself or herself in any way;

4. What are the Rights of the Public under the Brown Act? (con't)

- The public has the right to make public comments at some point in the meeting to address the legislative body on any subject over which the local agency has jurisdiction during the public comment agenda item at regular meetings;
  - No right to general public comment as special meetings.
  - Can be anywhere on the agenda.
- The public has the right to comment on any specific agenda item under consideration prior to or during the consideration of that item;
- The public has a right to review and obtain a copy of all documents distributed to the members of a legislative body for use at a public meeting;

4. What are the Rights of the Public under the Brown Act? (con't)

- The public has the right to record a meeting using a recorder or camera;
- The public has the express right to criticize the policies, procedures, programs, or services of the legislative body, or the acts or omissions of its elected officials;

5. What are the Penalties for Violating the Brown Act?

- If you are a public official, you need to take the Brown Act seriously. There are both criminal and civil penalties for violating the Brown Act.
  - ANY Intentional violation of the Brown Act is a criminal act;
  - An action for an injunction or declaratory relief for violations of the Brown Act may be brought by any interested person or by the District Attorney. The court may order the action taken by the legislative body null and void or order an elected official and staff not to violate the Brown Act again or be held in contempt of court;

6. State Suspension of the Brown Act?

- AB 1464 suspended the state mandate that legislative bodies comply with the Brown Act during the 2012-2013 budget year. What does that mean?
  - Preparation and posting at least 72 hours before a regular meeting of an agenda that contains a brief general description of each item of business to be transacted or discussed at the meeting. (See Gov. Code § 54954.2(a).)
  - Inclusion on the agenda of a brief general description of all items to be discussed in closed session. (See Gov. Code § 54954.2(a).)
  - Disclosure of each item to be discussed in closed session in an open meeting, prior to any closed session. (See Gov. Code § 54957.7 (a).)
  - Report in open session prior to adjournment on the actions and votes taken in closed session regarding certain subject matters. (See Gov. Code §§ 54957.1(a)(l)-(4), (6); 54957.7 (b).)

What should the College Do?

5. What are the Penalties for Violating the Brown Act Cont...?

- ANY Intentional violation of the Brown Act is a criminal misdemeanor;
- An action for an injunction or declaratory relief for violations of the Brown Act may be brought by any interested person or by the District Attorney. The court may order the action taken by the legislative body null and void or order an elected official and staff not to violate the Brown Act again or be held in contempt of court;
- Public/Grand Jury scron.

Conflicts of Interest

There are a number of conflict of interest laws which apply to you.

- Transportation Passes
- Gifts (including Agency Raffles, Gift Exchanges, Honoraria)
- Doctrine of Incompatible Offices
- Incompatible Activities
- Bias
- Political Reform Act
- Government Code Section 1090 and Financial Interests

Transportation Passes

- The California Constitution provides, in Article 12, section 7, that:
  - "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office."
- Quo warranto forfeiture
- Exception: If free pass or discount is because of membership in some other category or group, such as a frequent flyer miles or employment of a particular company, rather than because of public officer status

Gifts

- No elected officer of a local government agency, including members of the District and other public officials who manage public investments as specified in Section 87200, shall accept gifts from any single source in any calendar year with a total cumulative value of more than four hundred twenty dollars ($420).
- Gifts include anything that confers a personal benefit on the recipient.

Gifts Cont. . .

- Gift disclosure requirements:
  - Individual gifts received valued at more than $50 received within a 12 month period
  - Gifts total received from a single source with a value of more than four hundred twenty dollars ($420).

Exempt Gifts

- (1) Informational material such as books, reports, pamphlets, calendars, or periodicals.
- (2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation.
- (3) Gifts from an individual's family: spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.
- (4) Campaign contributions.
- (5) Any devise or inheritance.
- (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars ($250).

Gifts to an Official's Family or Family Member

- Gifts to an official's family or family member can constitute a gift to a public official if the official will receive a financial benefit from the gift, uses the gift, or controls the gift, and cannot show that the donor has an established working, social, or similar relationship with the official's family member independent of the donor's relationship with the official.
  - "Official's family" or "family member" includes any of the following individuals:
    - (A) An official's spouse;
    - (B) A "dependent child" of the official;
    - (C) An official's child (including an adoptive child or stepchild) who meets all of the following criteria:
      - (i) Is at least 18 but no more than 23 years old and is a full-time or part-time student;
      - (ii) Has the same principal place of residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school is not the child's "principal place of residence"; and
      - (iii) Does not provide over one-half of his or her own support.
- A single gift given to both an official and one or more members of the official's family is considered a gift to the official for the full value of the gift.

Gifts Checklist

- Step by step gift analysis:
  - Step 1: Is the recipient an "official" of the District?
  - Step 2: Is a gift involved?
  - Step 3: Did a official or his/her family receive the gift?
  - Step 4: When was the gift received?
  - Step 5: What is the value of the gift?
  - Step 6: Who is the source of the gift?
  - Step 7: Does the gift require disclosure and disqualification?

Example - Gift to Spouse is a Reportable Gift to Official

- In January a vendor that provides goods to an agency had its contract renewed by the District. The vendor offered entertainment tickets to the spouse of one of the board members. Does the board member have to report the offer and disqualify himself/herself from participating on the contract award?
  - Apply the test.

Example - Gift to Spouse is a Reportable Gift to Official

- While there are a lot of unknowns in the example, it is important to know that there is a presumption that such gifts provided to the spouse of a local government agency official who is listed in Government Code Section 87200 (e.g., any public official who manages public investments) are gifts to the official.
  - An exception to this rule applies when there is an established working, social, or similar relationship between the donor/vendor and the official's family member, independent of the relationship between the donor/vendor and the official.

Agency Raffles and Gift Exchanges

- If a local agency awards an item to an agency employee in a raffle and the agency received the item from a third party, the item is considered a gift to the employee through the intermediary agency and may need to be reported on a statement of economic interests, if valued over $50.
  - However, if the item is received by the agency from another agency employee who is not acting as an intermediary for another donor, the item will not be considered a gift.
- When an employee of an agency participates in an employee gift exchange, any item received by the employee is not a gift so long as the item received is provided by another employee of the agency and the gifts are not substantially disproportionate in value.

Honoraria

- An honorarium is a payment received for making a speech, publishing an article, or attending any public or private conference, convention, meeting, social event, meal, or similar gathering.
- Local elected officers and candidates for those offices and all officials holding positions listed in Government Code section 87200 are prohibited from receiving honoraria payments.
- Likewise, an employee designated under a local government agency's conflict of interest code is prohibited from receiving honoraria payments from any source of gifts or income the employee is required to report on his or her statement of economic interests.
- Some limited exceptions apply: valid business, public entity or charity receives the compensation.

Doctrine of Incompatible Offices

- Public Official cannot hold incompatible offices
- Only the potential of conflict between duties of offices is needed
- Does not apply to employees
- First office is automatically vacated

3

Incompatible Activities

- Government Code section 1126(a):

  A local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved.
- Not self-executing

4

Bias

- Common law conflicts of interest
  - To very large extent, doctrine has been superseded by the Political Reform Act
  - Based on 1928 case (police chief selling found property)
  - "Public officer impliedly bound to exercise powers conferred on him with disinterested skill, zeal, and diligence, and primarily for the benefit of the public."

Bias (cont.)

- Due Process Rights
  - In an adjudicatory hearing, not a legislative matter, members of the legislative body are acting in a quasi-judicial manner.
  - Due process requires a judge to be fair, impartial, and disinterested.
  - A member must step down if bias is shown.

Political Reform Act

- Basic concept

  "Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own ***financial interests*** or the ***financial interests*** of persons who have supported them..." (Government Code section 81001(b).)

- Implemented by regulations in California Code of Regulations (CCR), written by the Fair Political Practice Commission.

Political Reform Act

- Basic Prohibition

  "No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless that effect is indistinguishable from the effect on the public generally. A conflict of interest is disqualifying if the public official's participation is not legally required." (2 Cal. Code Regs., § 18700(a).)

- Note emphasis on "financial."

Political Reform Act

- How do you find a conflict of interest under the Political Reform Act:

  - "Follow the money"

The 8 Step Process

- Step One: Are you a "public official" within the meaning of the rules?
- Step Two: Are you making, participating in making, or influencing a governmental decision?
- Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?
- Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

The 8 Step Process (cont.)

- Step Five: Is the financial impact on your economic interests are considered important enough to trigger a conflict of interest?
- Step Six: Is it substantially likely that the governmental decision will materiality affect your economic interests?
- Step Seven: If you have a conflict of interest, does the "public generally" exception apply?
- Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Step One

- Are You a Public Official?
- Yes as to Board Members

Step Two

Are you making, participating in making, or influencing a governmental decision?

- Are you making a governmental decision?
  - Voting on a matter, appointing a person, obligating the District to a course of action, entering into a contract or agreement on behalf of the District, or determining not to do any of those things (unless your determination was because of a conflict of interest) is a governmental decision.
  - "Governmental decision" does not include purely secretarial, manual, or clerical duties, appearances before the any public agency as a member of the public representing yourself, or taking actions on terms and conditions of your own employment or conduct.

Are you making, participating in making, or influencing a governmental decision? (cont.)

- Participating in making a governmental decision?
  - Negotiating (without significant substantive review) with a governmental entity or person regarding a governmental decision, advising or making recommendations to, the person who is making the decision.
- Influencing a governmental decision?
  - Contacting, appearing before, or otherwise attempting to influence any member, officer, employee or consultant of the person's agency with respect to a governmental decision before that agency, or, if it is another agency, attempting to influence that other agency by representing or purporting to represent the official's agency (as by use of official stationery).

Step Three

What are your Economic Interests?

- **Business Investment**. You have an economic interest in a business entity in which you, your spouse, your dependent children or anyone acting on your behalf has invested $2,000 or more.
- **Business Employment or Management**. You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.
- **Real Property**. You have an economic interest in real property in which you, your spouse, your dependent children or anyone acting on your behalf has invested $2,000 or more, and also in certain leasehold interests.

What are Your Economic Interests? (cont.)

- **Sources of Income**. You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) $500 or more in income within 12 months prior to the decision about which you are concerned.
  - When thinking about sources of income, keep in mind that you have a community property interest in your spouse's income – a person from whom your spouse receives income may also be a source of a conflict of interest to you.
  - Also keep in mind that if you, your spouse, or your dependent children own 10 percent of more of a business, you are considered to be receiving "pass-though" income from the business's clients. In other words, the business's clients may be considered sources of income to you.
- **NOTE**: There are certain exceptions to the definition of income: The two most important are that campaign contributions and salary/expenses from a governmental entity are not income.

What are Your Economic Interests? (cont.)

- **Gifts**. You have an economic interest in anyone, whether an individual or an organization, who has given you gifts which total $420 or more within 12 months prior to the decision about which you are concerned.
- **Personal Financial Effect**. You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family.
  - This is known as the "personal financial effects" rule.
  - If these expenses, income, assets or liabilities are likely to go up or down by $250 or more in a 12-month period as a result of a governmental decision, then the decision has a "personal financial effect" on you.
- **Exemptions** There are several detailed exemptions. 2

Step Four
Are Your Economic Interests Directly or Indirectly Involved?

- What is meant by "direct" or "indirect"?
  - Business entities, sources of income, or sources of gifts.
    - Direct if any of them, in person or by agent has initiated the governmental proceeding by filing a claim, application, appeal, etc., or is a named party in, or is the subject of, a proceeding (i.e., renewal of a license or permit, contract, etc.).
    - Indirect otherwise.

Are Your Economic Interests Directly or Indirectly Involved? (cont.)

- Real Property
  - Direct if any of several complex tests are met. [3] Basically they are:
    - The 500 foot rule
    - Direct affect on property
    - Direct affect on use of property
    - Fees or taxes on property
    - Redevelopment plan
    - Construction of public improvements benefiting property
  - Indirect otherwise.

Are Your Economic Interests Directly or Indirectly Involved? (cont.)

- Personal Financial Effect
  - Defined as resulting in the personal expenses, income, assets, or liabilities of the official or the official's immediate family either increasing **or** decreasing.
  - Direct if <u>any</u> effect

<u>Step Five</u>

Is the financial impact on your economic interests are considered important enough to trigger a conflict of interest?

What kinds of financial impacts on your economic interests are considered important enough (material) to trigger a conflict of interest?

- Business entities
  - <u>Direct</u> – <u>Presumed</u> to be material (rebuttable) [Minor exception – I will give orally [4]]
  - <u>Indirect</u> – Very complex rules if not a small business – [I will give orally [4]] If small business, effect is material if decision will result in an increase or decrease in gross revenues for a fiscal year or value of the business' assets or liabilities of $20,000 or more, or causes business to incur or avoid incurring additional expenses of $5,000 or more per year, or reduces or eliminates existing expenses of $5,000 or more per year.

Is the financial impact on your economic interests are considered important enough to trigger a conflict of interest? (cont.)

- Real Property
  - Direct – Presumed to be material (rebuttable)
  - Indirect – Presumed to not be material (rebuttable)
- Sources of Income or Gifts
  - Direct – Deemed to be material
  - Indirect – If a business entity, use same test as described above. If a non-profit entity, including a governmental entity, complex set of rules. If an individual, the decision will affect that person's income, investments, assets or liabilities (except real property) by $1,000 or more, or, for property, apply the standards discussed before.

Is the financial impact on your economic interests are considered important enough to trigger a conflict of interest? (cont.)

- **Special Rule**. Nexus. Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purposes which would be achieved, defeated, aided, or hindered by the decision. [I think the District Attorney would also call this bribery.]

Step Six

Is it substantially likely that the governmental decision will materiality affect your economic interests?

The Act itself uses the words "reasonably foreseeable". The FPPC rules interpret that to mean "substantially likely". It means: The likelihood need not be a certainty, but must be more than merely a possibility.

What does that mean?

Step Seven

If you have a conflict of interest, does the "public generally" exception apply?

- Four part test:
  - 1: Identify financial interest affected,
  - 2: Is it part of a significant segment of other economic interests?
  - 3: Will the significant segment also be affected by the governmental decision?
  - 4: Will your economic interest be affected in substantially the same manner as the other economic interests?

Step Eight

Even if you have a disqualifying conflict of interest, is your participation legally required?

- There exists no alternative source of decision
- Cannot be used to break ties
- Only smallest number of disqualified individuals may participate; i.e., only to get a quorum
- Specific procedural rules apply

What do you do if you do have a Conflict and are Disqualified?

- Following announcement of agenda item, but before discussion or vote
  - Publicly identify each type of economic interest affected, and give the following details:
    - If an investment, the name of the business entity in which the investment is made
    - If a business position, the name of the business, and a general description of the business activity

What do you do if you do have a Conflict and are Disqualified (cont.)

- If real property other than the official's own home, the address or other indication of the property.
- If the official's own home, state "It is my home."
- If a source of income or gifts, identify the source.
- If a personal financial effect, identify the expense, liability, asset, or income that is affected.

What do you do if you do have a Conflict and are Disqualified (cont.)

- Special rule for closed sessions: Must orally, before the closed sessions, announce only that official has a conflict prohibited by Government Code section 87100.
- All the announcements must be made orally, and are part of the official record.

What do you do if you do have a Conflict and are Disqualified (cont.)

- After making the announcement, you must leave the room, unless
  - Matter is on the consent calendar and not pulled
  - If the matter involves a "personal interest", which includes real property, a business wholly-owned by the official or members of his immediate family, or a business over which the official alone, or with his or her spouse, exercises sole direction and control, then, while the official still may not vote, he or she may leave the dais, and go join the audience, and speak as a member of the public.

FPPC Involvement

- You may obtain informal, telephonic advice from the FPPC, but you cannot rely on it as a legal defense.
- You may obtain formal, written advice from the FPPC, and you may rely on it as a legal defense.

Government Code Section 1090

- 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.

Government Code Section 1090 (cont.)

- There is NO definition in the chapter of "Financial interest."
- Except as noted below, cannot avoid penalties by abstaining, disqualifying one's self, or even being absent.
- This Act is very strictly enforced against public officials by the courts.

Government Code Section 1090 (cont.)

Financial Interest

- As noted, no definition is given. Definitions came from court cases and attorney general opinions. (I'll provide examples [6])
- Both cases and opinions consistently refer to "any financial interest, direct or indirect, no matter how remote." Can you trace a path to the money?
- Making a contract includes planning, discussion, compromises, negotiation, research, etc., leading to the contract. Stay out of it completely from the start.

Government Code Section 1090 (cont.)

Financial Interest con. . .

- One way of determining whether a financial interest exists is to look at the exceptions contained in the chapter. For example, if there is an exception for making a contract with a corporation in which a council member owns less than a specified percentage of shares, then it implies that a contract with a corporation in which the council member owns more than that percentage is, generally, a financial interest. Otherwise, there would be no need to pass an exception.
- Financial interest includes gain or loss.

Government Code Section 1090 (cont.)

Exceptions cont. . .

- Remote interest. (Applies only to officers)
  - There are listed 15 interests which are deemed remote. (and one extra for special districts.) I will read some of them orally. [7]
  - If there is an available exception under the "remote interest" definition, you may not use it unless:
    - You disclose the conflict,
    - You do not vote on the matter, and
    - You do not influence or attempt to influence another member of the council or commission covering the contract.

Government Code Section 1090 (cont.)

Exceptions cont. . .

- Non-Interest (applies to officers and employees)
  - There are 13 interests which are deemed not to be financial interests at all. They are very technical.

Government Code Section 1090 (cont.)

Exceptions cont. . .

- Subdivision of land
  - Notwithstanding 1090, you may subdivide lands owned by you, or in which you have an interest, provided"
    - You first disclose the interest, and
    - You do not vote on the matter.

Penalties for Violating Government Code Section 1090

- The contract is null and void.
  - Exception - Certain third party good faith real property interests.
- Willful violation means purposeful and with knowledge.
- Penalties:
  - Fine of up to $1,000, or
  - Imprisonment in state prison (a felony), and
  - Forever disqualified from holding public office in California, and
  - Loss of whatever you gained from the contract.

"If you can't do the time, don't do the crime."

Special Notes

- Spousal income
- Temporality issues
- A person who makes a willful and knowing disclosure of confidential information (or information from a closed session) for pecuniary gain is guilty of a misdemeanor [relates to real property interests.]

Form 700 Disclosure

- What is it? – A form that all public "officials" are required to fill out that identify their economic interests.
- When must the for be filled out?
  - Within 30 days of entering office.
  - Within 30 days of leaving office.
  - Annually while a public official.
- The Form is a public record

Form 700 Disclosure (cont.)

- What must be disclosed:
  - Sources of income
  - Interests in real property
  - Investments
  - Business positions
  - Gifts.

Other Ethics Issues

- Gift of Public Funds is prohibited by the California Constitution.
- Private/political use public funds or resources is unlawful.
- Mass Mailing Restrictions using public funds:
  - Anything tangible delivered by any means to anyone;
  - Featuring or referencing a elected official;
  - Costing more than $50.00;
  - To more than 200 recipients in a one month period.

Questions?