M e m o r a n d u m

To: CHAIR AND COMMISSIONERS

CTC Meeting: March 25, 2015

Reference No.: 4.7
Action

From: WILL KEMPTON
Executive Director

Subject: **APPROVAL OF AMENDMENT TO THE COMMISSION'S CONFLICT OF INTEREST CODE**

ISSUE:

Should the Commission approve the proposed amendment to the Commission's Conflict of Interest Code?

Amendments to the Commission's Conflict of Interest Code are proposed to add positions that involve the making, or participation in the making, of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of Section 87302 of the Government Code. The proposed amendment, statement of reasons for the amendment, and notice of intention to amend the existing conflict of interest code have been published in the Office of Administrative Law's Notice of Publication, and are set forth in Attachments 1, 2 and 3 respectively. The proposed amendment:

- Newly designates the positions of Principal Transportation Engineer, Supervising Transportation Engineer, Supervising Transportation Planner, and Members of the Technical Advisory Committee on Aeronautics as subject to the Commission's Conflict of Interest disclosure requirements.

- Creates a new category of reportable interests.

- Adds clarifying language and makes other technical changes to reflect the current organizational structure of the Commission.

RECOMMENDATION:

Staff recommends the Commission:

1) Approve the proposed amendments to the Commission's Conflict of Interest Code for processing as specified in California Code of Regulations, Title 2, Division 6, and

2) Authorize staff to finalize the proposed amendments and convey them to the Fair Political Practices Commission.

BACKGROUND:

Under the Political Reform Act (the "Act"), all public agencies are required to adopt a Conflict of Interest Code. A Conflict of Interest Code designates positions required to file Statements of Economic Interests (Form 700), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interests.

The Commission's Conflict of Interest Code requires amendment to include positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in Government Code Section 87302 (a) which states *"Specific enumeration of the positions within the agency, other than those specified in Section 87200, which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. An investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position."*

California Code of Regulations, Title 2, Division 6 Section 18750 (c) requires that every agency which proposes to amend its existing conflict of interest code shall (1) conduct a public hearing or establish a written comment period; (2) prepare an initial proposed amendment; (3) prepare a Notice of Intention (notice) to amend an existing code that meets specific requirements; (4) file a copy of the notice with the Office of Administrative Law for publication in the California Notice Register at least 60 days before the public hearing or close of the comment period; (5) file a copy of the notice (endorsed by the Office of Administrative Law) with the FPPC at least 45 days before the public hearing or close of the written comment period; (6) provide notice to each employee of the agency affected by the proposed amendment at least 45 days before the hearing or the close of the comment period; (7) make the exact terms of the proposed code or amendment available for inspection and copying to interested persons for at least 45 days prior to the public hearing or the close of the comment period; (8) accept written comments from interested persons through the conclusion of the public hearing or close of the comment period; (9) conduct a public hearing if at least 15 days prior to the close of the comment period a public hearing is requested.

The code reviewing body for state agencies is the Fair Political Practices Commission (FPPC). The Commission has been in contact with FPPC staff regarding these amendments. Once the required amendment process described above is complete, the amendment must be filed with the FPPC for approval.

Attachments
1. Proposed Amendment to the California Transportation Commission's Conflict of Interest Code
2. Explanation of Reasons for Amendments to the California Transportation Commission's Conflict of Interest Code
3. Notice of Intention to Amend the Conflict-Of-Interest Code of the California Transportation Commission

CALIFORNIA TRANSPORTATION COMMISSION
CONFLICT OF INTEREST CODE

The Political Reform Act, (Government Code Sections 81000, et seq.), requires state and local government agencies to adopt and promulgate c~~C~~onflict of i~~I~~nterest c~~C~~odes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730), which 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, it 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. This regulation and the attached Appendices ~~Appendix~~ designating positions ~~officials and employees~~ and establishing disclosure categories shall constitute the conflict of interest code of the **California Transportation Commission** (**Commission**).

Individuals holding designated positions ~~Designated employees~~ shall file their statements of economic interests with the **Commission**, ~~California Transportation Commission, who~~ which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) Upon receipt of the statements ~~of economic interests~~ of the Commissioners and the Executive Director, the **Commission** shall make and retain copies ~~a copy~~ and forward the original statements to the **Fair Political Practices Commission**. All other statements ~~Statements of all other designated employees~~ will be retained by the **Commission**. ~~(Government Code Section 81008).~~

NOTE: Authority cited: Sections 81008, 87300, 87306, Government Code. Reference: Section 87302, Government Code.

APPENDIX A
DESIGNATED POSITIONS

Designated Positions	Assigned Disclosure Categories
Commissioners	1
Executive Director	1
Legal Counsel	1
Chief Deputy Director	1
Assistant Executive Director	1
Principal Transportation Engineer	1
Member, Technical Advisory Committee on Aeronautics	4
Staff Services Manager (Administrative Officer)	2, 3
Supervising Transportation Planner	2, 3
Supervising Transportation Engineer	2, 3
Consultants/New Positions ~~1/~~	~~1~~*

~~1/ With respect to Consultants, the Executive Director may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director shall forward a copy of this determination to the Fair Political Practices Commission. The Director determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.~~
~~1 of 2 (Appendix)~~

* Consultants and new positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code (i.e., Category 1), subject to the following limitation:

The Executive Director may determine in writing that a particular consultant or new position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's or new position's duties and, based on that description, a statement of the extent of the disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Sec. 81008.)

APPENDIX B
DISCLOSURE CATEGORIES

~~**Disclosure Categories**~~

Category 1
Designated positions ~~officials or employees~~ assigned to this category must report:
All sources of income, including receipt of gifts, loans, and travel payments, interests in real property, and investments and business positions in business entities.

Category 2
Designated positions ~~officials or employees~~ assigned to this category must report:
Business positions, investments in business entities, or income, including receipt of gifts, loans, and travel payments, from sources which manufacture or sell supplies, machinery, ~~or~~ equipment, or services of the type utilized by the Commission.

Category 3
Designated positions ~~officials or employees~~ assigned to this category must report:
Business positions, investments in business entities, or income, including receipt of gifts, loans, and travel payments, from sources that ~~which~~ are contractors ~~or subcontractors~~ engaged in the performance of work or services of the type funded ~~utilized~~ by the Commission.

Category 4
Designated positions assigned to this category must report:

1. Business positions, investments in business entities, or income, including receipt of gifts, loans, and travel payments, from sources that are engaged in the performance of work or services involving aviation, package delivery, aviation fuel, aviation maintenance or repair, pilot training, sales and purchases of aircraft, and ground transportation to and from airports, and from sources that own interests in real property located within airports, and from sources conducting business within airports,
2. Interests in real property located within an airport or within one and one half miles of the boundary of an airport,
3. Income, including rental income, from sources renting an interest in real property located within an airport or within one and one half miles of the boundary of an airport.

California Transportation Commission
Proposed Amendments to Conflict of Interest Code
Explanation of Reasons

In accordance with Title 2, Division 6, California Code of Regulations Section 18750 (c) (3) (G), the California Transportation Commission (Commission) provides the following explanation of reasons for proposing to amendment the Commission's Conflict of Interest Code:

General Explanation of Reasons:
The Commission's Conflict of Interest Code requires amendment to include positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in Government Code Section 87302 (a) which states:

"Specific enumeration of the positions within the agency, other than those specified in Section 87200, which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. An investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position."

Designated Position and New Category Addition, New Disclosure Category 4 - Member, Technical Advisory Committee on Aeronautics
The Technical Advisory Committee on Aeronautics ("TACA") is established pursuant to Government Code Section 14506.5. The TACA has a connection to the Commission's Committee on Aeronautics, a committee of commissioners described in Government Code Section 14506. Government Code Section 14506.5 provides for the appointment of the members of the TACA. As to its role, the law provides as follows:

"*This Technical Advisory Committee shall give technical advice to the Committee on Aeronautics on the full range of aviation issues to be considered by the commission.*"

Meetings of the Commission, the Commission's Committee on Aeronautics and the TACA are subject to the Open Meeting Law (Government Code Section 11121). The TACA serves to provide technical advice which involve the making, or participation in the making, of decisions by the Commission and/or the Commission's Committee on Aeronautics that may foreseeably have a material effect on any financial interest as described in new Disclosure Category 4, as set forth in Government Code Section 87302 (a). Therefore, members of the TACA must file their statements of economic interests consistent with Disclosure Category 4 of the Commission's Conflict of Interest Code.

Designated Position Addition, Disclosure Category 1 - Principal Transportation Engineer
As a member of the Commission's key policy staff, the Principal Transportation Engineer, under the direction of the Commission's Executive Director and Chief Deputy Director, is responsible for assisting the Commission in its responsibilities related to the Toll Bridge Program Oversight

Committee, Right of Way, Design-Build Demonstration Program, Project Delivery, and other matters of the Commission. The Principal Transportation Engineer serves to provide technical advice and formulate policy and other recommendations which involve the making, or participation in the making, of decisions by the Commission and/or the Commission's Committees that may foreseeably have a material effect on the types of financial interests described in Disclosure Category 1. Therefore the Principal Transportation Engineer must file a statement of economic interests consistent with Disclosure Category 1 of the Commission's Conflict of Interest Code.

Designated Position Additions, Disclosure Category 2, 3 – Supervising Transportation Planner & Supervising Transportation Engineer

The Supervising Transportation Planner & Supervising Transportation Engineer positions serve under the direction of the Commission's Assistant Executive Directors and/or Principal Transportation Engineer. These positions serve as policy staff coordinating transportation policy, planning, programming and funding recommendations which involve the making, or participation in the making, of decisions by the Commission and/or the Commission's Committees that may foreseeably have a material effect on any financial interest, as described in Disclosure Category 2 and 3. Therefore, the Supervising Transportation Planner and Supervising Transportation Engineer positions must file a statement of economic interests consistent with Disclosure Categories 2 and 3 of the Commission's Conflict of Interest Code.

Consultants/New Positions Amendment

Consultants and New Positions of the Commission may involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in Government Code Section 87302 (a). Therefore, an amendment is required to the Commission's Conflict of Interest Code to clarify that the Commission's consultants and new positions will be added to the list of designated positions and subject to the broadest disclosure category in the code unless the Executive Director determines in writing that the disclosure requirements do not apply.

Other Amendments

Other amendments are proposed to update the Commission's Conflict of Interest Code to add clarifying language and make other technical changes to reflect the current organizational structure of the Commission.

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTERST CODE OF THE CALIFORNIA TRANSPORTATION COMMISSION

NOTICE IS HEREBY GIVEN that the California Transportation Commission, pursuant to the authority vested in it by Section 87306 of the Government Code, proposes amendments to its conflict-of-interest code. The purpose of these amendments is to implement the requirements of Sections 87300 through 87302, and Section 87306 of the Government Code.

The California Transportation Commission proposes to amend its conflict-of-interest code to include employee positions that involve the making, or participation in the making, of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of Section 87302 of the Government Code.

These amendments newly designate the positions of Principal Transportation Engineer, Supervising Transportation Engineer, Supervising Transportation Planner, and Members of the Technical Advisory Committee on Aeronautics, and create a new category of reportable interests. The amendments also add clarifying language and make other technical changes to reflect the current organizational structure of the Commission. Copies of the amended code are available and may be requested from the contact person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than February 16, 2015, or at the conclusion of the public hearing, if requested, whichever comes later, to the contact person set forth below.

A public hearing has been scheduled concerning the proposed amendments. The hearing will occur during the California Transportation Commission's March 2015 meeting. Notice of the date, time and location of the meeting will be made available on the Commission's website at www.catc.ca.gov, or the information can be obtained by contacting the person set forth below.

The California Transportation Commission has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the contact person set forth below.

The California Transportation Commission has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the California Transportation Commission has determined that there are no alternatives that would be more effective in carrying out the purpose for which the amendments are proposed, or would be as effective and less burdensome to affected private persons, than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

California Transportation Commission
Attention: Rosemary Mejia
1120 N Street, MS-52
Sacramento, CA 95814
(916) 654-4245
Rosemary_Mejia@dot.ca.gov