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Public Entities, Officers, and Employees

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; Political Reform Act—financial disclosure and disqualification

Government Code §§87206.5 (repealed); §§82029, 82030, 82033, 82034, 87103, 87206, 87207 (amended).
AB 1682 (Bosco); STATS 1980, Ch 183
AB 3419 (Johnson); STATS 1980, Ch 1000

The Political Reform Act of 1974 specifies those circumstances when a public official is required to make a financial disclosure and provides for disqualification of a public official from participating in decisions because of a conflict of interest.¹ Chapter 1000 amends existing law regarding what constitutes an “interest in real property” or an “investment” for disclosure purposes to include an ownership interest held directly, indirectly, or beneficially by the public official or other filer or his or her immediate family.² Disclosure is required when the value of the investment or interest in real property, not including the principal residence of the filer, is \$1000 or more.³ Chapter 1000 further clarifies provisions of the disclosure statement by more explicitly distinguishing the separate monetary categories that must be specified in statements of the fair market value of an interest or investment in real property, or of the aggregate value of income acquired by the filer from each source of income.⁴

Under existing law, a public official is prohibited on conflict of interest grounds from participating in governmental decisions⁵ when the official has a financial interest⁶ in the decision.⁷ For purposes of determining whether an official has a financial interest in a decision, an

1. See CAL. GOV'T CODE §§81002, 87100; CAL. STATS. 1980, c. 183, §§4, 7, at —. See generally PROPOSITION 9, added by INITIATIVE MEASURE approved by the electorate June 4, 1974, Effective Jan. 7, 1975 (enacting CAL. GOV'T CODE §§81000-91014) (copy on file at *Pacific Law Journal*) [hereinafter cited as INITIATIVE MEASURE].

2. Compare CAL. GOV'T CODE §§82033, 82034 with INITIATIVE MEASURE, *supra* note 1, at 16 (enacting CAL. GOV'T CODE §§82033, 82034). See also CAL. GOV'T CODE §82029 (definition of immediate family).

3. See CAL. GOV'T CODE §87206(d), (f).

4. Compare *id.* §§87206(d), 87207(a)(2) with INITIATIVE MEASURE, *supra* note 1, at 42 (enacting CAL. GOV'T CODE §87206(d)), 43 (enacting CAL. GOV'T CODE §87207).

5. See generally 1 FPPC OPIN. 39; 1 FPPC OPIN. 54.

6. See CAL. GOV'T CODE §87103. But see *Woodland Hills Residents Ass'n v. City Council*, 26 Cal. 3d 938, 946 n.7, 609 P.2d 1029, 1033 n.7, 164 Cal. Rptr. 255, 259 n.7 (1980). See also 26 Cal. 3d at 952, 609 P.2d at 1036, 164 Cal. Rptr. at 262 (Bird, C.J., concurring and dissenting).

7. See CAL. GOV'T CODE §87100.

indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, or by an agent on behalf of a public official.⁸ Prior to the enactment of Chapter 183, an indirect investment or interest also meant any business entity in which the public official had over a 50 percent ownership interest or in which the official, and/or his or her spouse and dependent children, had a present or future interest worth more than \$1000.⁹ Chapter 183 provides instead that any investment or interest owned by a business entity or trust in which the official, the official's agents, spouse, and/or dependent children owns directly, indirectly, or beneficially a *ten percent* or greater interest constitutes an indirect investment or interest.¹⁰ In addition, Chapter 1000 deletes the requirement that the disclosure statement must contain the investments and interests in real property of a business entity when the disclosing party has an investment that constitutes 50 percent or more of the ownership interest in that business entity.¹¹

Finally, Chapter 183 expands the statutory definition of income to include any outstanding loan¹² issued by a commercial lending institution, within its regular course of business, and without regard to the borrower's status as a public official,¹³ unless the loan is used to purchase the filer's principal residence *or* the balance due does not exceed \$10,000.¹⁴ In addition, the definition of income now excludes payments under a defined benefit pension plan qualified under Section 401(a) of the Internal Revenue Code,¹⁵ or debts not exceeding \$10,000 resulting from retail installment or credit card transactions made in the lender's regular course of business, without regard to the borrower's status as a public official.¹⁶

8. *See id.* §87103.

9. *See* INITIATIVE MEASURE, *supra* note 1, at 41 (enacting CAL. GOV'T CODE §87103).

10. *See* CAL. GOV'T CODE §87103.

11. *Compare id.* §87206 with INITIATIVE MEASURE, *supra* note 1, at 43 (enacting CAL. GOV'T CODE §87206).

12. *See* CAL. GOV'T CODE §82030(a).

13. *See id.* §82030(b)(8).

14. *See id.* §82030(b)(8)(A), (B).

15. *See id.* §82030(b)(11).

16. *See id.* §82030(b)(10).

Public Entities, Officers, and Employees; public employees retirement system—benefits

Government Code §21253 (new); §§20016, 20017.77, 21252.6 (amended).

SB 528 (Watson); STATS 1980, Ch 46

(Effective March 27, 1980)

Prior to the enactment of Chapter 46, for purposes of the Public Employees' Retirement System (hereinafter referred to as PERS),¹ a contracting agency² that elected to use the "two percent at 55" retirement formula³ and also offered the "one-half pay at 55" retirement formula⁴ was required to put all safety members⁵ hired under the age of 30 years on the two percent at 55 formula and keep current employees hired after attaining the age of 30 years on the one-half pay at 55 formula.⁶ Chapter 46 modifies this procedure by allowing a safety member the *option* of choosing between these two available formulas⁷ provided that the contracting agency that employs the member elects to be subject to Chapter 46 by an amendment to the agency's existing contract or by an express provision in a new contract.⁸

When a contracting agency elects to amend its contract in accordance with Chapter 46, members on the active payroll of the agency on the effective date of the amendment must elect in writing within 90 days to be subject to either retirement formula with respect to all service performed for the contracting agency.⁹ Former members who are reinstated with the agency after retirement¹⁰ must also elect in writing within 90 days to be subject to either formula with respect to all service provided for the contracting agency prior to the effective date of the contract amendment.¹¹ This election, however, will be effective only if the reinstated member remains in employment for at least one year after reinstatement.¹² Former members who reenter state service and elect to redeposit contributions¹³ will be subject to the two percent at 55 formula with respect to all safety service performed prior to the effective date of the contract amendment.¹⁴ Finally, former employees of an amending agency whose service to the agency was subject to the one-half pay at 55 formula retain rights under that formula.¹⁵

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1. See generally CAL. GOV'T CODE §§20000-21500.
 2. See *id.* §20010 (definition of contracting agency).
 3. See *id.* §21252.6 (providing for compensation of two percent per service year at age 55).
 4. See *id.* §21252.1 (providing for 50 percent of the employee's final compensation at age 55 with a minimum of 20 years of service).
 5. See generally *id.* §§20019, 20019.3 (definitions of local safety members).
 6. See CAL. STATS. 1977, c. 368, §7, at 1349 (amending CAL. GOV'T CODE §21252.6).
 7. See CAL. GOV'T CODE §§21252.1, 21252.6.
 8. See *id.* §§21252.6, 21253.
 9. See *id.* §21253(a).
 10. See generally *id.* §§21101-21103.
 11. See *id.* §21253(d).
 12. See *id.*
 13. See *id.* §20654 (redeposit of contributions).
 14. See *id.* §§21252.6, 21253(c).
 15. See *id.* §§21252.1, 21253(b).

Chapter 46 also restores PERS membership status to employees of the Youthful Offender Parole Board and the Board of Prison Terms.¹⁶ Recently enacted legislation separated the Youthful Offender Parole Board from the Department of Youth Authority¹⁷ and replaced the Community Release Board with the Board of Prison Terms.¹⁸ The legislation, however, failed to make a corresponding change in employee classification for the purposes of the PERS.¹⁹ Chapter 46 restores safety and industrial member status to the affected employees²⁰ and provides that the reclassification is retroactive to January 1, 1980.²¹

16. *See id.* §§20016, 20017.77. *See generally* CAL. PENAL CODE §§5075-5082 (Board of Prison Terms); CAL. WELF. & INST. CODE §§1716-1726 (Youthful Offender Parole Board).

17. *See* CAL. WELF. & INST. CODE §§1716-1726.

18. *See* CAL. PENAL CODE §5078; CAL. STATS. 1979, c. 255, §64, at — (legislative intent to only effect a name change).

19. *Compare* CAL. GOV'T CODE §§20016, 20017.77 with CAL. STATS. 1979, c. 255, §§1-64, at — (replaced Community Release Board with the Board of Prison Terms) and CAL. STATS. 1979, c. 860, §§1-39, at — (creation of Youthful Offender Parole Board).

20. *See* CAL. GOV'T CODE §§20016, 20017.77.

21. *See* CAL. STATS. 1980, c. 46, §5, at — (intent to make change retroactive).

Public Entities, Officers, and Employees; civil service layoff procedure

Government Code §19533.04 (new); §§19143.5, 19533 (amended).

AB 920 (Alatorre); STATS 1980, Ch 65

(Effective April 21, 1980)

Support: Department of Finance; Governor's Office of Employee Relations

Prior to the enactment of Chapter 65, there were several methods of computing seniority credits based upon an employee's salary and the computation date.¹ Chapter 65 revises the procedure for the computation of seniority for state employees,² except for professional, scientific, administrative, management, and executive classes, by providing a *single* method for computing seniority credits, regardless of an employee's salary or the computation date.³

As did prior law, Chapter 65 allows one credit for each complete month of full-time state service.⁴ If an employee has a break in service of six months to three years, only one-half the credits normally received

1. *See* CAL. STATS. 1978, c. 776, §116, at 2467 (amending CAL. GOV'T CODE §19533). *See also* CAL. STATS. 1967, c. 160, §1, at 1245 (amending CAL. GOV'T CODE §19533) (where the phrase "on the computation date. . ." was used instead of "at the time notice of layoff is given. . .").

2. *See* CAL. GOV'T CODE §19533.04 (definition of state service for purposes of determining seniority).

3. *See id.* §19533(a).

4. *Compare id.* with CAL. STATS. 1978, c. 776, §116, at 2467.

for employment before the break will be computed,⁵ and no credits will be received for (1) service prior to a break of more than three years⁶ or (2) service prior to a break due to dismissal, or rejection during a probationary period⁷ if service is broken for six months or longer.⁸

5. See CAL. GOV'T CODE §§19143.5, 19533(a).

6. See *id.* §19143.5.

7. See *id.* §§19170-19180 (defining probationary period, and reasons for rejection of probationer).

8. See *id.* §§19143, 19533(a).

Public Entities, Officers, and Employees; claims against public entities

Code of Civil Procedure §1268.020 (amended); Education Code §§35201, 72501 (repealed); Government Code §§955.5, 50170-50175 (repealed); §§906, 965.5, 965.6, 965.7, 965.8, 965.9, 970.1, 970.5 (new); §§912.6, 935.6, 942, 948, 955.6, 965, 965.2, 970, 970.4, 970.6, 970.8, 971 (amended); Water Code §§31091-31096 (repealed).

AB 2146 (McAlister); STATS 1980, Ch 215

Support: Department of Transportation; Office of the Governor, Legal Affairs Unit

In an apparent attempt to clarify the duty of public entities¹ to pay approved claims and money judgments, the legislature has enacted Chapter 215.² Specifically, Chapter 215 requires public entities to pay *all* approved claims and money judgments,³ makes the writ of mandate the proper means to compel payment of claims or judgments,⁴ establishes rules regarding the payment of interest on allowed claims,⁵ and requires local public entities to appropriate funds in their budgets to pay all judgments.⁶

Prior to the enactment of Chapter 215, a local public entity⁷ was only required to pay tort or inverse condemnation judgments⁸ and plaintiffs with other claims against a public entity were often precluded from

1. See CAL. CIV. PROC. CODE §1268.020(d) (exclusion of the Regents of the University of California for purposes of this Chapter); CAL. GOV'T CODE §811.2 (definition of public entity).

2. See *Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities*, 15 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS AND STUDIES 1257, 1262 (1980) [hereinafter cited as RECOMMENDATIONS].

3. Compare CAL. GOV'T CODE §970(b) with CAL. STATS. 1975, c. 285, §2, at 705 (amending CAL. GOV'T CODE §970(b)).

4. See CAL. GOV'T CODE §§942, 965.7.

5. See *id.* §906(b), (c).

6. See *id.* §970.8.

7. See *id.* §900.4 (definition of local public entity).

8. See CAL. STATS. 1975, c. 285, §2, at 705. See generally *id.* §§2-8, at 705-07.

recovery.⁹ By eliminating references to tort and inverse condemnation proceedings,¹⁰ Chapter 215 requires a local public entity to pay *all* money judgments.¹¹ In addition, in order to avoid unreasonable hardship, prior law allowed for the payment of judgments in not more than ten annual installments, each payment to consist of an equal portion of the *principal* plus any accrued interest.¹² This payment requirement, however, defeated the purpose of installment payments because the accrued interest on the initial balance resulted in substantially larger payments in the first few years.¹³ Chapter 215, by providing that *each installment payment* be in equal amount,¹⁴ instead requires that the amount of the principal paid in each installment will increase with each payment as the amount of accrued interest required to be included with each payment decreases.¹⁵

Prior to the enactment of Chapter 215, there was no provision requiring the payment of interest on claims allowed in whole or in part.¹⁶ Chapter 215 mandates that no interest is payable on an amount allowed on a claim¹⁷ if the payment of the claim is subject to approval of an appropriation by the legislature.¹⁸ If an appropriation is made, however, interest starts to accrue 30 days after the effective date of the appropriation.¹⁹ If the claim is not subject to the approval of the legislature, unless otherwise agreed,²⁰ interest accrues 30 days after the claimant accepts the settlement in writing.²¹ In either case, interest is payable at the same rate as in a judgment.²²

Prior to the enactment of Chapter 215, both execution and the writ of mandate were used for the enforcement of judgments and claims against the state.²³ Execution, however, has not been an effective means of collecting judgments because property of the state is exempt from execution except in rare instances when a statute expressly pro-

9. See RECOMMENDATIONS, *supra* note 2, at 1263.

10. Compare CAL. GOV'T CODE §970(b) with CAL. STATS. 1975, c. 285, §2, at 705.

11. See CAL. GOV'T CODE §970(b).

12. See CAL. STATS. 1975, c. 285, §5, at 705 (amending CAL. GOV'T CODE §970.6).

13. See RECOMMENDATIONS, *supra* note 2, at 1264.

14. See CAL. GOV'T CODE §970.6(b).

15. See *id.*; RECOMMENDATIONS, *supra* note 2, at 1264, 1283.

16. See RECOMMENDATIONS, *supra* note 2, at 1267.

17. See CAL. GOV'T CODE §906(a) (definition of amount allowed on a claim).

18. See *id.* §906(b)(1).

19. See *id.*

20. See *id.* §906(c) (exceptions to interest provisions if parties otherwise agree).

21. See *id.* §906(b)(2).

22. See *id.* §906(b)(3).

23. See *id.* §§942, 970.2; CAL. STATS. 1975, c. 1275, §2, at 3457 (operative July 1, 1976) (enacting CAL. CIV. PROC. CODE §1268.020).

vides otherwise.²⁴ Chapter 215 establishes the writ of mandate as the appropriate procedure to compel payment of judgments against the state.²⁵ Moreover, the writ of mandate may be used up to ten years after the final judgment, or, if the judgment is payable in installments, up to ten years after the last installment is due.²⁶ Finally, Chapter 215 provides that no tort claim or judgment against the state is enforceable unless either the legislature has authorized payment²⁷ or the Director of Finance has certified that a sufficient appropriation for payment exists.²⁸

24. See RECOMMENDATIONS, *supra* note 2, at 1262, 1266; CAL. STATS. 1975, c. 1275, §2, at 3457 (use of execution in specified instances).

25. See CAL. GOV'T CODE §965.7(a).

26. See *id.* §965.5(a).

27. See *id.* §965.6(a).

28. See *id.* §965.6(b).

Public Entities, Officers, and Employees; Department of Fair Employment and Housing—powers

Government Code §§12963.1, 12963.2, 12963.3, 12963.4, 12963.5, 12963.7 (new); §§12930, 12963, 12965 (amended).

AB 2702 (M. Waters); STATS 1980, Ch 1023

Support: Department of Finance

The Governor's Reorganization Plan No. 1 of 1979¹ abolished the Fair Employment Practices Commission and the Division of Fair Employment Practices within the Department of Industrial Relations, and created the Department of Fair Employment and Housing (hereinafter referred to as the DFEH) within the State Consumer Services Agency, and the Fair Employment and Housing Commission within the DFEH.² Chapter 1023 makes substantive changes relating to the DFEH by specifying the investigatory powers of the department and clarifying the procedures through which these powers may be used.³

Under existing law, the director of the DFEH is allowed to issue an accusation in the event an unlawful employment practice cannot be resolved through conference, conciliation, or persuasion.⁴ Prior to the enactment of Chapter 1023, however, the accusation had to be issued, if at all, within one year after the filing of the complaint that revealed the

1. See CAL. STATS. 1980, c. 992, §§1-12, at — (codifying the Governor's Reorganization Plan No. 1).

2. Compare *id.* at — with CAL. STATS. 1963, c. 1853, §2, at 3823 and CAL. STATS. 1959, c. 121, §1, at 1999.

3. See generally CAL. STATS. 1980, c. 1023, §§1-10, at —.

4. See CAL. GOV'T CODE §12965(a).

unlawful employment practice.⁵ Apparently due to the large amount of work necessary to investigate some class action complaints,⁶ Chapter 1023 allows the DFEH *two years* from the date the complaint is filed to issue an accusation for any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation.⁷ For all other complaints, an accusation still must be issued, if at all, within one year of the filing of the complaint.⁸ In addition, if the director determines that a complaint *investigated* as a group or class complaint is to be treated as a group or class complaint for purposes of *conciliation* and *accusation* as well, the director must communicate that fact in writing within one year after the filing of the complaint to each person or entity alleged in the complaint to have committed an unlawful practice.⁹

Chapter 1023 also clarifies the investigatory powers of the DFEH¹⁰ and defines the procedures necessary to invoke these powers.¹¹ Moreover, Chapter 1023 makes it clear that the superior court has jurisdiction to order compliance with subpoenas issued by the DFEH,¹² and that the DFEH has the power to subpoena physical materials in connection with subpoenaed testimony.¹³ Finally, Chapter 1023 expands the investigatory power of the DFEH pursuant to a complaint¹⁴ to include the power to (1) issue subpoenas,¹⁵ (2) examine witnesses,¹⁶ (3) take evidence, depositions, and affidavits,¹⁷ (4) issue written interrogatories,¹⁸ (5) request the production of physical material,¹⁹ and (6) petition the superior court to order compliance with an investigatory request.²⁰

5. See CAL. STATS. 1980, c. 992, §4, at — (codifying the Governor's Reorganization Plan No. 1).

6. Telephone interview with Jim Miller, Staff Attorney with the DFEH (Sept. 15, 1980) (notes on file at the *Pacific Law Journal*).

7. See CAL. GOV'T CODE §12965(a). See also *id.* §12961 (circumstances permitting complaint to be treated as group or class complaint).

8. See *id.* §12965(a).

9. See *id.* §§12961, 12965(a).

10. See generally *id.* §12930(f)-(k).

11. See generally *id.* §§12963.1-12963.5.

12. See *id.* §12963.5(a).

13. See *id.* §12963.1(a).

14. See *id.* §§12960, 12961, 12980.

15. See *id.* §§12930(g)(1), 12963.1.

16. See *id.* §12930(g)(2).

17. See *id.* §§12930(g)(2), 12963.3.

18. See *id.* §§12930(g)(3), 12963.2.

19. See *id.* §§12930(g)(4), 12963.4.

20. See *id.* §§12930(g)(5), 12963.5.