

1 **§ 18705.[Renumbered from Regulation 18708]**

2 (a) A public official who has a financial interest in a decision may establish that he or she
3 is legally required to make or to participate in the making of a governmental decision within the
4 meaning of ~~Government Code section~~ Section 87101 only if there exists no alternative source of
5 decision consistent with the purposes and terms of the statute authorizing the decision.

6 (b) Whenever a public official who has a financial interest in a decision is legally
7 required to make or to participate in making such a decision, he or she shall state the existence of
8 the potential conflict as follows:

9 (1) The public official shall disclose the existence of the conflict and describe with
10 particularity the nature of the economic interest. "Particularity" as used in this regulation shall be
11 satisfied if the official discloses:

12 (A) whether the conflict involves an investment, business position, interest in real
13 property, or the receipt of income, loans, or gifts;

14 (B) if the interest is an investment, the name of the business entity in which each
15 investment is held; if the interest is a business position, a general description of the business
16 activity in which the business entity is engaged; if the interest is real property, the address or
17 another indication of the location of the property, unless the property is the official's principal or
18 personal residence, in which case the official shall disclose this fact. For income, loans or gifts,
19 the official shall disclose the person or entity that is the source.

20 (2) The public official or another officer or employee of the agency shall give a summary
21 description of the circumstances under which he or she believes the conflict may arise.

22 (3) Either the public official or another officer or employee of the agency shall disclose
23 the legal basis for concluding that there is no alternative source of decision.

24 (4) The disclosures required by this regulation shall be made in the following manner:

25 (A) If the governmental decision is made during an open session of a public meeting, the
26 disclosures shall be made orally before the decision is made, by either the public official or by
27 another officer or employee of the agency. The information contained in the disclosures shall be
28 made part of the official public record either as a part of the minutes of the meeting or as a

1 writing filed with the agency. The writing shall be prepared by the public official and/or any
2 officer or employee and shall be placed in a public file of the agency within 30 days after the
3 meeting; or

4 (B) If the governmental decision is made during a closed session of a public meeting, the
5 disclosures shall be made orally during the open session either before the body goes into closed
6 session or immediately after the closed session. The information contained in the disclosures
7 shall be made part of the official public record either as a part of the minutes of the meeting or as
8 a writing filed with the agency. The writing shall be prepared by the public official and/or any
9 officer or employee and shall be placed in a public file of the agency within 30 days after the
10 meeting; or

11 (C) If the government decision is made or participated in other than during the open or
12 closed session of a public meeting, the disclosures shall be made in writing and made part of the
13 official public record, either by the public official and/or by another officer or employee of the
14 agency. The writing shall be filed with the public official's appointing authority or supervisor and
15 shall be placed in a public file within 30 days after the public official makes or participates in the
16 decision. Where the public official has no appointing authority or supervisor, the disclosure(s)
17 shall be made in writing and filed with the agency official who maintains the records of the
18 agency's statements of economic interests, or other designated office for the maintenance of such
19 disclosures, within 30 days of the making of or participating in the decision.

20 (c) This regulation shall be construed narrowly, and shall:

21 (1) Not be construed to permit an official, who is otherwise disqualified under
22 ~~Government Code section~~ Section 87100, to vote to break a tie.

23 (2) Not be construed to allow a member of any public agency, who is otherwise
24 disqualified under ~~Government Code section~~ Section 87100, to vote if a quorum can be
25 convened of other members of the agency who are not disqualified under ~~Government Code~~
26 ~~section~~ Section 87100, whether or not such other members are actually present at the time of the
27 disqualification.

1 (3) Require participation by the smallest number of officials with a conflict that are
2 "legally required" in order for the decision to be made. A random means of selection may be
3 used to select only the number of officials needed. When an official is selected, he or she is
4 selected for the duration of the proceedings in all related matters until his or her participation is
5 no longer legally required, or the need for invoking the exception no longer exists.

6 (d) For purposes of this section, a "quorum" shall constitute the minimum number of
7 members required to conduct business and when the vote of a supermajority is required to adopt
8 an item, the "quorum" shall be that minimum number of members needed for that adoption.

9 Comment: Nothing in the provisions of subsection (b)(4)(B) is intended to cause an agency or
10 public official to reveal the confidences of a closed session contemplated by law. For example,
11 under the Brown Act (Government Code sections 54950 et seq.) a city council may enter a
12 closed session to discuss personnel matters and need not publicly disclose the name of the
13 employee who is the subject of the meeting. (Government Code section 54957.) This regulation
14 does not require a city council person who is legally required to participate in that closed session
15 to disclose that employee's name when the council member makes the record required by this
16 regulation.

17 Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003 and
18 87101, Government Code.

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