

1 **§ 18702.1. Determining When a Public Official is Making a Governmental Decision**

2 **Materiality Standard: Financial Interest in Business Entities.**

3 **[Moved to Regulation 18704.1]**

4 (a) A public official "makes a governmental decision," except as provided in 2 Cal. Code  
5 Regs. section 18702.4, when the official, acting within the authority of his or her office or  
6 position:

7 (1) Votes on a matter;

8 (2) Appoints a person;

9 (3) Obligates or commits his or her agency to any course of action;

10 (4) Enters into any contractual agreement on behalf of his or her agency;

11 (5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or  
12 (a)(4), above, unless such determination is made because of his or her financial interest. When  
13 the determination not to act occurs because of the official's financial interest, the official's  
14 determination may be accompanied by an oral or written disclosure of the financial interest.

15 (b) When an official with a disqualifying conflict of interest abstains from making a  
16 governmental decision in an open session of the agency and the official remains on the dais or in  
17 his or her designated seat during deliberations of the governmental decision in which he or she is  
18 disqualified, his or her presence shall not be counted toward achieving a quorum.

19 (c) During a closed meeting of the agency, a disqualified official shall not be present  
20 when the decision is considered or knowingly obtain or review a recording or any other  
21 nonpublic information regarding the governmental decision.

22 (d) Notwithstanding subdivision (a) of this regulation, to determine if a public official  
23 who holds an office specified in Government Code section 87200 is making, participating in  
24 making, or using or attempting to use his or her official position to influence a governmental  
25 decision relating to an agenda item which is noticed for a meeting subject to the provisions of the  
26 Bagley Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government  
27 Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1) (a)(4);

1 ~~18702.2, 18702.3, 18702.4, and 18702.5 Regulations 18704.1(a)(1) (a)(4), 18704.2, 18704.3,~~  
2 ~~18704.4, and 18704.5.~~

3 ~~Comment: Nothing in this section authorizes or prohibits an agency by local rule or custom from~~  
4 ~~requiring a disqualified member to step down from the dais and/or leave the chambers.~~

5 ~~Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003,~~  
6 ~~87100, 87101, 87105 and 87200, Government Code.~~

7 **[Moved from Regulation 18705.1]**

8 (a) The reasonably foreseeable financial effect of a governmental decision on a business  
9 entity in which an official has a financial interest identified in Section 87103(a) or (d) is material  
10 whenever the business entity:

11 (1) Initiates the proceeding in which the governmental decision will be made by filing an  
12 application, claim, appeal, or request for other government action concerning the business entity;

13 (2) Offers to make a sale of a service or a product to the official's agency;

14 (3) Bids on or enters into a written contract with the official's agency;

15 (4) Is the named manufacturer in a purchase order of any product purchased by the  
16 official's agency or the sales provider of any products to the official's agency that aggregates to  
17 \$1,000 or more in any 12-month period;

18 (5) Applies for a permit, license, grant, tax credit, exception, variance, or other  
19 entitlement that the official's agency is authorized to issue;

20 (6) Is the subject of any inspection, action, or proceeding subject to the regulatory  
21 authority of the official's agency; or

22 (7) Is otherwise subject to an action taken by the official's agency, the effect of which is  
23 directed solely at the business entity in which the official has an interest.

24 (8) Exception. Notwithstanding the above provisions, any financial effect on a business  
25 entity that occurs as a result of a travel payment made for food, lodging, transportation, or fuel,  
26 authorized by an agency in the course of carrying out an agency function, to a business entity  
27 that provides such services to the general public shall be treated under subdivision (b).

1 (b) For a governmental decision not identified in subdivision (a), the financial effect is  
2 material if a prudent person with sufficient information would find it is reasonably foreseeable  
3 that the decision's financial effect would contribute to a change in the price of the business  
4 entity's publicly traded stock, or the value of a privately-held business entity. Examples of  
5 decisions that may be applicable include those that:

6 (1) Authorize, prohibit, regulate or otherwise establish conditions for an activity in which  
7 the business entity is engaged;

8 (2) Increase or decrease the amount of competition in the field in which the business  
9 entity is engaged;

10 (3) Increase or decrease the need for the products or services that the business entity  
11 supplies;

12 (4) Make improvements in the surrounding neighborhood such as redevelopment  
13 projects, traffic/road improvements, or parking changes that may affect, either temporarily or  
14 permanently, the amount of business the business entity receives;

15 (5) Decide the location of a major development, entertainment facility, or other project  
16 that would increase or decrease the amount of business the entity draws from the location of the  
17 project; or

18 (6) Increase or decrease the tax burden, debt, or financial or legal liability of the business  
19 entity.

20 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100,  
21 87102.5, 27 87102.6, 87102.8 and 87103, Government Code.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///