

1 **§ 18702.3. ~~Determining When a Public Official is Using or Attempting to Use His/Her~~**  
2 **~~Official Position to Influence a Governmental Decision~~ Materiality Standard: Financial**  
3 **~~Interest in a Source of Income.~~**

4 **[Moved to Regulation 18704.3]**

5 ~~(a) With regard to a governmental decision which is within or before an official's agency~~  
6 ~~or an agency appointed by or subject to the budgetary control of his or her agency, the official is~~  
7 ~~attempting to use his or her official position to influence the decision if, for the purpose of~~  
8 ~~influencing the decision, the official contacts, or appears before, or otherwise attempts to~~  
9 ~~influence, any member, officer, employee or consultant of the agency. Attempts to influence~~  
10 ~~include, but are not limited to, appearances or contacts by the official on behalf of a business~~  
11 ~~entity, client, or customer.~~

12 ~~(b) With regard to a governmental decision which is within or before an agency not~~  
13 ~~covered by subsection (a), the official is attempting to use his or her official position to influence~~  
14 ~~the decision if, for the purpose of influencing the decision, the official acts or purports to act on~~  
15 ~~behalf of, or as the representative of, his or her agency to any member, officer, employee or~~  
16 ~~consultant of an agency. Such actions include, but are not limited to the use of official stationery.~~

17 ~~Note: Authority cited: Section 83112, Government Code. Reference: Section 87100,~~  
18 ~~Government Code.~~

19 **[Moved from Regulation 18705.3]**

20 The following standards apply to determine when the reasonably foreseeable financial  
21 effect of a governmental decision on an official's financial interest, identified as a source of  
22 income under Section 87103(c), is material.

23 (a) Income from the Sale of Goods and Services: For income received by the official or  
24 his or her spouse for goods and services provided in the ordinary course of business, including a  
25 salary, the financial effect is material if:

26 (1) The source is a claimant, applicant, respondent, contracting party, or is otherwise  
27 named or identified as the subject of the proceeding; or

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1 (2) The source is an individual that will be financially affected under the standards  
2 applied to an official in Regulation ~~18705.5~~ 18702.5, or the official knows or has reason to know  
3 that the individual has an interest in a business entity or real property that will be financially  
4 affected under the standards applied to a financial interest in Regulation ~~18705.1 or 18705.2~~  
5 18702.1 or 18702.2, respectively; or

6 (3) The source is a nonprofit that will receive a measurable financial benefit or loss, or  
7 the official knows or has reason to know that the nonprofit has an interest in real property that  
8 will be financially affected under the standards applied to a financial interest in Regulation  
9 ~~18705.2~~ 18702.2; or

10 (4) The source is a business entity that will be financially affected under the standards as  
11 applied to a financial interest in Regulation ~~18705.1~~ 18702.1.

12 (b) Income from the Sale of Personal or Real Property: For income from the sale of  
13 personal or real property belonging to the official, or the official's spouse if the property is  
14 community property, the financial effect of the decision is material if the official knows or has  
15 reason to know that the source of income is a claimant, applicant, respondent, contracting party,  
16 or is otherwise named or identified as the subject of the proceeding, or has an interest in any  
17 business entity or real property that will be financially affected under the standards applied to a  
18 financial interest in Regulation ~~18705.1 or 18705.2~~ 18702.1 or 18702.2, respectively.

19 (c) Nexus. Any reasonably foreseeable financial effect on a person who is a source of  
20 income to a public official is deemed material if the public official receives or is promised the  
21 income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by  
22 the decision.

23 (d) Exception – Income from Retail Sales of a Business Entity: For purposes of applying  
24 the exception under Section 87103.5, the retail customers of a business entity constitute a  
25 significant segment of the public generally if the business is open to the public and provides  
26 goods or services to customers that comprise a broad base of persons representative of the  
27 jurisdiction as a whole and not confined to any specialized occupation, profession, or business.  
28 Income from an individual customer is not distinguishable from the amount of income received

1 from other customers when the official is unable to recognize a significant monetary difference  
2 between the business provided by the individual customer and the general clientele of the  
3 business. An official is unable to recognize a significant monetary difference when either:

4 (1) The business is of the type that sales to any one customer will not have a significant  
5 impact on the business's annual net sales; or

6 (2) The business has no records that distinguish customers by amount of sales, and the  
7 official has no other information that the customer provides significantly more income to the  
8 business than an average customer.

9 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,  
10 87102.6, 87102.8 and 87103, Government Code.

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