

1 **§ 18700. Basic Rule; Application: Definitions; Guide to Conflict of Interest Regulations.**

2 (a) Basic Rule: A public official at any level of state or local government has a prohibited  
3 conflict of interest and may not make, participate in making, or in any way use or attempt to use  
4 his or her official position to influence a governmental decision when he or she knows or has  
5 reason to know he or she has a disqualifying financial interest. A public official has a  
6 disqualifying financial interest if the decision will have a reasonably foreseeable material  
7 financial effect, distinguishable from the effect on the public generally, directly on the official, or  
8 his or her immediate family, or on any financial interest described in subdivision  
9 (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103.)

10 (b) Application: The Act's conflict of interest prohibitions apply only to public officials  
11 and only to governmental decisions that have a financial effect.

12 (c) For purposes of the Act's conflict of interest ~~provisions~~ prohibitions, (Sections ~~87101-~~  
13 87100-87105; Regulations 18700-18706), the following definitions apply:

14 (1) "Public Official" (see Section 82048) means every member, officer, employee, or  
15 consultant of a state or local government agency other than:

16 (A) A judge or court commissioner;

17 (B) A member of the Board of Governors and designated employees of the State Bar of  
18 California;

19 (C) A member of the Judicial Council;

20 (D) A member of the Commission on Judicial Performance, provided that he or she is  
21 subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of  
22 Division 3 of the Business and Professions Code as provided in Section 6038 of that article.

23 (E) A federal officer or employee serving in an official federal capacity on a state or local  
24 government agency.

25 (2) "Member" does not include an individual who performs duties as part of a  
26 committee, board, commission, group, or other body that does not have decisionmaking  
27 authority.

1 (A) A committee, board, commission, group, or other body possesses decisionmaking  
2 authority whenever:

3 (i) It may make a final governmental decision;

4 (ii) It may compel or prevent a governmental decision either by reason of an exclusive  
5 power to initiate the decision or by reason of a veto that may not be overridden; or

6 (iii) It makes substantive recommendations and, over an extended period of time, those  
7 recommendations have been regularly approved without significant amendment or modification  
8 by another public official or governmental agency.

9 (B) A committee, board, commission, group, or other body does not possess  
10 decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic  
11 and preparing a report or recommendation for submission to another public official or  
12 governmental agency that has final decisionmaking authority; and does not meet any of the  
13 criteria set forth in subsection ~~(32)~~(A)(i-iii), ~~above~~.

14 (3) "Governmental agency" means any state or local agency ~~or any entity or organization~~  
15 ~~acting as a governmental agency as determined under Regulation 18700.1.~~

16 (4) "Governmental decision" means any action taken by a government agency that has a  
17 financial effect on any person other than the governmental agency making the decision.

18 (5) "Financial effect" means an effect that provides a benefit of monetary value or  
19 provides, prevents, or avoids a detriment of monetary value.

20 (6) "Financial interest" means anything or anyone listed in subparagraphs (A-E) ~~below~~  
21 and includes an interest in the public official's own personal finances and those of a member of  
22 his or her immediate family.

23 (A) Any business entity, as defined in Section 82005, in which the public official has a  
24 direct or indirect investment worth at least \$2,000 (Section 87103(a)). For a "parent, subsidiary  
25 or otherwise related business entity," see Regulation ~~18700.2~~ 18700.3.

26 (B) Any real property, ~~as determined under Regulation 18700.2,~~ in which the public  
27 official has a direct or indirect interest of at least \$2,000 (Section 87103(b));

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1 (C) Any source of income, ~~as defined in Section 82030~~ including commission income  
2 and incentive income as defined in 18700.1, amounting to a total of at least \$500, provided or  
3 promised to, and received by the public official within 12 months before the decision is made  
4 (Section 87103(c)). Income is “promised to” the public official if he or she has a legally  
5 enforceable right to the promised income. For a source of income that is a business entity that is  
6 a “parent, subsidiary, or otherwise related business entity,” see Regulation ~~18700.3~~ 18700.2.

7 (D) Any business entity, as defined in Section 82005, in which the public official is a  
8 director, officer, partner, trustee, employee, or holds any position of management (Section  
9 87103(d)). For a “parent, subsidiary, or otherwise related business entity,” see Regulation  
10 18700.2.

11 (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts amounting to  
12 a total of at least \$440 provided to, received by, or promised to the public official within 12  
13 months before the decision is made (Section 87103(e); Regulation 18941(b));

14 (F) For purposes of this paragraph (c)(8), indirect investment or interest means any  
15 investment or interest owned by the spouse or dependent child of a public official, by an agent on  
16 behalf of a public official, or by a business entity or trust in which the official, the official’s  
17 agents, spouse, and dependent children own directly, indirectly, or beneficially at least a  
18 10-percent interest (Section 87103(e) see also Sections 82033 and 82034).

19 (d) To determine whether a public official has a prohibited conflict of interest under the  
20 Act, ~~proceed with~~ apply the following ~~analysis~~:

21 (1) Step One: Is it reasonably foreseeable that the governmental decision will have a  
22 financial effect on any of the public official’s financial interests? To determine if the financial  
23 effect is reasonably foreseeable, apply Regulation 18701. If the answer is no, there is no conflict  
24 of interest under the Act. If the answer is yes, proceed to Step Two.

25 (2) Step Two: Will the reasonably foreseeable financial effect be material? To determine  
26 if the reasonably foreseeable financial effect is material, apply Regulation 18702. If the answer is  
27 no, there is no conflict of interest under the Act. If the answer is yes, proceed to Step Three.

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1 (3) Step Three: Can the public official demonstrate that the material financial effect on  
2 the public official’s financial interest is indistinguishable from its effect on the public generally?  
3 To determine if the material financial effect on any of the public official’s financial interest is  
4 indistinguishable from its effect on the public generally, apply Regulation ~~18703~~ 18707 et seq. If  
5 the answer is yes, there is no conflict of interest under the Act. If the answer is no, proceed to  
6 Step Four.

7 (4) Step Four: If after applying the three step analysis and determining the public official  
8 has a conflict of interest, absent an exception, he or she may not make, participate in making, or  
9 in any way attempt to use his or her official position to influence the governmental decision. To  
10 determine if the public official is “making, participating in making, or in any way attempting to  
11 use his or her official position to influence a governmental decision,” apply Regulation 18704. If  
12 the public official will be called upon to make, participate in the making, or use his or her official  
13 position to influence a governmental decision in which he or she has a financial interest as  
14 determined under Step One through Step Three, he or she will have a prohibited conflict of  
15 interest.

16 (e) Exception: Notwithstanding the provisions of Sections 87100 and 87103 and this  
17 regulation, a public official may make or participate in a governmental decision in which he or  
18 she has a prohibited conflict of interest if the provisions of Section 87101 and Regulation 18705  
19 apply.

20 (f) Segmentation: To determine if an agency may segment a decision in order to allow a  
21 public official to participate in a governmental decision by removing from consideration the  
22 elements of the governmental decision in which the official would otherwise have a prohibited  
23 conflict of interest, apply Regulation 18706.

24 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103,  
25 Government Code.

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