

1 **§ 18701. Public Official, Definitions. Determining Whether a Financial Effect Is**
2 **Reasonably Foreseeable.**

3 ~~[Moved to Regulation 18700] (a) For purposes of Government Code section 82048,~~
4 ~~which defines "public official," and Government Code section 82019, which defines "designated~~
5 ~~employee," the following definitions apply:~~

6 ~~(1) "Member" shall include, but not be limited to, salaried or unsalaried members of~~
7 ~~committees, boards or commissions with decisionmaking authority.~~

8 ~~(A) A committee, board or commission possesses decisionmaking authority whenever:~~

9 ~~(i) It may make a final governmental decision;~~

10 ~~(ii) It may compel a governmental decision; or it may prevent a governmental decision~~
11 ~~either by reason of an exclusive power to initiate the decision or by reason of a veto that may not~~
12 ~~be overridden; or~~

13 ~~(iii) It makes substantive recommendations that are, and over an extended period of time~~
14 ~~have been, regularly approved without significant amendment or modification by another public~~
15 ~~official or governmental agency.~~

16 ~~(B) A committee, board, or commission does not possess decisionmaking authority under~~
17 ~~subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic~~
18 ~~and preparing a report or recommendation for submission to another governmental body that has~~
19 ~~final decisionmaking authority.~~

20 ~~[Moved to Regulation 18704.6] (2) "Consultant" means an individual who, pursuant to a~~
21 ~~contract with a state or local government agency:~~

22 ~~(A) Makes a governmental decision whether to:~~

23 ~~(i) Approve a rate, rule, or regulation;~~

24 ~~(ii) Adopt or enforce a law;~~

25 ~~(iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval,~~
26 ~~order, or similar authorization or entitlement;~~

27 ~~(iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type~~
28 ~~of contract that requires agency approval;~~

1 ~~(v) Grant agency approval to a contract that requires agency approval and to which the~~
2 ~~agency is a party, or to the specifications for such a contract;~~

3 ~~(vi) Grant agency approval to a plan, design, report, study, or similar item;~~

4 ~~(vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency,~~
5 ~~or for any subdivision thereof; or~~

6 ~~(B) Serves in a staff capacity with the agency and in that capacity participates in making~~
7 ~~a governmental decision as defined in regulation 18702.2 or performs the same or substantially~~
8 ~~all the same duties for the agency that would otherwise be performed by an individual holding a~~
9 ~~position specified in the agency's Conflict of Interest Code under Government Code section~~
10 ~~87302.~~

11 ~~(b) For purposes of Government Code section 87200, the following definitions apply:~~

12 ~~(1) "Other public officials who manage public investments" means:~~

13 ~~(A) Members of boards and commissions, including pension and retirement boards or~~
14 ~~commissions, or of committees thereof, who exercise responsibility for the management of~~
15 ~~public investments;~~

16 ~~(B) High level officers and employees of public agencies who exercise primary~~
17 ~~responsibility for the management of public investments, such as chief or principal investment~~
18 ~~officers or chief financial managers. This category shall not include officers and employees who~~
19 ~~work under the supervision of the chief or principal investment officers or the chief financial~~
20 ~~managers; and~~

21 ~~(C) Individuals who, pursuant to a contract with a state or local government agency,~~
22 ~~perform the same or substantially all the same functions that would otherwise be performed by~~
23 ~~the public officials described in subdivision (b)(1)(B) above.~~

24 ~~(2) "Public investments" means the investment of public moneys in real estate, securities,~~
25 ~~or other economic interests for the production of revenue or other financial return.~~

26 ~~(3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or~~
27 ~~any city, county, town, district, or public agency therein, or by an officer thereof acting in his or~~
28 ~~her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness,~~

1 trust funds held by public pension and retirement systems, deferred compensation funds held for
2 investment by public agencies, and public moneys held by a financial institution under a trust
3 indenture to which a public agency is a party.

4 (4) "~~Management of public investments~~" means the following nonministerial functions:
5 ~~directing the investment of public moneys; formulating or approving investment policies;~~
6 ~~approving or establishing guidelines for asset allocations; or approving investment transactions.~~

7 Comment: In limited circumstances, the members of a nonprofit organization may be "public
8 officials." (In re Siegel (1977) 3 FPPC Ops. 62.)

9 Note: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 82048,
10 87100, 87200 and 87302, Government Code.

11 **[Renumbered from Regulation 18706]** (a) ~~Economic~~ Financial Interest Explicitly
12 Involved: A financial effect on ~~an economic~~ a financial interest is presumed to be reasonably
13 foreseeable if the ~~economic~~ financial interest is a named party in, or the subject of, a
14 governmental decision before the official or the official's agency. ~~An economic~~ A financial
15 interest is the subject of a proceeding if the decision involves the issuance, renewal, approval,
16 denial or revocation of any license, permit, or other entitlement to, or contract with, the
17 ~~economic~~ financial interest, and includes any governmental decision affecting a real property
18 ~~economic~~ financial interest as described in Regulation 18705.2(a)(1)-(6).

19 (b) ~~Economic~~ Financial Interest Not Explicitly Involved in Decision: A financial effect
20 need not be likely to be considered reasonably foreseeable. In general, if the financial effect can
21 be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably
22 foreseeable. If the financial result cannot be expected absent extraordinary circumstances not
23 subject to the public official's control, it is not reasonably foreseeable. In determining whether a
24 governmental decision will have a reasonably foreseeable financial effect on ~~an economic~~ a
25 financial interest other than an interest described in subdivision (a) ~~above~~, the following factors
26 should be considered. These factors are not intended to be an exclusive list of all the relevant
27 facts that may be considered in determining whether a financial effect is reasonably foreseeable,
28 but are included as general guidelines.

1 (1) The extent to which the occurrence of the financial effect is contingent upon
2 intervening events, not including future governmental decisions by the official's agency, or any
3 other agency appointed by or subject to the budgetary control of the official's agency.

4 (2) Whether the public official should anticipate a financial effect on his or her ~~economic~~
5 ~~interest~~ financial interest as a potential outcome under normal circumstances when using
6 appropriate due diligence and care.

7 (3) Whether the public official has ~~an economic~~ a financial interest that is of the type that
8 would typically be affected by the terms of the governmental decision or whether the
9 governmental decision is of the type that would be expected to have a financial effect on
10 businesses and individuals similarly situated to those businesses and individuals in which the
11 public official has ~~an economic~~ a financial interest.

12 (4) Whether a reasonable inference can be made that the financial effects of the
13 governmental decision on the public official's ~~economic~~ financial interest ~~could~~ might
14 compromise ~~the~~ a public official's ability to act in a manner consistent with his or her duty to act
15 in the best interests of the public.

16 (5) Whether the governmental decision will provide or deny an opportunity, or create an
17 advantage or disadvantage for one of the official's ~~economic~~ financial interests, including
18 whether the ~~economic~~ financial interest may be entitled to compete or be eligible for a benefit
19 resulting from the decision.

20 (6) Whether the public official has the type of ~~economic~~ financial interest that would
21 cause a similarly situated person to weigh the advantages and disadvantages of the governmental
22 decision on his or her economic interest in formulating a position.

23 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,
24 87102.6, 87102.8 and 87103, Government Code.

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