

(a) Introduction.

(1) If a business entity in which a public official has an economic interest is directly involved in a governmental decision (see Regulation 18704.1(a)), use the standards in subdivision (b) of this regulation.

(2) If a business entity in which a public official has an economic interest is indirectly involved in a governmental decision (see Regulation 18704.1(b)), use the standards in subdivision (c) of this regulation.

(b) Directly involved business entities.

(1) General Rule: Unless the exception in subdivision (b)(2) of this regulation applies, the financial effects of a governmental decision on a business entity which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.

(2) Exception: If the public official's only economic interest in the business entity is an investment interest (see Section 87103(a)), and the public official's investment in the business entity is worth $25,000 or less, apply the materiality standards in either of the following provisions, as applicable:

(A) Subdivision (c)(1) of this regulation if the business entity is listed in the Fortune 500, or if not listed in the Fortune 500, has revenues that are no less than the revenues of the business entity that ranks 500th in the Fortune 500 list.
(B) Subdivision (c)(2) of this regulation if the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had net income of no less than $2.5 million.

(e) Indirectly involved business entities. The following materiality standards apply when a business entity in which a public official has an economic interest is indirectly involved in a governmental decision. If more than one of the following subdivisions is applicable to the business entity in question, apply the subdivision with the highest dollar thresholds.

(1) If the business entity is listed in the Fortune 500 or, if not listed in the Fortune 500, has revenues that are no less than the revenues of the business entity that ranks 500th in the Fortune 500 list, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

(A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year of $10,000,000 or more; or

(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of $2,500,000 or more; or

(C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of $10,000,000 or more.

(2) If the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had net income of no less than $2.5 million, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
(A) The governmental decision will result in an increase or decrease to the business
entity's gross revenues for a fiscal year in the amount of $500,000 or more; or,

(B) The governmental decision will result in the business entity incurring or avoiding
additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount
of $200,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of assets
or liabilities of $500,000 or more.

(3) If the business entity is listed on either the NASDAQ or American Stock Exchange,
or if not so listed, for its most recent fiscal year had net income of no less than $750,000, the
financial effect of a governmental decision on the business entity is material if it is reasonably
foreseeable that:

(A) The governmental decision will result in an increase or decrease to the business
entity's gross revenues for a fiscal year in the amount of $300,000 or more; or,

(B) The governmental decision will result in the business entity incurring or avoiding
additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount
of $100,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of assets
or liabilities of $300,000 or more.

(4) If the business entity is not covered by subdivisions (c)(1)-(3), the financial effect of a
governmental decision on the business entity is material if it is reasonably foreseeable that:

(A) The governmental decision will result in an increase or decrease in the business
entity's gross revenues for a fiscal year in the amount of $20,000 or more; or,
(B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of $5,000 or more; or,

(C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of $20,000 or more.

(d) Terminology. The accounting terms described below are the same as, or not inconsistent with, terms used in Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. Nothing in this subdivision should be construed to incorporate new items not contemplated under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, nor to exclude any items that might be included in the definitions of these terms under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards.

(1) Assets. As used in this section, "assets" means all property, real and personal, tangible and intangible, which belongs to any business entity. This includes, but is not limited to, cash, securities, merchandise, raw materials, finished goods, operating supplies, and ordinary maintenance material and parts, accounts receivable and notes and loans receivable, and prepaid expenses (such as prepaid insurance, interests, rents, taxes, advertising, and operating supplies).

(A) When a business entity holds a claim over collateral (including real property) as security for a loan made by the business entity, such a claim does not make the collateral (including real property) an "asset" of the business entity, unless the business entity has initiated proceedings to foreclose upon, or acquire the asset based on the debtor's failure to repay the loan. The loan or note secured by the collateral is an asset.
(B) The definition of "assets" also includes intangible assets. Intangible assets include, but are not limited to, long-lived legal rights and competitive advantages developed or acquired by a business enterprise, patents, copyrights, franchises, trademarks, organizational costs, goodwill, and secret processes.

(2) Expenses: In general, the term refers to the current costs of carrying on an activity.

(3) Gross Revenue: Actual or expected inflows of cash or other assets. "Gross Revenue" is the revenue of a business entity before adjustments or deductions are made for returns and allowances and the costs of goods sold, and prior to any deduction for these and any other expenses.

(4) Liabilities: Obligations of the business entity, liquidation of which is reasonably expected to require the transfer of assets or the creation of other new liabilities. Any financial obligation or cash expenditures that must be made by the business entity at a specific time to satisfy the contractual terms of such an obligation.

(5) Net Income: A business entity's total earnings; otherwise defined as revenues adjusted for the costs of doing business, depreciation, interest, taxes, and other expenses. This amount is usually found at the bottom of a business entity's Profit and Loss statement. Also described as Net Profit.

(e) Financial Statements. In complying with this regulation, public officials may rely on the most recent independently audited financial statements of the business entity so long as those statements are reflective of the current condition of the business entity. Financial statements are not considered "reflective of the current condition of the business entity" where:
(1) The most recent independently audited financial statements of the business entity are for a fiscal year ending more than twenty-four months prior to the date of the governmental decision.

(2) The most recent audit of the financial statements resulted in an adverse opinion, was issued with a disclaimer, or was otherwise qualified in such a manner that the statement of assets, liabilities, expenses, or gross revenues is questioned in the audit report, or

(3) There has been a subsequent event, intervening between the date that the financial statement was created and the date of the decision of the public official, that makes the statement no longer representative, including, but not limited to, business reorganizations.

Comments: Electronic access to annual reports, quarterly reports, and other financial statements filed with the United States Securities and Exchange Commission ("SEC") may be obtained by accessing the SEC's website and selecting its EDGAR database of statutory filings:

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

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

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

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

(4) Is the named manufacturer of any product purchased by the official's agency or the sales provider of any products to the official’s agency that aggregates to $1,000 in any 12-month period;
(5) Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement that the official’s agency is authorized to issue;

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

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

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

(b) For governmental decisions not identified in subdivision (a) above, the financial effect of the decision on a business entity in which an official has a financial interest is material under the circumstances listed below.

(1) For a financial interest under Section 87103(a):

(A) If the business entity is a publicly traded corporation listed on a United States or foreign stock exchange, the financial effect of the decision is material if it will reasonably foreseeably result in an increase or decrease to the value of the business entity’s stock to a degree that would sufficiently motivate an informed investor to act upon such information.

(B) If the business entity is other than a publicly traded corporation listed on a United States or foreign stock exchange, the financial effect of the decision is material if it will reasonably foreseeably result in an increase or decrease to the value of the company.

(2) For a financial interest under Section 87103(d), the financial effect of the decision is material if it will have a recognizable financial impact on the business entity of sufficient
magnitude or proportion to motivate a reasonable person to weigh the advantages or
disadvantages of the financial outcome of the governmental decision on the operation of the
business entity in which he or she has the financial interest. Examples of governmental decisions
that should be considered under this provision are decisions that may:

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

(B) Increase or decrease the need for the products or services that the business entity
supplies;

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

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

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

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