

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18702.3. Materiality Standard: Financial Interest in a Source of Income.

(a) The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a source of income is material if any of the following criteria are met:

(1) The source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party.

(2) The source is an individual and:

(A) The decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by \$1,000 or more; or

(B) The official knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the materiality standards in Regulation 18702.1; or

(C) The official knows or has reason to know that the individual has an interest in real property and:

(i) The property is a named party in, or the subject of, the decision as defined in Regulations 18701(a) and 18702.2(a)(1) through (6); or

(ii) There is clear and convincing evidence the decision would have a substantial effect on the property.

(3) The source is a nonprofit organization and one of the following applies:

(A) The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than:

(i) \$1,000,000; or

(ii) Five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000.

(B) The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:

(i) \$250,000; or

(ii) One percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500.

(C) The official knows or has reason to know that the organization has an interest in real property and:

(i) The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or

(ii) There is clear and convincing evidence the decision would have a substantial effect on the property.

(4) The source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1.

(b) Nexus. Any reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal.

(c) Exception: Income from Retail Sales of a Business Entity. For purposes of applying Section 87103.5:

(1) The retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public, and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction.

(2) Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business. An official is unable to recognize a significant monetary difference when:

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

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

(d) Government Entities. Where a government entity qualifies as a source of income as defined in Section 82030, including where a public official is paid by the entity as a consultant or contractor, this Regulation does not apply. Under Regulation 18703(e)(7), an official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on the official.

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

HISTORY

1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).

2. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).

3. Editorial correction of History 2 (Register 2000, No. 25).

4. Change without regulatory effect renumbering former section 18702.3 to section 18704.3 and renumbering former section 18705.3 to section 18702.3, including amendment of section, filed 4-27-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18).

5. Repealer and new section filed 9-6-2019; operative 10-6-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2019, No. 36).