

Senate Bill No. 1467

CHAPTER 1122

An act to amend Section 10430 of, and to add Article 4 (commencing with Section 10515) and Article 5 (commencing with Section 10520) to Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1467, Bowen. Public contracts: conflict of interest.

Existing law, with specified exemptions, including the acquisition of information technology goods and services, regulates the procurement of materials, supplies, equipment, and services by state agencies. These provisions do not apply to the Regents of the University of California or to the Trustees of the California State University.

This bill would apply certain of these procurement provisions to the Trustees of the California State University.

Existing law includes various prohibitions with respect to conflicts of interest of persons who are awarded state contracts or officers or employees of the state who are contracting with the state either directly or through other entities, as well as remedies for violation of any of the provisions.

This bill would apply specified conflict-of-interest provisions to transactions, except as provided, under those provisions regulating the acquisition of information technology goods and services.

This bill would also add similar conflict-of-interest and remedies provisions with regard to contracting with the University of California.

By making violations of these provisions a felony, or in some cases a misdemeanor, thereby creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Department of Finance to report to the Legislature regarding the effect of this bill on the state's contracting costs.

Certain provisions of the bill would become operative on July 1, 2003.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 10430 of the Public Contract Code is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Section 10365.5, Article 8 (commencing with Section 10410), and Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors of the California Community Colleges shall be governed by this chapter, except as provided in Sections 10295, 10335, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 2. Article 4 (commencing with Section 10515) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:



Article 4. Conflict of Interest

10515. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after January 1, 2003, for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than 10 percent of the total monetary value of the consulting services contract.

10516. No officer or employee of the University of California shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest if that employment, activity, or enterprise is sponsored or funded, or sponsored and funded, by any university department through or by a university contract unless the employment, activity, or enterprise is within the course and scope of the officer's or employee's regular university employment. No officer or employee in the university shall contract on his or her own individual behalf as an independent contractor with any university department to provide services or goods. This section shall not apply to officers or employees of the university with teaching or research responsibilities.

10517. (a) No retired, dismissed, separated, or formerly employed person of the University of California employed with the university or otherwise appointed to serve in the university may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract while employed in any capacity by any university department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left university employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from the University of California, no person employed in the university or otherwise appointed to serve in the university may enter into a contract with any university department, if he or she was employed by that department in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract



for the continuation of an attorney's services on a matter he or she was involved with prior to leaving the university.

(c) This section does not prohibit the rehire or reappointment of University of California employees after retirement, consistent with university administrative policies, nor does it apply to inventors and authors of intellectual property licensed under technology transfer agreements.

10518. Each contractor who enters into a contract with the University of California for ten thousand dollars (\$10,000) or more, shall be assigned an identification number by the university. Each contractor who has been assigned a number shall list it on each contract he or she enters into with the university, regardless of the amount of the contract. In the case of a corporation or firm, the president's assigned number shall be used exclusively on each contract. The assigned number shall remain unchanged regardless of future name changes.

SEC. 3. Article 5 (commencing with Section 10520) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 5. Remedies and Penalties

10520. Every contract or other transaction entered in violation of any provision of this chapter is void, unless the violation is technical or nonsubstantive.

10521. The University of California, or any person acting on behalf of the university, may bring a civil action seeking a determination by the superior court that a contract or other transaction has been entered in violation of any provision of this chapter. If the court finds substantial evidence of a violation, it may issue a temporary injunction to prevent any further dealings upon the contract or other transaction, pending a final determination on the merits of the case. If the action results in a final determination that the contract or other transaction has been entered in violation of this chapter, it shall be void, and the state or person bringing the action shall be awarded costs and attorney's fees. This section shall not be construed to permit an award of costs and attorney fees to the person or entity contracting or otherwise transacting with the university.

10522. Any officer or employee of the University of California who corruptly performs any official act under this chapter to the injury of the university is guilty of a felony.

10523. Any person contracting with the University of California by oral or written contract who corruptly permits the violation of any contract made under this chapter is guilty of a felony.

10524. Persons convicted under Section 10522 or 10523 are also liable to the University of California for double the amount the



university may have lost, or be liable to lose by reason of the acts made crimes by this article.

10525. Willful violation of any other provision of this chapter shall constitute a misdemeanor.

SEC. 4. On or before April 1, 2003, the Department of Finance shall report to the Legislature regarding the effect this act will have on the state's contracting costs.

SEC. 5. Sections 1 to 3, inclusive, of this act shall become operative on July 1, 2003.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

