

**ASSEMBLY BILL**

**No. 527**

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**Introduced by Assembly Member Roger Hernández**

February 15, 2011

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An act to amend Sections 1090 and 1091 of, and to add Section 1096.5 to, the Government Code, relating to public officials.

LEGISLATIVE COUNSEL'S DIGEST

AB 527, as introduced, Roger Hernández. Public officials: financial interests.

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law defines what is a remote interest in a contract that does not present a prohibited conflict of interest under these provisions. Existing law authorizes a body or board to make a contract that involves a remote interest of a member of the body if, among other things, the remote interest is disclosed to the body or board and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest. Violation of these provisions is a crime.

This bill would additionally require that the remote interest be disclosed at a public meeting of that body or board and would require the counsel or other legal advisor of the body or board to identify a statutory basis for classifying the interest as a remote interest. By increasing the scope of actions that constitute a crime, this bill would impose a state-mandated local program.

This bill would also prohibit the specified officers or employees from authorizing the expenditure of public funds, as specified, if any member of the body or board is financially interested in the person or entity that receives the expended funds.

This bill would also prohibit a body or board of a city or county from approving any project, plan, permit, or conveyance of land in which a member of that body is financially interested, as defined, unless specified conditions are met, including disclosing the financial interest at a public meeting of that body or board, requiring the financially interested member to abstain from voting on the item, and requiring the body or board to approve the item by a vote of its membership sufficient for the purpose without the vote or votes of the member with the remote interest. The bill would make a violation of these provisions a crime, thereby imposing a state-mandated local program.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

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

1 SECTION 1. Section 1090 of the Government Code is amended  
 2 to read:  
 3 1090. Members of the Legislature, state, county, district,  
 4 judicial district, and city officers or employees shall not be  
 5 financially interested in any contract made by them in their official  
 6 capacity, or by any body or board of which they are members. *Nor*  
 7 *shall any state, county, district, judicial district, and city officers*  
 8 *or employees authorize the expenditure of public funds, regardless*  
 9 *of whether a contract is made in furtherance of the expenditure,*  
 10 *if any member of the body or board is financially interested in the*  
 11 *person or entity that receives the expenditure.* Nor shall state,  
 12 county, district, judicial district, and city officers or employees be  
 13 purchasers at any sale or vendors at any purchase made by them  
 14 in their official capacity.  
 15 As used in this article, “district” means any agency of the state  
 16 formed pursuant to general law or special act, for the local

1 performance of governmental or proprietary functions within  
2 limited boundaries.

3 SEC. 2. Section 1091 of the Government Code is amended to  
4 read:

5 1091. (a) An officer shall not be deemed to be interested in a  
6 contract entered into by a body or board of which the officer is a  
7 member within the meaning of this article if the officer has only  
8 a remote interest in the contract ~~and~~, if the fact of that interest is  
9 disclosed to the body or board of which the officer is a member  
10 and noted in its official records *at a public meeting of that body*  
11 *or board, and the counsel or other legal advisor of the body or*  
12 *board has identified a statutory basis for classifying the interest*  
13 *as remote at a public meeting of the body or board*, and thereafter  
14 the body or board authorizes, approves, or ratifies the contract in  
15 good faith by a vote of its membership sufficient for the purpose  
16 without counting the vote or votes of the officer or member with  
17 the remote interest.

18 (b) As used in this article, “remote interest” means any of the  
19 following:

20 (1) That of an officer or employee of a nonprofit entity exempt  
21 from taxation pursuant to Section 501(c)(3) of the Internal Revenue  
22 Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except  
23 as provided in paragraph (8) of subdivision (a) of Section 1091.5.

24 (2) That of an employee or agent of the contracting party, if the  
25 contracting party has 10 or more other employees and if the officer  
26 was an employee or agent of that contracting party for at least three  
27 years prior to the officer initially accepting his or her office and  
28 the officer owns less than 3 percent of the shares of stock of the  
29 contracting party; and the employee or agent is not an officer or  
30 director of the contracting party and did not directly participate in  
31 formulating the bid of the contracting party.

32 For purposes of this paragraph, time of employment with the  
33 contracting party by the officer shall be counted in computing the  
34 three-year period specified in this paragraph even though the  
35 contracting party has been converted from one form of business  
36 organization to a different form of business organization within  
37 three years of the initial taking of office by the officer. Time of  
38 employment in that case shall be counted only if, after the transfer  
39 or change in organization, the real or ultimate ownership of the  
40 contracting party is the same or substantially similar to that which

1 existed before the transfer or change in organization. For purposes  
2 of this paragraph, stockholders, bondholders, partners, or other  
3 persons holding an interest in the contracting party are regarded  
4 as having the “real or ultimate ownership” of the contracting party.  
5 (3) That of an employee or agent of the contracting party, if all  
6 of the following conditions are met:  
7 (A) The agency of which the person is an officer is a local public  
8 agency located in a county with a population of less than 4,000,000.  
9 (B) The contract is competitively bid and is not for personal  
10 services.  
11 (C) The employee or agent is not in a primary management  
12 capacity with the contracting party, is not an officer or director of  
13 the contracting party, and holds no ownership interest in the  
14 contracting party.  
15 (D) The contracting party has 10 or more other employees.  
16 (E) The employee or agent did not directly participate in  
17 formulating the bid of the contracting party.  
18 (F) The contracting party is the lowest responsible bidder.  
19 (4) That of a parent in the earnings of his or her minor child for  
20 personal services.  
21 (5) That of a landlord or tenant of the contracting party.  
22 (6) That of an attorney of the contracting party or that of an  
23 owner, officer, employee, or agent of a firm that renders, or has  
24 rendered, service to the contracting party in the capacity of  
25 stockbroker, insurance agent, insurance broker, real estate agent,  
26 or real estate broker, if these individuals have not received and  
27 will not receive remuneration, consideration, or a commission as  
28 a result of the contract and if these individuals have an ownership  
29 interest of 10 percent or more in the law practice or firm, stock  
30 brokerage firm, insurance firm, or real estate firm.  
31 (7) That of a member of a nonprofit corporation formed under  
32 the Food and Agricultural Code or a nonprofit corporation formed  
33 under the Corporations Code for the sole purpose of engaging in  
34 the merchandising of agricultural products or the supplying of  
35 water.  
36 (8) That of a supplier of goods or services when those goods or  
37 services have been supplied to the contracting party by the officer  
38 for at least five years prior to his or her election or appointment  
39 to office.

1 (9) That of a person subject to the provisions of Section 1090  
2 in any contract or agreement entered into pursuant to the provisions  
3 of the California Land Conservation Act of 1965.

4 (10) Except as provided in subdivision (b) of Section 1091.5,  
5 that of a director of, or a person having an ownership interest of,  
6 10 percent or more in a bank, bank holding company, or savings  
7 and loan association with which a party to the contract has a  
8 relationship of borrower or depositor, debtor or creditor.

9 (11) That of an engineer, geologist, or architect employed by a  
10 consulting engineering or architectural firm. This paragraph applies  
11 only to an employee of a consulting firm who does not serve in a  
12 primary management capacity, and does not apply to an officer or  
13 director of a consulting firm.

14 (12) That of an elected officer otherwise subject to Section 1090,  
15 in any housing assistance payment contract entered into pursuant  
16 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.  
17 Sec. 1437f) as amended, provided that the housing assistance  
18 payment contract was in existence before Section 1090 became  
19 applicable to the officer and will be renewed or extended only as  
20 to the existing tenant, or, in a jurisdiction in which the rental  
21 vacancy rate is less than 5 percent, as to new tenants in a unit  
22 previously under a Section 8 contract. This section applies to any  
23 person who became a public official on or after November 1, 1986.

24 (13) That of a person receiving salary, per diem, or  
25 reimbursement for expenses from a government entity.

26 (14) That of a person owning less than 3 percent of the shares  
27 of a contracting party that is a for-profit corporation, provided that  
28 the ownership of the shares derived from the person's employment  
29 with that corporation.

30 (15) That of a party to litigation involving the body or board of  
31 which the officer is a member in connection with an agreement in  
32 which all of the following apply:

33 (A) The agreement is entered into as part of a settlement of  
34 litigation in which the body or board is represented by legal  
35 counsel.

36 (B) After a review of the merits of the agreement and other  
37 relevant facts and circumstances, a court of competent jurisdiction  
38 finds that the agreement serves the public interest.

1 (C) The interested member has recused himself or herself from  
2 all participation, direct or indirect, in the making of the agreement  
3 on behalf of the body or board.

4 (16) That of a person who is an officer or employee of an  
5 investor-owned utility that is regulated by the Public Utilities  
6 Commission with respect to a contract between the investor-owned  
7 utility and a state, county, district, judicial district, or city body or  
8 board of which the person is a member, if the contract requires the  
9 investor-owned utility to provide energy efficiency rebates or other  
10 type of program to encourage energy efficiency that benefits the  
11 public when all of the following apply:

12 (A) The contract is funded by utility consumers pursuant to  
13 regulations of the Public Utilities Commission.

14 (B) The contract provides no individual benefit to the person  
15 that is not also provided to the public, and the investor-owned  
16 utility receives no direct financial profit from the contract.

17 (C) The person has recused himself or herself from all  
18 participation in making the contract on behalf of the state, county,  
19 district, judicial district, or city body or board of which he or she  
20 is a member.

21 (D) The contract implements a program authorized by the Public  
22 Utilities Commission.

23 (c) This section is not applicable to any officer interested in a  
24 contract who influences or attempts to influence another member  
25 of the body or board of which he or she is a member to enter into  
26 the contract.

27 (d) The willful failure of an officer to disclose the fact of his or  
28 her interest in a contract pursuant to this section is punishable as  
29 provided in Section 1097. That violation does not void the contract  
30 unless the contracting party had knowledge of the fact of the remote  
31 interest of the officer at the time the contract was executed.

32 SEC. 3. Section 1096.5 is added to the Government Code, to  
33 read:

34 1096.5. (a) No body or board of a city or county, including,  
35 but not limited to, a planning commission, shall approve any  
36 project, plan, permit, or conveyance of land in which any member  
37 of that body is financially interested unless the fact of that interest  
38 is disclosed to the body or board by the financially interested  
39 member at a public meeting of that body or board, the financially  
40 interested member abstains from voting on the project, plan, permit,

1 or conveyance of land, and thereafter the body or board approves  
2 the project, plan, permit, or conveyance of land in good faith by  
3 a vote of its membership sufficient for the purpose without counting  
4 the vote or votes of the member with the remote interest.

5 (b) For purposes of this section, a member of a body or board  
6 shall be financially interested if the approval of the project, plan,  
7 permit, or conveyance will have a reasonably foreseeable financial  
8 effect on the member, on the real property owned or leased by the  
9 member, or on a business entity in which the member is an  
10 employee, agent, contractor, or consultant of the business entity.

11 (c) Any project, plan, permit, or conveyance approved in  
12 violation of this section shall be void and punishable in the manner  
13 provided in Section 1097.

14 SEC. 4. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.