

AMENDED IN ASSEMBLY MAY 17, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 527

Introduced by Assembly Member Roger Hernández

February 15, 2011

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 amended, 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 an officer or employee, as defined, of the state, a county, district, judicial district or city, or any city officer or employee from authorizing the expenditure of public funds, and 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 bill would also make findings and declarations relating to the application of its provisions to charter cities and charter counties.~~

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. (a) 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. ~~Not~~
- 7 ~~shall any state, county, district, judicial district, and city officers~~
- 8 ~~or employees authorize the expenditure of public funds, regardless~~

1 ~~of whether a contract is made in furtherance of the expenditure, if~~
2 ~~any member of the body or board is financially interested in the~~
3 ~~person or entity that receives the expenditure.~~ Nor shall state,
4 county, district, judicial district, and city officers or employees be
5 purchasers at any sale or vendors at any purchase made by them
6 in their official capacity.

7 As used in this article, “district” means any agency of the state
8 formed pursuant to general law or special act, for the local
9 performance of governmental or proprietary functions within
10 limited boundaries.

11 *(b) (1) A state, county, district, judicial district, and city officer*
12 *or employee shall not authorize the expenditure of public funds,*
13 *or approve or recommend approval of any project, plan, permit,*
14 *or conveyance of land, regardless of whether a contract is made*
15 *in furtherance of the expenditure or project, plan, permit, or*
16 *conveyance, if any member of the body or board of any state,*
17 *county, district, judicial district or city, or any city officer or*
18 *employee is financially interested in the transaction by virtue of*
19 *independent contracting by the individual or nongovernmental*
20 *entity receiving either public funds or an entitlement. Any*
21 *individual with a financial interest in the expenditure of public*
22 *funds or approval of any project, plan, permit, or conveyance of*
23 *land, is in violation of this section and shall be punishable in the*
24 *manner provided in Section 1097.*

25 *(2) For purposes of this subdivision, a city officer or employee*
26 *shall include elected and appointed officials of the governing body*
27 *and any subordinate board or commission, a city attorney, a city*
28 *manager, and a department head. This subdivision shall not apply*
29 *to an individual in a nonsupervisory or nonmanagerial position*
30 *who is directed by a department head.*

31 SEC. 2. Section 1091 of the Government Code is amended to
32 read:

33 1091. (a) An officer shall not be deemed to be interested in a
34 contract entered into by a body or board of which the officer is a
35 member within the meaning of this article if the officer has only
36 a remote interest in the contract, if the fact of that interest is
37 disclosed to the body or board of which the officer is a member
38 and noted in its official records at a public meeting of that body
39 or board, and the counsel or other legal adviser of the body or
40 board has identified a statutory basis for classifying the interest as

1 remote at a public meeting of the body or board, and thereafter the
 2 body or board authorizes, approves, or ratifies the contract in good
 3 faith by a vote of its membership sufficient for the purpose without
 4 counting the vote or votes of the officer or member with the remote
 5 interest.

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

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

12 (2) That of an employee or agent of the contracting party, if the
 13 contracting party has 10 or more other employees and if the officer
 14 was an employee or agent of that contracting party for at least three
 15 years prior to the officer initially accepting his or her office and
 16 the officer owns less than 3 percent of the shares of stock of the
 17 contracting party; and the employee or agent is not an officer or
 18 director of the contracting party and did not directly participate in
 19 formulating the bid of the contracting party.

20 For purposes of this paragraph, time of employment with the
 21 contracting party by the officer shall be counted in computing the
 22 three-year period specified in this paragraph even though the
 23 contracting party has been converted from one form of business
 24 organization to a different form of business organization within
 25 three years of the initial taking of office by the officer. Time of
 26 employment in that case shall be counted only if, after the transfer
 27 or change in organization, the real or ultimate ownership of the
 28 contracting party is the same or substantially similar to that which
 29 existed before the transfer or change in organization. For purposes
 30 of this paragraph, stockholders, bondholders, partners, or other
 31 persons holding an interest in the contracting party are regarded
 32 as having the “real or ultimate ownership” of the contracting party.

33 (3) That of an employee or agent of the contracting party, if all
 34 of the following conditions are met:

35 (A) The agency of which the person is an officer is a local public
 36 agency located in a county with a population of less than 4,000,000.

37 (B) The contract is competitively bid and is not for personal
 38 services.

39 (C) The employee or agent is not in a primary management
 40 capacity with the contracting party, is not an officer or director of

1 the contracting party, and holds no ownership interest in the
2 contracting party.

3 (D) The contracting party has 10 or more other employees.

4 (E) The employee or agent did not directly participate in
5 formulating the bid of the contracting party.

6 (F) The contracting party is the lowest responsible bidder.

7 (4) That of a parent in the earnings of his or her minor child for
8 personal services.

9 (5) That of a landlord or tenant of the contracting party.

10 (6) That of an attorney of the contracting party or that of an
11 owner, officer, employee, or agent of a firm that renders, or has
12 rendered, service to the contracting party in the capacity of
13 stockbroker, insurance agent, insurance broker, real estate agent,
14 or real estate broker, if these individuals have not received and
15 will not receive remuneration, consideration, or a commission as
16 a result of the contract and if these individuals have an ownership
17 interest of 10 percent or more in the law practice or firm, stock
18 brokerage firm, insurance firm, or real estate firm.

19 (7) That of a member of a nonprofit corporation formed under
20 the Food and Agricultural Code or a nonprofit corporation formed
21 under the Corporations Code for the sole purpose of engaging in
22 the merchandising of agricultural products or the supplying of
23 water.

24 (8) That of a supplier of goods or services when those goods or
25 services have been supplied to the contracting party by the officer
26 for at least five years prior to his or her election or appointment
27 to office.

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

31 (10) Except as provided in subdivision (b) of Section 1091.5,
32 that of a director of, or a person having an ownership interest of,
33 10 percent or more in a bank, bank holding company, or savings
34 and loan association with which a party to the contract has a
35 relationship of borrower or depositor, debtor or creditor.

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

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

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

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

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

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

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

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

29 (16) That of a person who is an officer or employee of an
30 investor-owned utility that is regulated by the Public Utilities
31 Commission with respect to a contract between the investor-owned
32 utility and a state, county, district, judicial district, or city body or
33 board of which the person is a member, if the contract requires the
34 investor-owned utility to provide energy efficiency rebates or other
35 type of program to encourage energy efficiency that benefits the
36 public when all of the following apply:

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

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

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

8 (D) The contract implements a program authorized by the Public
9 Utilities Commission.

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

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

19 ~~SEC. 3. Section 1096.5 is added to the Government Code, to~~
20 ~~read:~~

21 ~~1096.5. (a) No body or board of a city or county, including,~~
22 ~~but not limited to, a planning commission, shall approve any~~
23 ~~project, plan, permit, or conveyance of land in which any member~~
24 ~~of that body is financially interested unless the fact of that interest~~
25 ~~is disclosed to the body or board by the financially interested~~
26 ~~member at a public meeting of that body or board, the financially~~
27 ~~interested member abstains from voting on the project, plan, permit,~~
28 ~~or conveyance of land, and thereafter the body or board approves~~
29 ~~the project, plan, permit, or conveyance of land in good faith by~~
30 ~~a vote of its membership sufficient for the purpose without counting~~
31 ~~the vote or votes of the member with the remote interest.~~

32 ~~(b) For purposes of this section, a member of a body or board~~
33 ~~shall be financially interested if the approval of the project, plan,~~
34 ~~permit, or conveyance will have a reasonably foreseeable financial~~
35 ~~effect on the member, on the real property owned or leased by the~~
36 ~~member, or on a business entity in which the member is an~~
37 ~~employee, agent, contractor, or consultant of the business entity.~~

38 ~~(c) Any project, plan, permit, or conveyance approved in~~
39 ~~violation of this section shall be void.~~

1 ~~(d) A member of a body or board that is financially interested~~
 2 ~~in the approval of the project, plan, permit, or conveyance of land,~~
 3 ~~that votes to approve the project, plan, permit, or conveyance of~~
 4 ~~land is punishable by a fine of not more than one thousand dollars~~
 5 ~~(\$1,000), by imprisonment in the state prison, or by both fine and~~
 6 ~~imprisonment and is forever disqualified from holding any office~~
 7 ~~in this state.~~

8 ~~SEC. 4.~~

9 *SEC. 3.* The Legislature hereby finds and declares that the
 10 ethical integrity and stability of local government agencies in this
 11 state, including charter cities, has a direct impact on the long-term
 12 well-being of all residents of this state. The likelihood of businesses
 13 locating to, or staying in, the state is affected by the perception of
 14 a functioning, transparent, and practical governmental structure
 15 in the local governmental bodies in the state. Therefore, the
 16 Legislature finds and declares that to ensure the statewide integrity
 17 of local governments, including the prohibition against financially
 18 interested transactions, is an issue of statewide concern and not a
 19 municipal affair, as that term is used in Section 5 of Article XI of
 20 the California Constitution. Therefore, this act shall apply to every
 21 city and county in this state, including a charter city, charter county,
 22 and charter city and county.

23 ~~SEC. 5.~~

24 *SEC. 4.* No reimbursement is required by this act pursuant to
 25 Section 6 of Article XIII B of the California Constitution because
 26 the only costs that may be incurred by a local agency or school
 27 district will be incurred because this act creates a new crime or
 28 infraction, eliminates a crime or infraction, or changes the penalty
 29 for a crime or infraction, within the meaning of Section 17556 of
 30 the Government Code, or changes the definition of a crime within
 31 the meaning of Section 6 of Article XIII B of the California
 32 Constitution.

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