

ASSEMBLY BILL

No. 785

Introduced by Assembly Member Mendoza

February 17, 2011

An act to amend Section 1091.5 of, and to add Section 1091.7 to, the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 785, as introduced, Mendoza. Public officers: contracts: financial interest.

(1) Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract, as specified, made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions.

This bill would provide, notwithstanding any other provision of law, that a public officer who is an elected member of any state or local body, board, or commission shall be deemed to have a financial interest in a contract pursuant to these provisions, if that officer's spouse, or child, parent, or sibling, or the spouse of the child, parent, or sibling, has a financial interest in any contract made by that public officer in his or her official capacity, or by any body, board, or commission of which that public officer is a member.

(2) Existing law provides for a criminal penalty on every officer or person prohibited by state laws from making or being interested in contracts, who willfully violates any of the provisions of those laws.

By creating a new crime pursuant to these provisions, this bill would impose a state-mandated local program.

(3) 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 1091.5 of the Government Code is
2 amended to read:

3 1091.5. (a) An officer or employee shall not be deemed to be
4 interested in a contract if his or her interest is any of the following:

5 (1) The ownership of less than 3 percent of the shares of a
6 corporation for profit, provided that the total annual income to him
7 or her from dividends, including the value of stock dividends, from
8 the corporation does not exceed 5 percent of his or her total annual
9 income, and any other payments made to him or her by the
10 corporation do not exceed 5 percent of his or her total annual
11 income.

12 (2) That of an officer in being reimbursed for his or her actual
13 and necessary expenses incurred in the performance of official
14 duties.

15 (3) That of a recipient of public services generally provided by
16 the public body or board of which he or she is a member, on the
17 same terms and conditions as if he or she were not a member of
18 the body or board.

19 (4) That of a landlord or tenant of the contracting party if the
20 contracting party is the federal government or any federal
21 department or agency, this state or an adjoining state, any
22 department or agency of this state or an adjoining state, any county
23 or city of this state or an adjoining state, or any public corporation
24 or special, judicial, or other public district of this state or an
25 adjoining state unless the subject matter of the contract is the
26 property in which the officer or employee has the interest as
27 landlord or tenant in which event his or her interest shall be deemed
28 a remote interest within the meaning of, and subject to, the
29 provisions of Section 1091.

1 (5) That of a tenant in a public housing authority created
2 pursuant to Part 2 (commencing with Section 34200) of Division
3 24 of the Health and Safety Code in which he or she serves as a
4 member of the board of commissioners of the authority or of a
5 community development commission created pursuant to Part 1.7
6 (commencing with Section 34100) of Division 24 of the Health
7 and Safety Code.

8 (6) ~~That~~ *Except as provided in Section 1091.7, that* of a spouse
9 of an officer or employee of a public agency in his or her spouse's
10 employment or officeholding if his or her spouse's employment
11 or officeholding has existed for at least one year prior to his or her
12 election or appointment.

13 (7) That of a nonsalaried member of a nonprofit corporation,
14 provided that this interest is disclosed to the body or board at the
15 time of the first consideration of the contract, and provided further
16 that this interest is noted in its official records.

17 (8) That of a noncompensated officer of a nonprofit, tax-exempt
18 corporation, which, as one of its primary purposes, supports the
19 functions of the body or board or to which the body or board has
20 a legal obligation to give particular consideration, and provided
21 further that this interest is noted in its official records.

22 For purposes of this paragraph, an officer is "noncompensated"
23 even though he or she receives reimbursement from the nonprofit,
24 tax-exempt corporation for necessary travel and other actual
25 expenses incurred in performing the duties of his or her office.

26 (9) That of a person receiving salary, per diem, or reimbursement
27 for expenses from a government entity, unless the contract directly
28 involves the department of the government entity that employs the
29 officer or employee, provided that the interest is disclosed to the
30 body or board at the time of consideration of the contract, and
31 provided further that the interest is noted in its official record.

32 (10) That of an attorney of the contracting party or that of an
33 owner, officer, employee, or agent of a firm which renders, or has
34 rendered, service to the contracting party in the capacity of
35 stockbroker, insurance agent, insurance broker, real estate agent,
36 or real estate broker, if these individuals have not received and
37 will not receive remuneration, consideration, or a commission as
38 a result of the contract and if these individuals have an ownership
39 interest of less than 10 percent in the law practice or firm, stock
40 brokerage firm, insurance firm, or real estate firm.

1 (11) Except as provided in subdivision (b), that of an officer or
2 employee of, or a person having less than a 10-percent ownership
3 interest in, a bank, bank holding company, or savings and loan
4 association with which a party to the contract has a relationship
5 of borrower, depositor, debtor, or creditor.

6 (12) That of (A) a bona fide nonprofit, tax-exempt corporation
7 having among its primary purposes the conservation, preservation,
8 or restoration of park and natural lands or historical resources for
9 public benefit, which corporation enters into an agreement with a
10 public agency to provide services related to park and natural lands
11 or historical resources and which services are found by the public
12 agency, prior to entering into the agreement or as part of the
13 agreement, to be necessary to the public interest to plan for,
14 acquire, protect, conserve, improve, or restore park and natural
15 lands or historical resources for public purposes and (B) any officer,
16 director, or employee acting pursuant to the agreement on behalf
17 of the nonprofit corporation. For purposes of this paragraph,
18 “agreement” includes contracts and grants, and “park,” “natural
19 lands,” and “historical resources” shall have the meanings set forth
20 in subdivisions (d), (g), and (i) of Section 5902 of the Public
21 Resources Code. Services to be provided to the public agency may
22 include those studies and related services, acquisitions of property
23 and property interests, and any activities related to those studies
24 and acquisitions necessary for the conservation, preservation,
25 improvement, or restoration of park and natural lands or historical
26 resources.

27 (13) That of an officer, employee, or member of the Board of
28 Directors of the California Housing Finance Agency with respect
29 to a loan product or programs if the officer, employee, or member
30 participated in the planning, discussions, development, or approval
31 of the loan product or program and both of the following two
32 conditions exist:

33 (A) The loan product or program is or may be originated by any
34 lender approved by the agency.

35 (B) The loan product or program is generally available to
36 qualifying borrowers on terms and conditions that are substantially
37 the same for all qualifying borrowers at the time the loan is made.

38 (b) An officer or employee shall not be deemed to be interested
39 in a contract made pursuant to competitive bidding under a
40 procedure established by law if his or her sole interest is that of

1 an officer, director, or employee of a bank or savings and loan
2 association with which a party to the contract has the relationship
3 of borrower or depositor, debtor or creditor.

4 SEC. 2. Section 1091.7 is added to the Government Code, to
5 read:

6 1091.7. (a) Notwithstanding any other provision of law, a
7 public officer who is an elected member of any state or local body,
8 board, or commission shall be deemed to have a financial interest
9 in a contract pursuant to this article, if that officer's spouse, or
10 child, parent, or sibling, or the spouse of the child, parent, or
11 sibling, has a financial interest in any contract made by that public
12 officer in his or her official capacity, or by any body, board, or
13 commission of which that officer is a member.

14 (b) (1) The determination of a financial interest with respect to
15 any person described in this section shall be made according to
16 the same standards as those set forth in this article with respect to
17 the public officer, as applicable.

18 (2) For purposes of determining a financial interest pursuant to
19 this section, an individual lobbying on behalf of a contracting party
20 shall be construed to be an agent of that contracting party.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.