

AMENDED IN SENATE AUGUST 29, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1090**

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**Introduced by Assembly Member Fong**

February 22, 2013

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An act to amend Section ~~1097.1~~ *1091.5* of, and to add Sections 1097.1, 1097.2, 1097.3, ~~and~~ *and 1097.4, and 1097.5* to, the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, as amended, Fong. Public officers: conflicts of interest: contracts.

The Political Reform Act of 1974 establishes the Fair Political Practices Commission as the agency responsible for enforcing the act. The act authorizes the Commission to issue an opinion or advice to a person with respect to that person's duties under the act, as specified. The act authorizes the Commission to seek and impose administrative and civil penalties against persons who violate the act, as prescribed.

Existing law prohibits Members of the Legislature, 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 identifies certain remote interests that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract.* Existing law makes a willful violation of this prohibition a crime.

*This bill would establish an additional situation in which an official is not financially interested in a contract as applied to specified public services contracts entered into by certain special districts.*

This bill would also make a person who violates the prohibition against being financially interested in a contract, or who causes another person to violate ~~or who aids and abets another person in violating~~ the prohibition, subject to administrative and civil fines, as specified. The bill would authorize the Commission to enforce these violations by bringing an administrative or civil action against a person who is subject to the prohibition, as specified, upon written authorization from the district attorney of the county in which the alleged violation occurred.

This bill would authorize a person who is subject to those prohibitions to request an opinion or advice from the Commission with respect to those prohibitions. ~~The bill would authorize the Commission to issue opinions and advice to those persons consistent with the manner in which the Commission provides opinions and advice pursuant to the act, as specified.~~

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*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.

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

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

8 (4) That of a landlord or tenant of the contracting party if the  
9 contracting party is the federal government or any federal  
10 department or agency, this state or an adjoining state, any  
11 department or agency of this state or an adjoining state, any county  
12 or city of this state or an adjoining state, or any public corporation  
13 or special, judicial, or other public district of this state or an  
14 adjoining state unless the subject matter of the contract is the  
15 property in which the officer or employee has the interest as  
16 landlord or tenant in which event his or her interest shall be deemed  
17 a remote interest within the meaning of, and subject to, the  
18 provisions of Section 1091.

19 (5) That of a tenant in a public housing authority created  
20 pursuant to Part 2 (commencing with Section 34200) of Division  
21 24 of the Health and Safety Code in which he or she serves as a  
22 member of the board of commissioners of the authority or of a  
23 community development commission created pursuant to Part 1.7  
24 (commencing with Section 34100) of Division 24 of the Health  
25 and Safety Code.

26 (6) That of a spouse of an officer or employee of a public agency  
27 in his or her spouse's employment or officeholding if his or her  
28 spouse's employment or officeholding has existed for at least one  
29 year prior to his or her election or appointment.

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

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

39 For purposes of this paragraph, an officer is "noncompensated"  
40 even though he or she receives reimbursement from the nonprofit,

1 tax-exempt corporation for necessary travel and other actual  
2 expenses incurred in performing the duties of his or her office.

3 (9) That of a person receiving salary, per diem, or reimbursement  
4 for expenses from a government entity, unless the contract directly  
5 involves the department of the government entity that employs the  
6 officer or employee, provided that the interest is disclosed to the  
7 body or board at the time of consideration of the contract, and  
8 provided further that the interest is noted in its official record.

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

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

23 (12) That of (A) a bona fide nonprofit, tax-exempt corporation  
24 having among its primary purposes the conservation, preservation,  
25 or restoration of park and natural lands or historical resources for  
26 public benefit, which corporation enters into an agreement with a  
27 public agency to provide services related to park and natural lands  
28 or historical resources and which services are found by the public  
29 agency, prior to entering into the agreement or as part of the  
30 agreement, to be necessary to the public interest to plan for,  
31 acquire, protect, conserve, improve, or restore park and natural  
32 lands or historical resources for public purposes and (B) any officer,  
33 director, or employee acting pursuant to the agreement on behalf  
34 of the nonprofit corporation. For purposes of this paragraph,  
35 “agreement” includes contracts and grants, and “park,” “natural  
36 lands,” and “historical resources” shall have the meanings set forth  
37 in subdivisions (d), (g), and (i) of Section 5902 of the Public  
38 Resources Code. Services to be provided to the public agency may  
39 include those studies and related services, acquisitions of property  
40 and property interests, and any activities related to those studies

1 and acquisitions necessary for the conservation, preservation,  
2 improvement, or restoration of park and natural lands or historical  
3 resources.

4 (13) That of an officer, employee, or member of the Board of  
5 Directors of the California Housing Finance Agency with respect  
6 to a loan product or programs if the officer, employee, or member  
7 participated in the planning, discussions, development, or approval  
8 of the loan product or program and both of the following two  
9 conditions exist:

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

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

15 (14) *That of a party to a contract for public services entered*  
16 *into by a special district that requires a person to be a landowner*  
17 *or a representative of a landowner to serve on the board of which*  
18 *the officer or employee is a member, on the same terms and*  
19 *conditions as if he or she were not a member of the body or board.*  
20 *For purposes of this paragraph, "public services" includes the*  
21 *powers and purposes generally provided pursuant to provisions*  
22 *of the Water Code relating to irrigation districts, California water*  
23 *districts, water storage districts, or reclamation districts.*

24 (b) An officer or employee shall not be deemed to be interested  
25 in a contract made pursuant to competitive bidding under a  
26 procedure established by law if his or her sole interest is that of  
27 an officer, director, or employee of a bank or savings and loan  
28 association with which a party to the contract has the relationship  
29 of borrower or depositor, debtor or creditor.

30 ~~SECTION 1.—Section 1097 of the Government Code is amended~~  
31 ~~to read:~~

32 ~~1097.—(a) An officer or person prohibited by Section 1090~~  
33 ~~from making or being interested in contracts, or from becoming a~~  
34 ~~vendor or purchaser at sales, or from purchasing scrip, or other~~  
35 ~~evidences of indebtedness, including any member of the governing~~  
36 ~~board of a school district, who willfully violates any provision of~~  
37 ~~Section 1090 is punishable by a fine of not more than one thousand~~  
38 ~~dollars (\$1,000), or by imprisonment in the state prison, and is~~  
39 ~~forever disqualified from holding any office in this state.~~

1     ~~(b) An officer or person prohibited by Section 1090 from making~~  
2     ~~or being interested in contracts, or from becoming a vendor or~~  
3     ~~purchaser at sales, or from purchasing scrip, or other evidences of~~  
4     ~~indebtedness, including any member of the governing board of a~~  
5     ~~school district, who violates any provision of Section 1090, who~~  
6     ~~causes any other person to violate any provision of Section 1090,~~  
7     ~~or who aids and abets any other person in the violation of any~~  
8     ~~provision of Section 1090 shall be liable in an administrative action~~  
9     ~~commenced by the Commission as provided in Section 1097.1 or~~  
10    ~~a civil action commenced by the Commission as provided in~~  
11    ~~Section 1097.2.~~

12    ~~(c) The Commission shall not commence an administrative or~~  
13    ~~civil action pursuant to subdivision (b) against a person except~~  
14    ~~upon written authorization from the district attorney of the county~~  
15    ~~in which the alleged violation occurred. A civil action alleging a~~  
16    ~~violation of Section 1090 shall not be filed against a person~~  
17    ~~pursuant to this section if the Attorney General or a district attorney~~  
18    ~~is pursuing a criminal prosecution of that person pursuant to~~  
19    ~~subdivision (a).~~

20    ~~(d) If two or more persons are responsible for a violation of this~~  
21    ~~section, they shall be jointly and severally liable.~~

22    ~~(e) A person who is subject to the prohibitions of Section 1090,~~  
23    ~~or that person's authorized representative, may request an opinion~~  
24    ~~or advice from the Commission with respect to his or her duties~~  
25    ~~under Section 1090. The Commission may provide an opinion or~~  
26    ~~formal or informal advice to that person in a manner consistent~~  
27    ~~with the Commission's duties and authority to provide opinions~~  
28    ~~and advice pursuant to the Political Reform Act of 1974 (Title 9~~  
29    ~~(commencing with Section 81000)) and implementing regulations~~  
30    ~~adopted by the Commission. The Commission's authority to issue~~  
31    ~~opinions and advice pursuant to this subdivision is concurrent with~~  
32    ~~the authority of the Attorney General to issue opinions and advice~~  
33    ~~to a person with respect to Section 1090.~~

34    ~~(f) The Commission may adopt, amend, and rescind regulations~~  
35    ~~to implement this section and Sections 1097.1, 1097.2, 1097.3,~~  
36    ~~and 1097.4 in the same manner as provided in Section 83112.~~

37    ~~(g) For purposes of this section and Sections 1097.1, 1097.2,~~  
38    ~~1097.3, and 1097.4, "Commission" means the Fair Political~~  
39    ~~Practices Commission.~~

1 SEC. 2. Section 1097.1 is added to the Government Code, to  
2 read:

3 1097.1. (a) The Commission shall have the jurisdiction to  
4 commence an administrative action, or a civil action, as set forth  
5 within the limitations of this section and Sections 1097.2, 1097.3,  
6 1097.4, and 1097.5, against an officer or person prohibited by  
7 Section 1090 from making or being interested in contracts, or from  
8 becoming a vendor or purchaser at sales, or from purchasing  
9 scrip, or other evidences of indebtedness, including any member  
10 of the governing board of a school district, who violates any  
11 provision of those laws or who causes any other person to violate  
12 any provision of those laws.

13 (b) The Commission shall not have jurisdiction to commence  
14 an administrative or civil action or an investigation that might  
15 lead to an administrative or civil action pursuant to subdivision  
16 (a) against a person except upon written authorization from the  
17 district attorney of the county in which the alleged violation  
18 occurred. A civil action alleging a violation of Section 1090 shall  
19 not be filed against a person pursuant to this section if the Attorney  
20 General or a district attorney is pursuing a criminal prosecution  
21 of that person pursuant to Section 1097.

22 (c) (1) The Commission's duties and authority under the  
23 Political Reform Act of 1974 (Title 9 (commencing with Section  
24 81000)) to issue opinions or advice shall not be applicable to  
25 Sections 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5,  
26 1091.6, or 1097, except as provided in this subdivision.

27 (2) A person subject to Section 1090 may request the  
28 Commission to issue an opinion or advice with respect to his or  
29 her duties under Section 1090, 1091, 1091.1, 1091.2, 1091.3,  
30 1091.4, 1091.5, and 1091.6. The Commission shall decline to issue  
31 an opinion or advice relating to past conduct.

32 (3) The Commission shall forward a copy of the request for an  
33 opinion or advice to the Attorney General's office and the local  
34 district attorney prior to proceeding with the advice or opinion.

35 (4) When issuing the advice or opinion, the Commission shall  
36 either provide to the person who made the request a copy of any  
37 written communications submitted by the Attorney General or a  
38 local district attorney regarding the opinion or advice, or shall  
39 advise the person that no written communications were submitted.  
40 The failure of the Attorney General or a local district attorney to

1 submit a written communication pursuant to this paragraph shall  
2 not give rise to an inference that the Attorney General or local  
3 district attorney agrees with the opinion or advice.

4 (5) The opinion or advice, when issued, may be offered as  
5 evidence of good faith conduct by the requester in an enforcement  
6 proceeding, if the requester truthfully disclosed all material facts  
7 and committed the acts complained of in reliance on the opinion  
8 or advice. Any opinion or advice of the Commission issued  
9 pursuant to this subdivision shall not be admissible by any person  
10 other than the requester in any proceeding other than a proceeding  
11 brought by the Commission pursuant to this section. The  
12 Commission shall include in any opinion or advice that it issues  
13 pursuant to this subdivision a statement that the opinion or advice  
14 is not admissible in a criminal proceeding against any individual  
15 other than the requester.

16 (d) Any decision issued by the Commission pursuant to an  
17 administrative action commenced pursuant to the jurisdiction  
18 established in subdivision (a) shall not be admissible in any  
19 proceeding other than a proceeding brought by the Commission  
20 pursuant to this section. The Commission shall include in any  
21 decision it issues pursuant to an administrative action commenced  
22 pursuant to the jurisdiction established in subdivision (a) a  
23 statement that the decision applies only to proceedings brought  
24 by the Commission.

25 (e) The Commission may adopt, amend, and rescind regulations  
26 to govern the procedures of the Commission consistent with the  
27 requirements of this section and Sections 1097.2, 1097.3, 1097.4  
28 and 1097.5. These regulations shall be adopted in accordance  
29 with the Administrative Procedures Act (Chapter 3.5 (commencing  
30 with Section 11340) of Part 1 of Division 3 of Title 2).

31 (f) For purposes of this section and Sections 1097.2, 1097.3,  
32 1097.4, and 1097.5, "Commission" means the Fair Political  
33 Practices Commission.

34 ~~SEC. 2.~~

35 ~~SEC. 3.~~ Section ~~1097.1~~1097.2 is added to the Government  
36 Code, to read:

37 ~~1097.1.~~

38 1097.2. (a) Upon the sworn complaint of a person or on its  
39 own initiative, the Commission shall investigate possible violations  
40 of Section 1090 relating to any officer or person subject to that

1 ~~section, as provided in Section 1097.1.~~ After complying with  
2 ~~subdivision (b) of Section 1097.1, the~~ Commission shall provide  
3 a written notification to the person filing a complaint in the manner  
4 described in Section 83115.

5 (b) The Commission shall not make a finding of probable cause  
6 to believe Section 1090 has been violated unless the Commission  
7 has notified the person who is alleged to have violated Section  
8 1090 in the manner described in Section 83115.5.

9 (c) If the Commission determines there is probable cause to  
10 believe Section 1090 has been violated, it may hold a hearing to  
11 determine if a violation has occurred, subject to the requirements  
12 of ~~subdivision (e) of Section 1097 (b) of Section 1097.1~~ and in the  
13 manner described in Section 83116.

14 (d) If the Commission rejects the decision of an administrative  
15 law judge made pursuant to Section 11517, the Commission shall  
16 state the reasons in writing for rejecting the decision, as required  
17 by Section 83116.3.

18 (e) The Commission shall have all of the subpoena powers  
19 provided in Section 83118 to assist in the performance of the  
20 Commission's duties under this section.

21 ~~(f) The Commission may provide immunity from prosecution~~  
22 ~~for testimony compelled by the Commission over a person's~~  
23 ~~objection that the testimony or evidence required of him or her~~  
24 ~~may tend to incriminate that person, as provided in Section 83119,~~  
25 ~~with respect to possible violations of Section 1090. In addition to~~  
26 ~~the requirements of Section 83119, the Commission shall not grant~~  
27 ~~immunity to a witness pursuant to this section unless the~~  
28 ~~Commission has obtained written authorization from the Attorney~~  
29 ~~General and the district attorney of the county in which the alleged~~  
30 ~~violation occurred.~~

31 *(f) The Commission may refuse to excuse any person from*  
32 *testifying, or from producing books, records, correspondence,*  
33 *documents, or other evidence in obedience to the subpoena of the*  
34 *Commission notwithstanding an objection that the testimony or*  
35 *evidence required of the person may tend to incriminate the person.*  
36 *A person who is compelled, after having claimed the privilege*  
37 *against self-incrimination, to testify or produce testimonial*  
38 *evidence, shall not have that testimony or the testimonial evidence*  
39 *the person produced used against that person in a separate and*  
40 *subsequent prosecution. However, the individual so testifying shall*

1 *not be exempt from prosecution and punishment for perjury*  
 2 *committed in so testifying. The Commission shall not compel any*  
 3 *person to testify or produce testimonial evidence after the person*  
 4 *has claimed the privilege against self-incrimination unless the*  
 5 *Commission has obtained written authorization from the Attorney*  
 6 *General and the district attorney of the county in which the alleged*  
 7 *violation occurred.*

8 (g) The Commission shall not commence an administrative  
 9 action pursuant to this section against a person who is subject to  
 10 Section 1090 alleging a violation of that section if the Commission  
 11 has commenced a civil action pursuant to ~~Section 1097.2~~ 1097.3  
 12 against that person for the same violation. *For purposes of this*  
 13 *subdivision, the commencement of the administrative action shall*  
 14 *be the date of the service of the probable cause hearing notice, as*  
 15 *required by subdivision (b), upon the person alleged to have*  
 16 *violated Section 1090.*

17 (h) An administrative action brought pursuant to this section  
 18 shall be subject to the requirements of Section 91000.5. ~~For~~  
 19 ~~purposes of that section, the commencement of the administrative~~  
 20 ~~action shall be the date of the service of the probable cause hearing~~  
 21 ~~notice, as required by subdivision (b), upon the person alleged to~~  
 22 ~~have violated Section 1090.~~

23 ~~SEC. 3.~~

24 SEC. 4. Section ~~1097.2~~1097.3 is added to the Government  
 25 Code, to read:

26 ~~1097.2.~~

27 1097.3. (a) Subject to the requirements of ~~subdivision (e)~~ of  
 28 ~~Section 1097~~ 1097.1, the Commission may file a civil action  
 29 ~~against a person subject to the prohibitions identified in~~ *for an*  
 30 *alleged violation of Section 1090. A person held liable for such a*  
 31 ~~violation of Section 1090~~ shall be subject to a civil fine payable  
 32 to the Commission for deposit in the General Fund of the state in  
 33 an amount not to exceed *the greater of ten thousand dollars*  
 34 *(\$10,000) or three times the value of the financial benefit received*  
 35 ~~by the person, as determined by the trier of fact~~ *defendant for each*  
 36 *violation.*

37 (b) The Commission shall not commence a civil action pursuant  
 38 to this section alleging a violation of Section 1090 if the  
 39 Commission has commenced an administrative action pursuant to  
 40 Section 1097.1 against the person for the same violation.

1 (c) A civil action brought by the Commission pursuant to this  
2 section shall *not* be filed ~~not~~ more than four years after the date  
3 the violation occurred.

4 ~~SEC. 4.~~

5 *SEC. 5.* Section ~~1097.3~~*1097.4* is added to the Government  
6 Code, to read:

7 ~~1097.3.~~

8 *1097.4.* In addition to any other remedies available, the  
9 Commission may obtain a judgment in superior court for the  
10 purpose of collecting any unpaid monetary penalties, fees, or civil  
11 penalties imposed pursuant to Section ~~1097.1 or~~, ~~1097.2,~~ *or 1097.3.*  
12 Penalties shall be collected in accordance with Section 91013.5.

13 ~~SEC. 5.~~

14 *SEC. 6.* Section ~~1097.4~~*1097.5* is added to the Government  
15 Code, to read:

16 ~~1097.4.~~

17 *1097.5.* (a) If the time for judicial review of a final  
18 Commission order or decision issued pursuant to Section ~~1097.1~~  
19 *1097.2* has lapsed, or if all means of judicial review of the order  
20 or decision have been exhausted, the Commission may apply to  
21 the clerk of the superior court for a judgment to collect the penalties  
22 imposed by the order or decision, or the order as modified in  
23 accordance with a decision on judicial review.

24 (1) The application, which shall include a certified copy of the  
25 order or decision, or the order as modified in accordance with a  
26 decision on judicial review, and proof of service of the order or  
27 decision, constitutes a sufficient showing to warrant issuance of  
28 the judgment to collect the penalties. The clerk of the court shall  
29 enter the judgment immediately in conformity with the application.

30 (2) An application made pursuant to this section shall be made  
31 to the clerk of the superior court in the county where the monetary  
32 penalties, fees, or civil penalties were imposed by the Commission.

33 (3) A judgment entered in accordance with this section has the  
34 same force and effect as, and is subject to all the provisions of law  
35 relating to, a judgment in a civil action and may be enforced in the  
36 same manner as any other judgment of the court in which it is  
37 entered.

38 (4) The Commission may bring an application pursuant to this  
39 section only within four years after the date on which the monetary  
40 penalty, fee, or civil penalty was imposed.

1 (b) The remedy available under this section is in addition to  
2 those available under Section ~~1097.3~~ 1097.4 or any other law.

3 ~~SEC. 6.~~

4 *SEC. 7.* The Legislature finds and declares that this bill furthers  
5 the purposes of the Political Reform Act of 1974 within the  
6 meaning of subdivision (a) of Section 81012 of the Government  
7 Code.