

**Introduced by Senator DeSaulnier  
(Coauthor: Senator Gaines)**

February 21, 2013

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An act to add Section 87202.1 to, and to add Chapter 11 (commencing with Section 8847) to Division 1 of Title 2 of, the Government Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as introduced, DeSaulnier. Public works: the Public Works Peer Review Act of 2013.

Existing law defines a public work as construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type, street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, and public transportation demonstration projects, as specified.

This bill would require a state agency or department or a regional or local agency, principally tasked with administering the planning and development of a public works project to establish a specified peer review group, to provide it with expert advice on the scientific and technical aspects of the project if the public works is a megaproject, defined as having total development, construction, and reasonable projected maintenance costs exceeding one billion dollars \$1,000,000,000; if the Governor or the head of the administering agency has determined that the establishment of a peer review group is in the public interest in connection with the development and construction of the project; or if a statute or concurrent resolution is passed by the

Legislature requiring the administering agency to do so. The bill would prohibit a peer review group from meeting or taking any action until a charter is filed with the head of the administering agency and the relevant standing committees of the Legislature and is posted on the administering agency's Internet Web site, stating the group's objective, the scope of its activities, and a description of the duties for which the group is responsible, among other things.

Existing law, the Political Reform Act of 1974, prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows, or has reason to know, he or she has a financial interest. A violation of the act is a crime.

This bill would require a member of a peer review group, within 30 days of joining the group, to file specified forms with the Fair Political Practices Commission, under penalty of perjury, stating his or her economic interests, and declaring himself or herself to be independent of all parties involved in the project and to have no conflicts of interest.

Because the bill would expand the definition of a crime under the act, it would impose a state-mandated local program.

The bill would also require the Fair Political Practices Commission to create a form that identifies potential institutional conflicts for members of peer review groups, and requires a member of a peer review group to declare, under penalty of perjury, to be independent of all parties involved in the project, including project sponsors or contractors, and to have no conflicts of interest.

Existing constitutional provisions require that a statute that limits the right of access to public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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: yes.

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

1 SECTION 1. Chapter 11 (commencing with Section 8847) is  
2 added to Division 1 of Title 2 of the Government Code, to read:

3  
4 CHAPTER 11. THE PUBLIC WORKS PROJECT PEER REVIEW ACT  
5 OF 2013  
6

7 8847. This chapter shall be known and may be cited as the  
8 Public Works Project Peer Review Act of 2013.

9 8847.1. For purposes of this chapter, the following terms have  
10 the following meanings, unless expressly stated otherwise:

11 (a) “Administering agency” means either a state agency or  
12 department or a regional or local agency principally tasked with  
13 administering the planning and development of a public works  
14 project.

15 (b) “Auditor” means the Bureau of State Audits.

16 (c) “Conflict of interest” means a reviewer or a relative or  
17 professional associate of the reviewer has a financial or other  
18 interest in a project or with a project sponsor that is known to the  
19 reviewer and is likely to bias the reviewer’s evaluation of that  
20 project. A reviewer has a conflict of interest if he or she or a close  
21 relative or professional associate of the reviewer and any of the  
22 following also apply:

23 (1) He or she has received or could receive a direct financial  
24 benefit of any amount deriving from a project sponsor of or any  
25 contractor connected to the project under review.

26 (2) Apart from any direct financial benefit deriving from a  
27 project sponsor of or contractor connected to the project under  
28 review, he or she has received or could receive an indirect financial  
29 benefit from a project sponsor or contractor that in the aggregate  
30 exceeds ten thousand dollars (\$10,000) per year, including

1 honoraria, fees, stock or other financial benefit, and the current  
2 value of the reviewer’s already existing stock holdings.

3 (3) He or she has the appearance of a conflict of interest that  
4 would cause a reasonable person to question the reviewer’s  
5 impartiality if he or she were to participate in the review.

6 (4) He or she has any other interest in the project, project  
7 sponsor, or any connected contractor that, in the view of a  
8 reasonable person, is likely to bias the reviewer’s evaluation of  
9 that project.

10 (d) “Megaproject” means a project as defined in Section 1720  
11 of the Labor Code with total development, construction, and  
12 reasonable projected maintenance costs exceeding one billion  
13 dollars (\$1,000,000,000).

14 (e) “Peer review group” means a group of persons qualified by  
15 training and experience in particular scientific or technical fields,  
16 or as authorities knowledgeable in the various disciplines and fields  
17 related to the public works project under review, who give expert  
18 advice on the scientific and technical aspects of the project as  
19 described in this chapter.

20 (f) “Project” means a public works project as public works is  
21 defined in Section 1720 of the Labor Code.

22 (g) “Project sponsor” means any entity that funds a project,  
23 including a federal, state, local, or other entity, or the administering  
24 agency.

25 8848. (a) The administering agency of a project shall establish  
26 a peer review group if any of the following circumstances apply:

27 (1) The project is a megaproject.

28 (2) The Governor, or the head of the administering agency  
29 involved, has determined that the establishment of a peer review  
30 group is in the public interest in connection with the development  
31 and construction of a project.

32 (3) A statute or concurrent resolution is passed by the Legislature  
33 requiring the administering agency to establish a peer review group.

34 (b) Unless otherwise provided in statute, an administering  
35 agency shall not establish a peer review group other than under  
36 the provisions of this chapter.

37 8849. (a) A peer review group shall not meet or take any action  
38 until a charter has been written by the administering agency and  
39 filed with the relevant standing committees of the Legislature. The

1 charter also shall be posted on the administering agency’s Internet  
2 Web site and shall contain all of the following information:

- 3 (1) The group’s official name or designation.
- 4 (2) The group’s objective and the scope of its activities.
- 5 (3) A statement of the expertise and balance of interests required  
6 of the group membership to perform its charge.
- 7 (4) The name of the administering agency and official to whom  
8 the group reports.
- 9 (5) A description of the duties for which the group is responsible.
- 10 (6) The estimated number and frequency of group meetings.
- 11 (7) The estimated annual operating costs for the group.

12 (b) Before establishing a peer review group, an administering  
13 agency shall develop a transparent process for selecting members  
14 of the group. The auditor shall review the process by which the  
15 administering agency comprised the peer review group, to warrant  
16 that the process was followed.

17 8850. Components of megaprojects that must be evaluated by  
18 a peer review group include, but are not limited to, the following:

- 19 (a) Project demand studies.
- 20 (b) Design and engineering models and estimates.
- 21 (c) Construction, testing, and inspection practices.

22 8851. All of the following shall apply to members of a peer  
23 review group:

24 (a) A member shall, within 30 days of joining the group, file  
25 the statements required under Sections 87202 and 87202.1, under  
26 penalty of perjury, stating his or her economic interests, and  
27 declaring himself or herself to be independent of all parties  
28 involved in the project and to have no conflicts of interest.

29 (b) A member shall be reimbursed only for actual expenses, for  
30 example, transportation and room and board costs, plus one  
31 hundred dollars (\$100) per day he or she performs work in the  
32 review.

33 (c) A member shall have some expertise involving the work to  
34 be reviewed, but need not be an expert in the specific field.

35 (d) If a member feels unable to provide objective advice, he or  
36 she shall recuse him or herself from the peer review group.

37 8852. (a) All of the following shall apply to peer review group  
38 meetings:

1 (1) An agenda and relevant documents, shall be posted on the  
2 administering agency's Internet Web site at least one week before  
3 the meeting.

4 (2) The meeting shall be held in a publicly accessible forum.

5 (3) The meeting shall contain a public participation component,  
6 including presentations identifying specific issues to be discussed  
7 or reviewed, and any other relevant presentations from the  
8 administering agency.

9 (b) All documentation related to the issues to be reviewed at a  
10 peer review group meeting, to the extent possible without putting  
11 the administering agency at a negotiating disadvantage, shall be  
12 made available to the public upon request.

13 (c) (1) In order to evaluate matters that relate to personnel,  
14 design standards, contract amounts, or other issues that may put  
15 the administering agency at a negotiating disadvantage, a meeting  
16 of a peer review group subject to this act may be exempt in part  
17 from the requirements of the Bagley-Keene Open Meeting Act  
18 (Article 9 (commencing with Section 11120) of Division 3 of Title  
19 2), at the discretion of the head of the administering agency to  
20 whom the peer review group reports, unless that meeting includes  
21 participation by one or more full-time, or permanent part-time,  
22 officers or employees of the administering agency.

23 (2) This section shall not preclude a full-time, or permanent  
24 part-time, officer or employee of the administering agency from  
25 supplying administrative support to a peer review group. Support  
26 staff shall not divulge the contents of a closed-door meeting. The  
27 head of the administering agency shall be responsible for ensuring  
28 compliance with Section 11228.

29 SEC. 2. Section 87202.1 is added to the Government Code, to  
30 read:

31 87202.1. The commission shall create a form, similar to a Form  
32 700 statement of economic interests, that identifies potential  
33 institutional conflicts for members of peer review groups. The  
34 form shall require a member of a peer review group to declare,  
35 under penalty of perjury, to be independent of all parties involved  
36 in the project, including project sponsors or contractors, and to  
37 have no conflicts of interest, as defined in Section 8847.1.

38 SEC. 3. The Legislature finds and declares that this act imposes  
39 a limitation on the public's right of access to the meetings of public  
40 bodies or the writings of public officials and agencies within the

1 meaning of Section 3 of Article I of the California Constitution.  
2 Pursuant to that constitutional provision, the Legislature makes  
3 the following finding to demonstrate the interest protected by this  
4 limitation and the need for protecting the interest:

5 The public interest in nondisclosure pursuant to this act  
6 outweighs the public interest in disclosure, because requiring the  
7 public disclosure of the internal deliberations of peer review groups  
8 could impair the soundness of the group’s evaluation and  
9 disadvantage the administering agency in contract negotiations.

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

19 However, if the Commission on State Mandates determines that  
20 this act contains other costs mandated by the state, reimbursement  
21 to local agencies and school districts for those costs shall be made  
22 pursuant to Part 7 (commencing with Section 17500) of Division  
23 4 of Title 2 of the Government Code.

24 SEC. 5. The Legislature finds and declares that this bill furthers  
25 the purposes of the Political Reform Act of 1974 within the  
26 meaning of subdivision (a) of Section 81012 of the Government  
27 Code.