

AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE JUNE 1, 2015

**SENATE BILL**

**No. 330**

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**Introduced by Senator Mendoza**

February 23, 2015

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An act to amend, repeal, and add Section 1091 of the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 330, as amended, 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. 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, including, among others, that of a parent in the earnings of his or her minor child for personal services. Existing law makes a willful violation of this prohibition a crime.

This bill would, on and after January 1, 2017, instead include within the definition of remote interests that of a public officer who is an elected member of any state or local body, board, or commission, if that public officer's spouse, child, parent, 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 imposes a criminal penalty for every officer or person who willfully violates the prohibitions against making or being financially interested in contracts, as specified.

*This bill would additionally provide that a member who knows and fails to disclose his or her remote interest in a contract, as defined, or knows and willfully fails to disclose the fact of his or her remote interest in a contract, as defined, is subject to criminal penalty.* By expanding these prohibitions, this bill would create a new crime, and thus, 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 of the Government Code is amended  
2 to read:

3 1091. (a) An officer shall not be deemed to be interested in a  
4 contract entered into by a body or board of which the officer is a  
5 member within the meaning of this article if the officer has only  
6 a remote interest in the contract and if the fact of that interest is  
7 disclosed to the body or board of which the officer is a member  
8 and noted in its official records, and thereafter the body or board  
9 authorizes, approves, or ratifies the contract in good faith by a vote  
10 of its membership sufficient for the purpose without counting the  
11 vote or votes of the officer or member with the remote interest.

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

14 (1) That of an officer or employee of a nonprofit entity exempt  
15 from taxation pursuant to Section 501(c)(3) of the Internal Revenue  
16 Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of  
17 the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a  
18 nonprofit corporation, except as provided in paragraph (8) of  
19 subdivision (a) of Section 1091.5.

1 (2) That of an employee or agent of the contracting party, if the  
2 contracting party has 10 or more other employees and if the officer  
3 was an employee or agent of that contracting party for at least three  
4 years prior to the officer initially accepting his or her office and  
5 the officer owns less than 3 percent of the shares of stock of the  
6 contracting party; and the employee or agent is not an officer or  
7 director of the contracting party and did not directly participate in  
8 formulating the bid of the contracting party.

9 For purposes of this paragraph, time of employment with the  
10 contracting party by the officer shall be counted in computing the  
11 three-year period specified in this paragraph even though the  
12 contracting party has been converted from one form of business  
13 organization to a different form of business organization within  
14 three years of the initial taking of office by the officer. Time of  
15 employment in that case shall be counted only if, after the transfer  
16 or change in organization, the real or ultimate ownership of the  
17 contracting party is the same or substantially similar to that which  
18 existed before the transfer or change in organization. For purposes  
19 of this paragraph, stockholders, bondholders, partners, or other  
20 persons holding an interest in the contracting party are regarded  
21 as having the “real or ultimate ownership” of the contracting party.

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

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

26 (B) The contract is competitively bid and is not for personal  
27 services.

28 (C) The employee or agent is not in a primary management  
29 capacity with the contracting party, is not an officer or director of  
30 the contracting party, and holds no ownership interest in the  
31 contracting party.

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

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

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

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

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

39 (6) That of an attorney of the contracting party or that of an  
40 owner, officer, employee, or agent of a firm that renders, or has

1 rendered, service to the contracting party in the capacity of  
2 stockbroker, insurance agent, insurance broker, real estate agent,  
3 or real estate broker, if these individuals have not received and  
4 will not receive remuneration, consideration, or a commission as  
5 a result of the contract and if these individuals have an ownership  
6 interest of 10 percent or more in the law practice or firm, stock  
7 brokerage firm, insurance firm, or real estate firm.

8 (7) That of a member of a nonprofit corporation formed under  
9 the Food and Agricultural Code or a nonprofit corporation formed  
10 under the Corporations Code for the sole purpose of engaging in  
11 the merchandising of agricultural products or the supplying of  
12 water.

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

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

20 (10) Except as provided in subdivision (b) of Section 1091.5,  
21 that of a director of, or a person having an ownership interest of,  
22 10 percent or more in a bank, bank holding company, or savings  
23 and loan association with which a party to the contract has a  
24 relationship of borrower or depositor, debtor or creditor.

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

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

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

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

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

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

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

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

19 (16) That of a person who is an officer or employee of an  
20 investor-owned utility that is regulated by the Public Utilities  
21 Commission with respect to a contract between the investor-owned  
22 utility and a state, county, district, judicial district, or city body or  
23 board of which the person is a member, if the contract requires the  
24 investor-owned utility to provide energy efficiency rebates or other  
25 type of program to encourage energy efficiency that benefits the  
26 public when all of the following apply:

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

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

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

36 (D) The contract implements a program authorized by the Public  
37 Utilities Commission.

38 (c) This section is not applicable to any officer interested in a  
39 contract who influences or attempts to influence another member

1 of the body or board of which he or she is a member to enter into  
2 the contract.

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

8 (e) This section shall be repealed on January 1, 2017.

9 SEC. 2. Section 1091 is added to the Government Code, to  
10 read:

11 1091. (a) An officer shall not be deemed to be interested in a  
12 contract entered into by a body or board of which the officer is a  
13 member within the meaning of this article if the officer has only  
14 a remote interest in the contract and if the fact of that interest is  
15 disclosed to the body or board of which the officer is a member  
16 and noted in its official records, and thereafter the body or board  
17 authorizes, approves, or ratifies the contract in good faith by a vote  
18 of its membership sufficient for the purpose without counting the  
19 vote or votes of the officer or member with the remote interest.

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

22 (1) That of an officer or employee of a nonprofit entity exempt  
23 from taxation pursuant to Section 501(c)(3) of the Internal Revenue  
24 Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of  
25 the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a  
26 nonprofit corporation, except as provided in paragraph (8) of  
27 subdivision (a) of Section 1091.5.

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

36 For purposes of this paragraph, time of employment with the  
37 contracting party by the officer shall be counted in computing the  
38 three-year period specified in this paragraph even though the  
39 contracting party has been converted from one form of business  
40 organization to a different form of business organization within

1 three years of the initial taking of office by the officer. Time of  
2 employment in that case shall be counted only if, after the transfer  
3 or change in organization, the real or ultimate ownership of the  
4 contracting party is the same or substantially similar to that which  
5 existed before the transfer or change in organization. For purposes  
6 of this paragraph, stockholders, bondholders, partners, or other  
7 persons holding an interest in the contracting party are regarded  
8 as having the “real or ultimate ownership” of the contracting party.

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

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

13 (B) The contract is competitively bid and is not for personal  
14 services.

15 (C) The employee or agent is not in a primary management  
16 capacity with the contracting party, is not an officer or director of  
17 the contracting party, and holds no ownership interest in the  
18 contracting party.

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

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

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

23 (4) That of a public officer who is an elected member of any  
24 state or local body, board, or commission, if that public officer’s  
25 spouse, child, parent, sibling, or the spouse of the child, parent, or  
26 sibling, has a financial interest in any contract made by that public  
27 officer in his or her official capacity, or by any body, board, or  
28 commission of which that public officer is a member. *The member*  
29 *knows and fails to disclose, his or her interest in a contract*  
30 *pursuant to this paragraph is punishable as provided in Section*  
31 *1097. If the member knows and willfully fails to disclose the fact*  
32 *of his or her interest in a contract pursuant to this paragraph is*  
33 *punishable as provided in Section 1097. That violation does not*  
34 *void the contract unless the contracting party had knowledge of*  
35 *the fact of the remote interest of the officer at the time the contract*  
36 *was executed.*

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

38 (6) That of an attorney of the contracting party or that of an  
39 owner, officer, employee, or agent of a firm that renders, or has  
40 rendered, service to the contracting party in the capacity of

1 stockbroker, insurance agent, insurance broker, real estate agent,  
2 or real estate broker, if these individuals have not received and  
3 will not receive remuneration, consideration, or a commission as  
4 a result of the contract and if these individuals have an ownership  
5 interest of 10 percent or more in the law practice or firm, stock  
6 brokerage firm, insurance firm, or real estate firm.

7 (7) That of a member of a nonprofit corporation formed under  
8 the Food and Agricultural Code or a nonprofit corporation formed  
9 under the Corporations Code for the sole purpose of engaging in  
10 the merchandising of agricultural products or the supplying of  
11 water.

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

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

19 (10) Except as provided in subdivision (b) of Section 1091.5,  
20 that of a director of, or a person having an ownership interest of,  
21 10 percent or more in a bank, bank holding company, or savings  
22 and loan association with which a party to the contract has a  
23 relationship of borrower or depositor, debtor or creditor.

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

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

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

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

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

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

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

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

17 (16) That of a person who is an officer or employee of an  
18 investor-owned utility that is regulated by the Public Utilities  
19 Commission with respect to a contract between the investor-owned  
20 utility and a state, county, district, judicial district, or city body or  
21 board of which the person is a member, if the contract requires the  
22 investor-owned utility to provide energy efficiency rebates or other  
23 type of program to encourage energy efficiency that benefits the  
24 public when all of the following apply:

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

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

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

34 (D) The contract implements a program authorized by the Public  
35 Utilities Commission.

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

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

6 (e) This section shall become operative on January 1, 2017.

7 SEC. 3. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.