

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 704

Introduced by Senator Gaines

February 27, 2015

An act to amend Section ~~1091.5~~ 1091 of the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 704, as amended, Gaines. Public officers and employees: conflict of interest.

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~~ *include in the definition of "remote interest" the interest of a person who is an owner or partner of a firm serving on an advisory board or commission to the contracting agency, if the duties of the advisory board or commission do not include providing advice with respect to seeking or awarding contracts, and if the owner or partner recuses himself or herself from*

all participation in reviewing a project that results from a contract between the firm and the contracting agency.

Vote: majority. 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 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.

20 (2) That of an employee or agent of the contracting party, if the
21 contracting party has 10 or more other employees and if the officer
22 was an employee or agent of that contracting party for at least three
23 years prior to the officer initially accepting his or her office and
24 the officer owns less than 3 percent of the shares of stock of the
25 contracting party; and the employee or agent is not an officer or
26 director of the contracting party and did not directly participate in
27 formulating the bid of the contracting party.

28 For purposes of this paragraph, time of employment with the
29 contracting party by the officer shall be counted in computing the
30 three-year period specified in this paragraph even though the
31 contracting party has been converted from one form of business
32 organization to a different form of business organization within
33 three years of the initial taking of office by the officer. Time of

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

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

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

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

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

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

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

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

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

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

25 (6) That of an attorney of the contracting party or that of an
26 owner, officer, employee, or agent of a firm that renders, or has
27 rendered, service to the contracting party in the capacity of
28 stockbroker, insurance agent, insurance broker, real estate agent,
29 or real estate broker, if these individuals have not received and
30 will not receive remuneration, consideration, or a commission as
31 a result of the contract and if these individuals have an ownership
32 interest of 10 percent or more in the law practice or firm, stock
33 brokerage firm, insurance firm, or real estate firm.

34 (7) That of a member of a nonprofit corporation formed under
35 the Food and Agricultural Code or a nonprofit corporation formed
36 under the Corporations Code for the sole purpose of engaging in
37 the merchandising of agricultural products or the supplying of
38 water.

39 (8) That of a supplier of goods or services when those goods or
40 services have been supplied to the contracting party by the officer

1 for at least five years prior to his or her election or appointment
2 to office.

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

6 (10) Except as provided in subdivision (b) of Section 1091.5,
7 that of a director of, or a person having an ownership interest of,
8 10 percent or more in a bank, bank holding company, or savings
9 and loan association with which a party to the contract has a
10 relationship of borrower or depositor, debtor or creditor.

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

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

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

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

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

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

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

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

4 (16) That of a person who is an officer or employee of an
5 investor-owned utility that is regulated by the Public Utilities
6 Commission with respect to a contract between the investor-owned
7 utility and a state, county, district, judicial district, or city body or
8 board of which the person is a member, if the contract requires the
9 investor-owned utility to provide energy efficiency rebates or other
10 type of program to encourage energy efficiency that benefits the
11 public when all of the following apply:

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

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

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

21 (D) The contract implements a program authorized by the Public
22 Utilities Commission.

23 *(17) That of an owner or partner of a firm serving on an*
24 *advisory board or commission to the contracting agency if the*
25 *duties of the advisory board or commission do not include*
26 *providing advice with respect to seeking or awarding contracts*
27 *and if the owner or partner recuses himself or herself from all*
28 *participation in reviewing a project that results from a contract*
29 *between the firm and the contracting agency.*

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

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

39 ~~SECTION 1. Section 1091.5 of the Government Code is~~
40 ~~amended to read:~~

- 1 ~~1091.5.—(a) An officer or employee shall not be deemed to be~~
2 ~~interested in a contract if his or her interest is any of the following:~~
- 3 ~~(1) The ownership of less than 3 percent of the shares of a~~
4 ~~corporation for profit, provided that the total annual income to him~~
5 ~~or her from dividends, including the value of stock dividends, from~~
6 ~~the corporation does not exceed 5 percent of his or her total annual~~
7 ~~income, and any other payments made to him or her by the~~
8 ~~corporation do not exceed 5 percent of his or her total annual~~
9 ~~income.~~
- 10 ~~(2) That of an officer in being reimbursed for his or her actual~~
11 ~~and necessary expenses incurred in the performance of official~~
12 ~~duties.~~
- 13 ~~(3) That of a recipient of public services generally provided by~~
14 ~~the public body or board of which he or she is a member, on the~~
15 ~~same terms and conditions as if he or she were not a member of~~
16 ~~the body or board.~~
- 17 ~~(4) That of a landlord or tenant of the contracting party if the~~
18 ~~contracting party is the federal government or any federal~~
19 ~~department or agency, this state or an adjoining state, any~~
20 ~~department or agency of this state or an adjoining state, any county~~
21 ~~or city of this state or an adjoining state, or any public corporation~~
22 ~~or special, judicial, or other public district of this state or an~~
23 ~~adjoining state unless the subject matter of the contract is the~~
24 ~~property in which the officer or employee has the interest as~~
25 ~~landlord or tenant in which event his or her interest shall be deemed~~
26 ~~a remote interest within the meaning of, and subject to, the~~
27 ~~provisions of Section 1091.~~
- 28 ~~(5) That of a tenant in a public housing authority created~~
29 ~~pursuant to Part 2 (commencing with Section 34200) of Division~~
30 ~~24 of the Health and Safety Code in which he or she serves as a~~
31 ~~member of the board of commissioners of the authority or of a~~
32 ~~community development commission created pursuant to Part 1.7~~
33 ~~(commencing with Section 34100) of Division 24 of the Health~~
34 ~~and Safety Code.~~
- 35 ~~(6) That of a spouse of an officer or employee of a public agency~~
36 ~~in his or her spouse's employment or officeholding if his or her~~
37 ~~spouse's employment or officeholding has existed for at least one~~
38 ~~year prior to his or her election or appointment.~~
- 39 ~~(7) That of a nonsalaried member of a nonprofit corporation,~~
40 ~~provided that this interest is disclosed to the body or board at the~~

1 time of the first consideration of the contract, and provided further
2 that this interest is noted in its official records.

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

8 For purposes of this paragraph, an officer is “noncompensated”
9 even though he or she receives reimbursement from the nonprofit,
10 tax-exempt corporation for necessary travel and other actual
11 expenses incurred in performing the duties of his or her office.

12 ~~(9) That of a person receiving salary, per diem, or reimbursement~~
13 ~~for expenses from a government entity, unless the contract directly~~
14 ~~involves the department of the government entity that employs the~~
15 ~~officer or employee, provided that the interest is disclosed to the~~
16 ~~body or board at the time of consideration of the contract, and~~
17 ~~provided further that the interest is noted in its official record.~~

18 ~~(10) That of an attorney of the contracting party or that of an~~
19 ~~owner, officer, employee, or agent of a firm which renders, or has~~
20 ~~rendered, service to the contracting party in the capacity of~~
21 ~~stockbroker, insurance agent, insurance broker, real estate agent,~~
22 ~~or real estate broker, if these individuals have not received and~~
23 ~~will not receive remuneration, consideration, or a commission as~~
24 ~~a result of the contract and if these individuals have an ownership~~
25 ~~interest of less than 10 percent in the law practice or firm, stock~~
26 ~~brokerage firm, insurance firm, or real estate firm.~~

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

32 ~~(12) That of (A) a bona fide nonprofit, tax-exempt corporation~~
33 ~~having among its primary purposes the conservation, preservation,~~
34 ~~or restoration of park and natural lands or historical resources for~~
35 ~~public benefit, which corporation enters into an agreement with a~~
36 ~~public agency to provide services related to park and natural lands~~
37 ~~or historical resources and which services are found by the public~~
38 ~~agency, prior to entering into the agreement or as part of the~~
39 ~~agreement, to be necessary to the public interest to plan for,~~
40 ~~acquire, protect, conserve, improve, or restore park and natural~~

1 lands or historical resources for public purposes and (B) any officer,
2 director, or employee acting pursuant to the agreement on behalf
3 of the nonprofit corporation. For purposes of this paragraph,
4 “agreement” includes contracts and grants, and “park,” “natural
5 lands,” and “historical resources” shall have the meanings set forth
6 in subdivisions (d), (g), and (i) of Section 5902 of the Public
7 Resources Code. Services to be provided to the public agency may
8 include those studies and related services, acquisitions of property
9 and property interests, and any activities related to those studies
10 and acquisitions necessary for the conservation, preservation,
11 improvement, or restoration of park and natural lands or historical
12 resources.

13 (13) That of an officer, employee, or member of the Board of
14 Directors of the California Housing Finance Agency with respect
15 to a loan product or programs if the officer, employee, or member
16 participated in the planning, discussions, development, or approval
17 of the loan product or program and both of the following two
18 conditions exist:

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

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

24 (14) That of a party to a contract for public services entered into
25 by a special district that requires a person to be a landowner or a
26 representative of a landowner to serve on the board of which the
27 officer or employee is a member, on the same terms and conditions
28 as if he or she were not a member of the body or board. For
29 purposes of this paragraph, “public services” includes the powers
30 and purposes generally provided pursuant to provisions of the
31 Water Code relating to irrigation districts, California water districts,
32 water storage districts, or reclamation districts.

33 (15) That of an owner or partner of a firm serving on an advisory
34 board or commission to the contracting agency if the owner or
35 partner recuses himself or herself from all participation in
36 reviewing a project that results from a contract between the firm
37 and the contracting agency.

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.~~

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