An act to amend Section 1091.5 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.

State-mandated local program:  no.

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

SECTION 1. Section 1091 of the Government Code is amended
to read:

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

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

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

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

For purposes of this paragraph, time of employment with the
contracting party by the officer shall be counted in computing the
three-year period specified in this paragraph even though the
contracting party has been converted from one form of business
organization to a different form of business organization within
three years of the initial taking of office by the officer. Time of
employment in that case shall be counted only if, after the transfer
or change in organization, the real or ultimate ownership of the
contracting party is the same or substantially similar to that which
existed before the transfer or change in organization. For purposes
of this paragraph, stockholders, bondholders, partners, or other
persons holding an interest in the contracting party are regarded
as having the “real or ultimate ownership” of the contracting party.
(3) That of an employee or agent of the contracting party, if all
of the following conditions are met:
(A) The agency of which the person is an officer is a local public
agency located in a county with a population of less than 4,000,000.
(B) The contract is competitively bid and is not for personal
services.
(C) The employee or agent is not in a primary management
capacity with the contracting party, is not an officer or director of
the contracting party, and holds no ownership interest in the
contracting party.
(D) The contracting party has 10 or more other employees.
(E) The employee or agent did not directly participate in
formulating the bid of the contracting party.
(F) The contracting party is the lowest responsible bidder.
(4) That of a parent in the earnings of his or her minor child for
personal services.
(5) That of a landlord or tenant of the contracting party.
(6) That of an attorney of the contracting party or that of an
owner, officer, employee, or agent of a firm that renders, or has
rendered, service to the contracting party in the capacity of
stockbroker, insurance agent, insurance broker, real estate agent,
or real estate broker, if these individuals have not received and
will not receive remuneration, consideration, or a commission as
a result of the contract and if these individuals have an ownership
interest of 10 percent or more in the law practice or firm, stock
brokerage firm, insurance firm, or real estate firm.
(7) That of a member of a nonprofit corporation formed under
the Food and Agricultural Code or a nonprofit corporation formed
under the Corporations Code for the sole purpose of engaging in
the merchandising of agricultural products or the supplying of
water.
(8) That of a supplier of goods or services when those goods or
services have been supplied to the contracting party by the officer
for at least five years prior to his or her election or appointment
to office.
(9) That of a person subject to the provisions of Section 1090
in any contract or agreement entered into pursuant to the provisions
(10) Except as provided in subdivision (b) of Section 1091.5,
that of a director of, or a person having an ownership interest of,
10 percent or more in a bank, bank holding company, or savings
and loan association with which a party to the contract has a
relationship of borrower or depositor, debtor or creditor.
(11) That of an engineer, geologist, or architect employed by a
consulting engineering or architectural firm. This paragraph applies
only to an employee of a consulting firm who does not serve in a
primary management capacity, and does not apply to an officer or
director of a consulting firm.
(12) That of an elected officer otherwise subject to Section 1090,
in any housing assistance payment contract entered into pursuant
to Section 8 of the United States Housing Act of 1937 (42 U.S.C.
Sec. 1437f) as amended, provided that the housing assistance
payment contract was in existence before Section 1090 became
applicable to the officer and will be renewed or extended only as
to the existing tenant, or, in a jurisdiction in which the rental
vacancy rate is less than 5 percent, as to new tenants in a unit
previously under a Section 8 contract. This section applies to any
person who became a public official on or after November 1, 1986.
(13) That of a person receiving salary, per diem, or
reimbursement for expenses from a government entity.
(14) That of a person owning less than 3 percent of the shares
of a contracting party that is a for-profit corporation, provided that
the ownership of the shares derived from the person’s employment
with that corporation.
(15) That of a party to litigation involving the body or board of
which the officer is a member in connection with an agreement in
which all of the following apply:
(A) The agreement is entered into as part of a settlement of
litigation in which the body or board is represented by legal
counsel.
(B) After a review of the merits of the agreement and other
relevant facts and circumstances, a court of competent jurisdiction
finds that the agreement serves the public interest.
The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

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

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

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

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

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

(17) That of 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.

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

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

SECTION 1. Section 1091.5 of the Government Code is amended to read:
1091.5. (a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) That of an owner or partner of a firm serving on an advisory board or commission to the contracting agency 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.

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