

AMENDED IN ASSEMBLY JULY 8, 2015

AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 704**

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**Introduced by Senator Gaines**

February 27, 2015

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An act to amend Section 1091 of the Government Code, relating to ~~public officers~~; *officers and employees*.

LEGISLATIVE COUNSEL'S DIGEST

SB 704, as amended, Gaines. Public officers and employees: conflict of ~~interest~~; *interest; contracts*.

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 *in contracts* 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 include in the definition of "remote interest" the interest of a person who is an owner or partner of a firm serving ~~on~~ *as an advisory appointed member of an unelected* board or commission ~~to~~ *of* 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 providing any advice to the contracting agency regarding the~~

*contract between the firm and the contracting agency, and from all participation in reviewing a project that results from a contract between the firm and the contracting agency. that contract. The bill would also include in the definition of “remote interest” the interest of a planner employed by a consulting engineering, architectural, or planning firm.*

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

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

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

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

15 (B) The contract is competitively bid and is not for personal  
16 services.

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

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

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

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

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

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

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

37 (7) That of a member of a nonprofit corporation formed under  
38 the Food and Agricultural Code or a nonprofit corporation formed  
39 under the Corporations Code for the sole purpose of engaging in

1 the merchandising of agricultural products or the supplying of  
2 water.

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

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

10 (10) Except as provided in subdivision (b) of Section 1091.5,  
11 that of a director of, or a person having an ownership interest of,  
12 10 percent or more in a bank, bank holding company, or savings  
13 and loan association with which a party to the contract has a  
14 relationship of borrower or depositor, debtor or creditor.

15 (11) That of an engineer, geologist, ~~or~~ architect, *or planner*  
16 employed by a consulting ~~engineering or engineering~~, architectural,  
17 *or planning* firm. This paragraph applies only to an employee of  
18 a consulting firm who does not serve in a primary management  
19 capacity, and does not apply to an officer or director of a consulting  
20 firm.

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

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

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

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

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

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

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

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

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

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

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

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

29 (17) That of an owner or partner of a firm serving ~~on~~ as an  
30 ~~advisory~~ *appointed member of an unelected* board or commission  
31 ~~to~~ of the contracting agency ~~if the duties of the advisory board or~~  
32 ~~commission do not include providing advice with respect to seeking~~  
33 ~~or awarding contracts and if the owner or partner recuses himself~~  
34 ~~or herself from~~ *providing any advice to the contracting agency*  
35 *regarding the contract between the firm and the contracting agency*  
36 *and from all participation in reviewing a project that results from*  
37 ~~a contract between the firm and the contracting agency. that~~  
38 *contract.*

39 (c) This section is not applicable to any officer interested in a  
40 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.

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