

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 1011

Introduced by Senator Mendoza

February 11, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1011, as amended, Mendoza. Public officers: contracts: financial interest.

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 imposes a criminal penalty on every officer or person who willfully violates these prohibitions. 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.

This ~~bill would~~, *bill*, on and after January 1, 2018, *would* include within the definition of remote interest that of a public officer in the financial interest of that public officer's child, parent, *or* sibling, or the spouse of the child, parent, or sibling, except a public officer's financial interests ~~do~~ *would* not include any financial interest of those other persons unless the interest is actually known to the public officer. By

expanding these prohibitions, this bill would create a new crime, and thus would impose a state-mandated local program.

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.

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.

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

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

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

18 (B) The contract is competitively bid and is not for personal
19 services.

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

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

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

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

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

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

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

- 1 (7) That of a member of a nonprofit corporation formed under
2 the Food and Agricultural Code or a nonprofit corporation formed
3 under the Corporations Code for the sole purpose of engaging in
4 the merchandising of agricultural products or the supplying of
5 water.
- 6 (8) That of a supplier of goods or services when those goods or
7 services have been supplied to the contracting party by the officer
8 for at least five years prior to his or her election or appointment
9 to office.
- 10 (9) That of a person subject to the provisions of Section 1090
11 in any contract or agreement entered into pursuant to the provisions
12 of the California Land Conservation Act of 1965.
- 13 (10) Except as provided in subdivision (b) of Section 1091.5,
14 that of a director of, or a person having an ownership interest of,
15 10 percent or more in a bank, bank holding company, or savings
16 and loan association with which a party to the contract has a
17 relationship of borrower or depositor, debtor or creditor.
- 18 (11) That of an engineer, geologist, architect, or planner
19 employed by a consulting engineering, architectural, or planning
20 firm. This paragraph applies only to an employee of a consulting
21 firm who does not serve in a primary management capacity, and
22 does not apply to an officer or director of a consulting firm.
- 23 (12) That of an elected officer otherwise subject to Section 1090,
24 in any housing assistance payment contract entered into pursuant
25 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.
26 Sec. 1437f) as amended, provided that the housing assistance
27 payment contract was in existence before Section 1090 became
28 applicable to the officer and will be renewed or extended only as
29 to the existing tenant, or, in a jurisdiction in which the rental
30 vacancy rate is less than 5 percent, as to new tenants in a unit
31 previously under a Section 8 contract. This section applies to any
32 person who became a public official on or after November 1, 1986.
- 33 (13) That of a person receiving salary, per diem, or
34 reimbursement for expenses from a government entity.
- 35 (14) That of a person owning less than 3 percent of the shares
36 of a contracting party that is a for-profit corporation, provided that
37 the ownership of the shares derived from the person's employment
38 with that corporation.

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

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

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

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

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

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

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

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

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

32 (17) That of an owner or partner of a firm serving as an
33 appointed member of an unelected board or commission of the
34 contracting agency if the owner or partner recuses himself or
35 herself from providing any advice to the contracting agency
36 regarding the contract between the firm and the contracting agency
37 and from all participation in reviewing a project that results from
38 that 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.

8 (e) This section shall be repealed on January 1, 2018.

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 parent in the earnings of his or her minor child for
24 personal services.

25 ~~(5) That of a public officer in the financial interest of that public
26 officer’s child, parent, sibling, or the spouse of the child, parent,
27 or sibling, except a public officer’s financial interests do not
28 include any financial interest of those other persons unless the
29 interest is actually known to the public officer.~~

30 ~~(6)~~

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

32 ~~(7)~~

33 (6) That of an attorney of the contracting party or that of an
34 owner, officer, employee, or agent of a firm that renders, or has
35 rendered, service to the contracting party in the capacity of
36 stockbroker, insurance agent, insurance broker, real estate agent,
37 or real estate broker, if these individuals have not received and
38 will not receive remuneration, consideration, or a commission as
39 a result of the contract and if these individuals have an ownership

1 interest of 10 percent or more in the law practice or firm, stock
2 brokerage firm, insurance firm, or real estate firm.

3 ~~(8)~~

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

9 ~~(9)~~

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

14 ~~(10)~~

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

18 ~~(11)~~

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 ~~(12)~~

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

30 ~~(13)~~

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

1 ~~(14)~~

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

4 ~~(15)~~

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

9 ~~(16)~~

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

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

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

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

22 ~~(17)~~

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

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

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

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

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

3 ~~(18)~~

4 (17) That of an owner or partner of a firm serving as an
5 appointed member of an unelected board or commission of the
6 contracting agency if the owner or partner recuses himself or
7 herself from providing any advice to the contracting agency
8 regarding the contract between the firm and the contracting agency
9 and from all participation in reviewing a project that results from
10 that contract.

11 *(18) That of a public officer in the financial interest of that*
12 *public officer's child, parent, or sibling, or the spouse of the child,*
13 *parent, or sibling, except a public officer's financial interests do*
14 *not include any financial interest of those other persons unless the*
15 *interest is actually known to the public officer.*

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

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

25 (e) This section shall become operative on January 1, 2018.

26 SEC. 3. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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