

AMENDED IN ASSEMBLY JULY 30, 1998

AMENDED IN SENATE JUNE 3, 1997

AMENDED IN SENATE MAY 13, 1997

AMENDED IN SENATE APRIL 8, 1997

AMENDED IN SENATE MARCH 12, 1997

SENATE BILL

No. 281

Introduced by Senator Ayala Thompson
(Coauthor: Assembly Member Brown)

February 6, 1997

~~An act to add Sections 19531.1 and 19614.6 to the Business and Professions Code, relating to horseracing. An act to amend Section 1091 of the Government Code, relating to conflicts of interest.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 281, as amended, ~~Ayala Thompson. Horseracing: fairs: allocation of racing dates~~ *Conflicts of interest: public contracts.*

(1) Existing law prohibits certain public officials and employees from being financially interested in any contract made by them in their official capacity, or by any board of which they are members. An officer is not deemed to be interested in a contract entered into by a body or board of which the officer is a member if the officer has only a remote interest in the contract and other requirements are met. A remote interest is required to be publicly disclosed, and

thereafter the public body may authorize, approve, or ratify the contract in question, but the officer or employee with the remote interest is disqualified from voting. A remote interest is defined to include, among others, 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 3 years prior to the officer initially accepting his or her office.

This bill would further condition the application of this exception by requiring that in order for the exception to apply, the officer shall own less than 3% of the shares of the stock of the contracting party.

~~(1) Existing law authorizes the California Horse Racing Board to allocate racing weeks to an applicant or applicants, and to specify the racing days, dates, and hours for horseracing meetings. Existing law entitles any fair racing association that conducted racing in the central or southern zone prior to January 1, 1980, to be allocated up to 3 weeks of racing.~~

~~This bill would prohibit the board from allocating racing dates to a private thoroughbred association in the central or southern zone for the purpose of conducting thoroughbred racing during daytime or nighttime hours if a fair racing association is conducting racing in the central zone on the same dates and if that fair is obligated to make payments on a capital expense loan incurred for the purpose of improving its facilities for horseracing.~~

~~(2) Existing law permits any county or district agricultural association fair that is licensed to conduct racing meetings for the first time on or after January 1, 1979, to retain the license fee applicable to its meeting for payment of a capital expense loan incurred for the purpose of preparing its facilities for horseracing.~~

~~This bill would permit any county fair in the central zone that conducted fair racing meetings prior to January 1, 1980, commencing with the 1999 racing session, to retain a specified portion of the license fee applicable to its meeting for payment of a capital expense loan incurred for the purpose of improving its facilities for horseracing.~~

Vote: majority. Appropriation: no. Fiscal committee: yes *no*. State-mandated local program: no.



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

1 ~~SECTION 1. Section 19531.1 is added to the Business~~
2 SECTION 1. *Section 1091 of the Government Code is*
3 *amended to read:*

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

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

17 (1) That of an officer or employee of a nonprofit
18 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
21 party, if the contracting party has 10 or more other
22 employees and if the officer was an employee or agent of
23 that contracting party for at least three years prior to the
24 officer initially accepting his or her office *and the officer*
25 *owns less than 3 percent of the shares of stock of the*
26 *contracting party.*

27 For purposes of this paragraph, time of employment
28 with the contracting party by the officer shall be counted
29 in computing the three-year period specified in this
30 paragraph even though the contracting party has been
31 converted from one form of business organization to a
32 different form of business organization within three years
33 of the initial taking of office by the officer. Time of
34 employment in that case shall be counted only if, after the
35 transfer or change in organization, the real or ultimate
36 ownership of the contracting party is the same or
37 substantially similar to that which existed before the
38 transfer or change in organization. For purposes of this



1 paragraph, stockholders, bondholders, partners, or other
2 persons holding an interest in the contracting party are
3 regarded as having the “real or ultimate ownership” of
4 the contracting party.

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

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

10 (B) The contract is competitively bid and is not for
11 personal services.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

39 (d) The willful failure of an officer to disclose the fact
40 of his or her interest in a contract pursuant to this section



1 is punishable as provided in Section 1097. That violation
2 does not void the contract unless the contracting party
3 had knowledge of the fact of the remote interest of the
4 officer at the time the contract was executed.

5 ~~and Professions Code, to read:~~

6 ~~19531.1. Notwithstanding any other provision of law,~~
7 ~~the board shall not allocate racing dates to a private~~
8 ~~thoroughbred racing association in the central or~~
9 ~~southern zone for the purpose of conducting~~
10 ~~thoroughbred racing during daytime or nighttime hours~~
11 ~~if a fair racing association is conducting racing in the~~
12 ~~central zone on the same dates and if that fair is obligated~~
13 ~~to make payments on a capital expense loan incurred for~~
14 ~~the purpose of improving its facilities for horseracing.~~

15 ~~SEC. 2. Section 19614.6 is added to the Business and~~
16 ~~Professions Code, to read:~~

17 ~~19614.6. Notwithstanding Section 19614, any county~~
18 ~~fair in the central zone that conducted fair racing~~
19 ~~meetings prior to January 1, 1980, commencing with the~~
20 ~~1999 racing season, may retain that portion of the license~~
21 ~~fee applicable to its live racing meeting that exceeds the~~
22 ~~amount of license fees paid during its 1997 live racing~~
23 ~~meeting for payment of a capital expense loan incurred~~
24 ~~for the purpose of improving its facilities for horseracing.~~
25 ~~The license fee retention shall be applicable only during~~
26 ~~the loan period, only in an amount equal to the loan~~
27 ~~payments, and only if all the moneys retained are used to~~
28 ~~pay off the loan for those capital expenses. Any portion of~~
29 ~~the license fee in excess of the amount needed to make~~
30 ~~loan payments pursuant to this section shall be deposited~~
31 ~~in the Fair and Exposition Fund. However, if after the~~
32 ~~effective date of this section, the rate of the license fee~~
33 ~~imposed on fairs is reduced, the county fair may retain~~
34 ~~that portion of the license fee applicable to its live racing~~
35 ~~meeting that exceeds the amount of the license fees that~~
36 ~~would have been paid on its 1997 live racing meeting at~~
37 ~~the reduced rate.~~

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