

ASSEMBLY BILL

No. 746

Introduced by Assembly Member Coto

February 26, 2009

An act to amend Section 1091.5 of the Government Code, relating to conflicts of interest.

LEGISLATIVE COUNSEL'S DIGEST

AB 746, as introduced, Coto. Conflicts of interest.

Existing law prohibits specified state and local officers and employees from being financially interested in any contract made by them in their official capacity, or by any board or body of which they are members; however, an officer or employee is not deemed to be interested in a contract if his or her interest meets specified criteria.

This bill would provide that an independent contractor shall not be deemed to be interested in a contract executed on or after September 1, 2008, as a result of the independent contractor's preparation, at the request of a governmental entity, of a document that serves a purpose independent of the contract, a request for proposal, a request for qualifications, a request for bids, or any other bid-related documents.

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

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

- 1 SECTION 1. Section 1091.5 of the Government Code is
- 2 amended to read:
- 3 1091.5. (a) An officer or employee shall not be deemed to be
- 4 interested in a contract if his or her interest is any of the following:

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

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

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

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

26 (5) That of a tenant in a public housing authority created
27 pursuant to Part 2 (commencing with Section 34200) of Division
28 24 of the Health and Safety Code in which he or she serves as a
29 member of the board of commissioners of the authority or of a
30 community development commission created pursuant to Part 1.7
31 (commencing with Section 34100) of Division 24 of the Health
32 and Safety Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (c) *For any contract executed on or after September 1, 2008,*
29 *an independent contractor shall not be deemed to be interested in*
30 *a contract as a result of the independent contractor’s preparation,*
31 *at the request of a governmental entity, of a document that serves*
32 *a purpose independent of the contract, a request for proposal, a*
33 *request for qualifications, a request for bids, or any other*
34 *bid-related documents.*