

AMENDED IN SENATE JANUARY 27, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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:

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

1 time of the first consideration of the contract, and provided further
2 that this interest is noted in its official records.

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

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

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

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

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

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

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

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

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

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

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

30 ~~(c) For any contract executed on or after September 1, 2008, an~~

31 (c) An independent contractor shall not be deemed to be
32 interested in a contract as a result of the independent contractor’s
33 preparation, at the request of a governmental entity, of a document
34 that serves a purpose independent of the contract, a request for
35 proposal, a request for qualifications, a request for bids, or any
36 other bid-related documents.