

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 1, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 906

Introduced by Assembly Members Hill and Smyth

February 26, 2009

An act to amend Section 1091 of the Government Code, relating to conflict of interest.

LEGISLATIVE COUNSEL'S DIGEST

AB 906, as amended, Hill. Conflict of interest: remote interest in a contract.

Existing law prohibits Members of the Legislature, and 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 members.~~ Existing law defines what is a remote interest in a contract that does not present a prohibited conflict of interest under these provisions.

This bill would revise the definition of "remote interest" to include the interest of ~~an officer or employee of a state, county, district, judicial district, or city who is also~~ *a person who is both a member of a state, county, district, judicial district, or city body or board and an officer or employee or agent* of an investor-owned utility; in a contract solely related to energy efficiency encouragement programs, under specified conditions.

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

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

SECTION 1. Section 1091 of the Government Code is amended to read:

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

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

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) 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 three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

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

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

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

5 (B) The contract is competitively bid and is not for personal
6 services.

7 (C) The employee or agent is not in a primary management
8 capacity with the contracting party, is not an officer or director of
9 the contracting party, and holds no ownership interest in the
10 contracting party.

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

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

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

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

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

18 (6) That of an attorney of the contracting party or that of an
19 owner, officer, employee, or agent of a firm that 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 10 percent or more in the law practice or firm, stock
26 brokerage firm, insurance firm, or real estate firm.

27 (7) That of a member of a nonprofit corporation formed under
28 the Food and Agricultural Code or a nonprofit corporation formed
29 under the Corporations Code for the sole purpose of engaging in
30 the merchandising of agricultural products or the supplying of
31 water.

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

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

39 (10) Except as provided in subdivision (b) of Section 1091.5,
40 that of a director of, or a person having an ownership interest of,

1 10 percent or more in a bank, bank holding company, or savings
2 and loan association with which a party to the contract has a
3 relationship of borrower or depositor, debtor or creditor.

4 (11) That of an engineer, geologist, or architect employed by a
5 consulting engineering or architectural firm. This paragraph applies
6 only to an employee of a consulting firm who does not serve in a
7 primary management capacity, and does not apply to an officer or
8 director of a consulting firm.

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

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

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

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

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

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

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

37 ~~(16) (A) That of an officer or employee of a public entity who~~
38 ~~is also an employee or agent of the contracting party, if all of the~~
39 ~~following conditions are met:~~

1 ~~(i) The contracting party is an investor-owned utility regulated~~
2 ~~by the Public Utilities Commission.~~

3 ~~(ii) The contract solely provides the public entity with energy~~
4 ~~efficiency rebates or any other type of program to encourage energy~~
5 ~~efficiency by the public entity that is funded by utility ratepayers~~
6 ~~under the authority of the Public Utilities Commission.~~

7 ~~(iii) The officer or employee of the public entity has not directly~~
8 ~~or indirectly participated in making the contract in any manner.~~

9 ~~(B) For purposes of this paragraph, "public entity" means the~~
10 ~~state, county, district, judicial district, or city, as stated in Section~~
11 ~~1090.~~

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

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

22 *(B) The contract is not performed for the profit of the*
23 *investor-owned utility and provides no individual benefit to the*
24 *person that is not also provided to the public.*

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

29 *(D) The contract is approved by the Public Utilities Commission.*

30 *(c) This section is not applicable to any officer interested in a*
31 *contract who influences or attempts to influence another member*
32 *of the body or board of which he or she is a member to enter into*
33 *the contract.*

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