AMENDED IN ASSEMBLY APRIL 14, 2011

california legislature—2011–12 regular session

ASSEMBLY BILL No. 527

Introduced by Assembly Member Roger Hernández

February 15, 2011

An act to amend Sections 1090 and 1091 of, and to add Section 1096.5 to, the Government Code, relating to public officials.

legislative counsel's digest

AB 527, as amended, Roger Hernández. Public officials: financial interests.

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 law defines what is a remote interest in a contract that does not present a prohibited conflict of interest under these provisions. Existing law authorizes a body or board to make a contract that involves a remote interest of a member of the body if, among other things, the remote interest is disclosed to the body or board 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. Violation of these provisions is a crime.

This bill would additionally require that the remote interest be disclosed at a public meeting of that body or board and would require the counsel or other legal advisor of the body or board to identify a statutory basis for classifying the interest as a remote interest. By increasing the scope of actions that constitute a crime, this bill would impose a state-mandated local program.

This bill would also prohibit the specified officers or employees from authorizing the expenditure of public funds, as specified, if any member of the body or board is financially interested in the person or entity that receives the expended funds.

This bill would also prohibit a body or board of a city or county from approving any project, plan, permit, or conveyance of land in which a member of that body is financially interested, as defined, unless specified conditions are met, including disclosing the financial interest at a public meeting of that body or board, requiring the financially interested member to abstain from voting on the item, and requiring the body or board to approve the item by a vote of its membership sufficient for the purpose without the vote or votes of the member with the remote interest. The bill would make a violation of these provisions a crime, thereby imposing a state-mandated local program.

The bill would also make findings and declarations relating to the application of its provisions to charter cities and charter counties.

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:

SECTION 1. Section 1090 of the Government Code is amended to read:

1090. Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall any state, county, district, judicial district, and city officers or employees authorize the expenditure of public funds, regardless of whether a contract is made in furtherance of the expenditure, if any member of the body or board is financially interested in the person or entity that receives the expenditure. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

SEC. 2. 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, 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 at a public meeting of that body or board, and the counsel or other legal advisor of the body or board has identified a statutory basis for classifying the interest as remote at a public meeting of the body or board, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 1096.5 is added to the Government Code, to read:

1096.5. (a) No body or board of a city or county, including, but not limited to, a planning commission, shall approve any project, plan, permit, or conveyance of land in which any member of that body is financially interested unless the fact of that interest is disclosed to the body or board by the financially interested member at a public meeting of that body or board, the financially interested member abstains from voting on the project, plan, permit, or conveyance of land, and thereafter the body or board approves the project, plan, permit, or conveyance of land in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the member with the remote interest.

(b) For purposes of this section, a member of a body or board shall be financially interested if the approval of the project, plan, permit, or conveyance will have a reasonably foreseeable financial effect on the member, on the real property owned or leased by the member, or on a business entity in which the member is an employee, agent, contractor, or consultant of the business entity.

(c) Any project, plan, permit, or conveyance approved in violation of this section shall be void ~~and punishable in the manner provided in Section 1097~~.

(d) A member of a body or board that is financially interested in the approval of the project, plan, permit, or conveyance of land, that votes to approve the project, plan, permit, or conveyance of land is punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in the state prison, or by both fine and imprisonment and is forever disqualified from holding any office in this state.

SEC. 4. The Legislature hereby finds and declares that the ethical integrity and stability of local government agencies in this state, including charter cities, has a direct impact on the long-term well-being of all residents of this state. The likelihood of businesses locating to, or staying in, the state is affected by the perception of a functioning, transparent, and practical governmental structure in the local governmental bodies in the state. Therefore, the Legislature finds and declares that to ensure the statewide integrity of local governments, including the prohibition against financially interested transactions, is an issue of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to every city and county in this state, including a charter city, charter county, and charter city and county.

~~SEC. 4.~~

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O