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SB-1111 Public officers: contracts: financial interest. (2023-2024)

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Date Published: 09/23/2024 09:00 PM

Senate Bill No. 1111

CHAPTER 324

An act to amend, repeal, and add Section 1091 of the Government Code, relating to public officers.

[Approved by Governor September 20, 2024. Filed with Secretary of State September 20, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, Min. Public officers: contracts: financial interest.

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract, as specified, made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions. Existing law identifies certain remote interests that are not subject to this prohibition if, among other things, the member or officer discloses the fact of that interest to the body or board, including, among others, that of a parent in the earnings of the parent's minor child for personal services. Existing law imposes a criminal penalty on every officer or person who willfully violates these provisions.

This bill, on and after January 1, 2026, would include within the definition of remote interest that of a public officer if the public officer's child is an officer or director of, or has an ownership interest of 10% or more in, a party to a contract entered into by the body or board of which the officer is a member, if this information is actually known to the public officer. By expanding these provisions, this bill would create a new crime and thus would impose a state-mandated local program.

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 Local Program: yes

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)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), 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 before the officer initially accepting their 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 their 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 their 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, architect, or planner employed by a consulting engineering, architectural, or planning 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 themselves 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 themselves from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which they are a member.

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

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses themselves from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

(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 they are a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of their 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.

(e) This section shall be repealed on January 1, 2026.

SEC. 2. Section 1091 is added to the Government Code, 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)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), 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 before the officer initially accepting their 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 their 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 their 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, architect, or planner employed by a consulting engineering, architectural, or planning 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 themselves 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 themselves from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which they are a member.

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

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses themselves from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

(18) That of a public officer if the public officer's child is an officer or director of, or has an ownership interest of 10 percent or more in, a party to a contract entered into by the body or board of which the officer is a member, if this information is actually known to the public officer.

(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 they are a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of their 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.

(e) This section shall become operative on January 1, 2026.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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.