Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 330 (Mendoza) – As Amended July 7, 2015

SENATE VOTE: 40-0

SUBJECT: Public officers: contracts: financial interest.

SUMMARY: Expands the definition of what constitutes a remote interest for purposes of California law governing public officials' conflicts of interest in contracting. Specifically, **this bill**:

1) Deletes a provision stating that a remote interest includes that of a parent in the earnings of his or her minor child for personal services.

2) Provides, instead, that a remote interest includes that of a public officer who is an elected member of any state or local body, board, or commission, if that public officer's spouse, child, parent, sibling, or the spouse of the child, parent, or sibling, has a financial interest in any contract made by that public officer in his or her official capacity, or by any body, board, or commission of which that public officer is a member.

3) Makes the bill's provisions operative on January 1, 2017.

4) Provides that no reimbursement is required by this bill 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 bill 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.

EXISTING LAW:

1) Prohibits, pursuant to Government Code Section 1090 (Section 1090), 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.

2) Provides that a contract made in violation of Section 1090 may be voided by any party to the contract, except for the officer who had an interest in the contract in violation of Section 1090, as specified.

3) Provides that an officer shall not be deemed to be interested in a contract pursuant to Section 1090 if the officer has only a remote interest in the contract, as defined, that remote interest is disclosed to the body or board of which the officer is a member and noted in its official records, and the body or board approves the contract without counting the vote of the officer or member with the remote interest.

4) Defines remote interest to include a number of interests, including that of a parent in the earnings of his or her minor child for personal services.

5) Provides that the willful failure of an officer to disclose the fact of his or her remote interest in a contract is punishable by a fine of not more than $1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state. 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.

6) Allows the Fair Political Practices Commission (FPPC) to commence an administrative or civil enforcement action for a violation of Section 1090 and related laws.

7) Allows a person subject to Section 1090 to request the FPPC to issue an opinion or advice with respect to that person's duties under Section 1090 and related laws, and allows the FPPC to issue such an opinion or advice, subject to certain conditions.

8) Prohibits, pursuant to the Political Reform Act (PRA), a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know that he or she has a financial interest. A public official has a financial interest in a decision if the decision will have a material financial effect, as specified, on the official's spouse or dependent child.

9) Provides that the common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **Bill Summary**. This bill expands the definition of what constitutes a remote interest under Section 1090. It deletes a provision stating that a remote interest includes that of a parent in the earnings of his or her minor child for personal services. Instead, the bill defines remote interest to include that of a public officer who is an elected member of any state or local body, board, or commission, if that public officer’s spouse, child, parent, sibling, or the spouse of the child, parent, or sibling, has a financial interest in any contract made by that public officer in his or her official capacity, or by any body, board, or commission of which that public officer is a member. These provisions become effective on January 1, 2017. This bill is sponsored by the author.

2) **Author's Statement**. According to the author, "The perception that political agendas coincide with personal financial interests is a common thread of concern amongst the public. Public officers may be seen as having biases in their public contract decisions when a specific contract decision may affect a spouse, child, parent, sibling, or the spouse of a child, parent, or sibling.

   "It is not surprising that conflict of interest laws across our nation extend beyond the individual and include the individual’s family, family unit, and household regardless of

relationship, and others. For example, Arizona prohibits its government officials from acting on matters involving their family (Arizona Revised Statutes § 38-503). In Washington D.C., public officials are prohibited from acting on matters involving a member of the official's household (DC ST § 1-1106.01). Alabama and Kentucky prohibit a public officeholder from acting on matters where they or their family member may have a financial interest (ALA CODE § 36-25-1 and Kentucky Revised Statutes, § 6.731).

"We also have conflict of interest policies in our public universities. For example, at the University of California, Berkeley, the conflict of interest policy regarding purchasing decision-making extends to siblings, parents and in-laws (BUSINESS AND FINANCE BULLETIN G-39, Policy Regarding Employee-Vendor Relationships, August 19, 1982).

"Conflict of interest policies also extend to the private sector. Best Buy, for example, prohibits individuals representing the company from acting on matters where they or their family member, including a spouse, child, parent, sibling, or the spouse of the child, parent, or sibling, have an interest (Best Buy Conflict of Interest Policy). Hewlett-Packard requires its representatives to remove themselves from acting on matters relating to their family or friends and the company (Hewlett-Packard, Our Standards of Business Conduct, Page 11)…California is at the forefront of protecting the public by ensuring that officeholders do not engage in 'self-dealing.' However, in light of the allegations involving our state in the last several years, it is time to strengthen our conflict of interest laws."

3) **Background**. Two conflict-of-interest laws specifically govern the allowable conduct of government officials when they act in their official capacity: Section 1090, and the PRA.

Section 1090 prohibits public officials or employees from having a financial interest in any contract made by them in their official capacity, or by any body or board of which they are members. Willful violation of this provision is punishable by a fine of up to $1,000 or imprisonment, and any violator is forever disqualified from holding any office in the state. In addition, contracts that are made in violation of Section 1090 can be voided by any party to the contract except the officer interested in the contract. For the purposes of Section 1090, a public official is generally considered to have a direct financial interest in a contract if that official's spouse has a financial interest in the contract.

Existing law provides a number of exceptions to Section 1090. Among other provisions, existing law provides that an officer shall not be deemed to be financially interested in a contract if: the officer has only a remote interest in the contract; that fact is disclosed to the body or board of which the officer is a member and noted in its official records; and, the body or board thereafter approves the contract without counting the vote of the member with the remote interest. Among the numerous instances of what constitutes a remote interest is an interest of a parent in the earnings of his or her minor child for personal services. Willful violation of this provision is punishable by a fine of up to $1,000 or imprisonment, and any violator is forever disqualified from holding any office in the state. However, a contract made in violation of the remote interest statutes is not void, unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

The PRA prohibits any state or local public official from using his or her official position to influence any governmental decision in which the official has a financial interest, or that will

have a material financial effect on a member of the official's immediate family, which is defined to include a spouse or any dependent children.

4) **Common Law Doctrine Against Conflicts of Interest**. In addition to Section 1090 and the PRA, the common law doctrine also governs conflicts of interests. The common law doctrine, codified in the Civil Code, provides that the common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State. The common law includes a prohibition against self-dealing.

   In January 2009, the Attorney General opined that "[t]he common law doctrine prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." The opinion noted that, while the PRA and Section 1090 focus "on actual or potential financial conflicts, the common law prohibition extends to noneconomic interests as well." The opinion stated that, even though the conflict of interest rules in the PRA and Section 1090 did not apply to the case at hand (which involved a redevelopment agency board member and her son who sought a loan from the board), "…it is difficult to imagine that the agency member has no private or personal interest in whether her son's business transactions are successful or not. At the least, an appearance of impropriety or conflict would arise by the member's participation in the negotiations and voting upon an agreement that, if executed, would presumably redound to her son's benefit."

   The opinion concluded that "…the agency board member's status as the private contracting party's parent … places her in a position where there may be at least a temptation to act for personal or private reasons rather than with 'disinterested skill, zeal, and diligence' in the public interest, thereby presenting a potential conflict…. Under these circumstances, we believe that the only way to be sure of avoiding the common law prohibition is for the board member to abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement."

5) **Policy Considerations**. The Committee may wish to consider the following:

   a) The state's conflict-of-interest laws collectively draw the line around a public officer's financial interest to include the financial interests of the officer's spouse and minor children. This bill significantly expands this circle of financial interest (albeit a "remote" one) to include a public officer's (adult) child, parent or sibling, as well as the spouse of a public officer's child, parent, or sibling. As noted in prior analyses of this bill and related legislation, it might be unreasonable to expect a public officer to know the financial interests of this universe of relatives, especially if the official has a large number of them and/or if there are strained relationships with any of these individuals. While the penalty for violating the remote interest provisions of Section 1090 requires "willful failure" to disclose a remote interest, it could be difficult for public officials to prove they were unaware of such a remote interest at the time a contract was approved. In addition, expanding the definition of a financial interest to encompass this much broader group of people begs the question of whether the financial interests of these individuals truly represents a financial interest for the related public official. The Committee may wish to consider whether the potential merits of this bill outweigh its potential unintended consequences.

b) Given the broad reach of Section 1090, the PRA, and the common law doctrine over conflicts of interest by public officials, the Committee may wish to consider whether this bill is necessary.

6) **Related Legislation**. SB 704 (Gaines) establishes a new remote interest exception to Section 1090 for certain individuals who are serving on advisory boards or committees. SB 704 is pending in the Assembly Elections and Redistricting Committee.

7) **Previous Legislation.** AB 1090 (Fong), Chapter 650, Statutes of 2013, authorized the FPPC to bring civil and administrative enforcement actions for violations of Section 1090 and required the FPPC to provide opinions and advice with respect to Section 1090.

   SB 952 (Torres), Chapter 453, Statutes of 2014, prohibited an individual from aiding or abetting a violation of Section 1090 and related laws.

   AB 785 (Mendoza) of the 2011-12 legislative session would have provided that a public official has a financial interest in a governmental contracting decision if an immediate family member of the public official, as defined, lobbies the agency of the official on that decision or is a high ranking official in a business entity on which it is reasonably foreseeable that the decision would have a material financial effect. AB 785 was held in the Assembly Local Government Committee.

8) **Arguments in Support**. The City of Norwalk, in support, writes, "California is our nation's largest economy. The impact of decisions made in the State Capitol is felt throughout the world. However, California's impact is not derived solely from decisions made inside the walls of the State Capitol Building. Local public officials are repeatedly faced with contract decisions that affect local jurisdictions like cities, counties, and school districts. The public perception that political decisions are wrongly influenced by personal financial interests is pervasive...it is time to strengthen our conflict of interest laws."

9) **Arguments in Opposition**. None on file.

10) **Conflicting Legislation**. Provisions of this bill conflict with SB 704 (Gaines) and may need amendments to address the conflict, should both bills continue to move through the legislative process.

11) **Double-referred**. This bill is double-referred to the Assembly Elections and Redistricting Committee, where it is scheduled to be heard on July 15, 2015.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Norwalk

Opposition

None on file

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