

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1111 (Min) – As Amended March 19, 2024

AS PROPOSED TO BE AMENDED

SENATE VOTE: 37-0

SUBJECT: Public officers: contracts: financial interest

SUMMARY: Requires, beginning in 2026, a public officer to recuse themselves from voting on a contract made by the officer's governmental entity if the officer's child is an officer or director of, or has substantial ownership in, a contracting party to a contract entered into by the body or board of which the officer is a member, if the child's interest is known to the public officer.

Specifically, **this bill:**

- 1) Provides, for the purposes of Government Code Section 1090 et seq. (Section 1090), dealing with conflicts of interests in contracts, that a public officer is deemed to have a remote interest in a contract for the purposes of Section 1090 if the officer's child is an officer or director of, or has an ownership interest of 10 percent or more in, a contracting party to a contract entered into by the body or board of which the officer is a member, and that interest is actually known to the public officer.
- 2) Provides for the provisions of this bill to become operative on January 1, 2026.
- 3) Makes a number of technical and clarifying changes.
- 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, as specified, 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 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. Prohibits state, county, district, judicial district, and city officers or employees from being purchasers at any sale made by them in their official capacity, or from being vendors at any purchase made by them in their official capacity. Prohibits an individual from aiding or abetting a violation of these provisions. [Government Code (GC) § 1090]
- 2) 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, if the fact of the interest is disclosed by the officer to the board or body of which the officer is a member and that interest is noted in its official records, and the body or board authorizes, approves, or

ratifies the contract without counting the vote of the officer or member with the remote interest. Provides that the term "remote interest" includes, among other interests, a parent's interest in the earnings of the person's minor child for personal services. [GC § 1091]

- 3) Enumerates various financial interests for which an officer or employee is deemed not to be interested in a contract pursuant to Section 1090. [GC § 1091.5]
- 4) 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. Provides that the willful failure of an officer to disclose a remote interest in a contract 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. [GC §§ 1091(d), 1092]
- 5) Provides that a person who willfully violates Section 1090, or who willfully aids or abets a violation of Section 1090, 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 the state. [GC § 1097]
- 6) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). [GC §§ 83100, 83111]
- 7) Gives the FPPC the authority to commence an administrative or civil enforcement action for a violation of Section 1090 and related laws. [GC §§ 1097.1-1097.5]
- 8) Authorizes 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. Permits the FPPC to issue such an opinion or advice, subject to certain conditions. [GC §§ 1097.1(c)]
- 9) Prohibits a public official, pursuant to the PRA, from making, participating in making, or in any way attempting to use the person's official position to influence a governmental decision in which the official knows or has reason to know that the official has a financial interest. Provides that 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. [GC §§ 82029, 87100, 87103]
- 10) Makes violations of the PRA subject to administrative, civil, and criminal penalties. [GC §§ 83116, 91000-91005.5]

FISCAL EFFECT: According to the Senate Appropriations Committee, "Ongoing Fair Political Practices Commission (FPPC) costs of approximately \$90,000 annually for 1/2 PY of legal staff time to handle increased requests for written advice in conflict-of-interest cases. (General Fund)."

COMMENTS:

- 1) **Proposed Amendments.** According to the Assembly Elections Committee analysis of this bill: “Based on discussions between the author and the committee chair, the author has agreed to accept amendments to this bill that amend the language on page 9, lines 35-39 of the bill as follows:

(18) That of a public officer ~~in the financial interest of that~~ if the public officer’s ~~child, parent, or sibling, or the spouse of the child, parent, or sibling, except a public officer’s financial interests do not include any financial interest of those other persons unless the interest is actually known to the public officer.~~ child is an officer or director of, or has an ownership interest of 10 percent or more in, a contracting 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.

These amendments are designed to ensure that the bill addresses the concern identified by the bill’s author while minimizing the possibility that this bill will create significant governance and compliance issues for governmental bodies.”

This analysis reflects these proposed amendments. Due to committee deadlines, Elections Committee is unable to adopt these amendments. Instead, these amendments should be adopted by this Committee.

- 2) **Bill Summary. As proposed to be amended,** this bill establishes that public officers must recuse themselves from voting on contracts made by their governmental entity if their child is an officer or director of, or has an ownership interest of 10 percent or more in, a contracting 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.

This bill has a delayed operative date of January 1, 2026.

The author is the sponsor of this bill.

- 3) **Author’s Statement.** According to the author, “Current law prohibits public officers from entering into state contracts that directly benefit them financially. However, the law does not apply when the contract directly affects a public official’s child, parent, sibling, or the spouse of a child, parent, or sibling. Government officials have the responsibility of handling millions of taxpayer dollars and approving contracts on their behalf. As such, they must be held to the highest ethical standards in order to avoid any conflicts of interest or perception of impropriety when conducting business on the public’s behalf. Public officials should not be using their positions to enrich themselves financially, directly or indirectly. SB 1111 would require government officials to abstain from voting when a family member has a financial interest or may benefit from the outcome of a public contract decision under the jurisdiction of that official. At a time where we see public officials direct millions in taxpayer dollars to groups without publicly disclosing family ties, this legislation is necessary.”

- 4) **Orange County.** Starting in late 2023, news surfaced that an Orange County Supervisor awarded COVID-19 relief funding to an organization run by his daughter without disclosing the connection to the public.¹ After public scrutiny over the contracts, news surfaced that the organization was also behind on required audits.² Despite these concerns, the Supervisor continued to award funding to the organization.³

According to an April 8, *Los Angeles Times* Article, “In September 2022, with the five supervisors’ districts splitting federal coronavirus relief funds earmarked for ‘social needs,’ the board voted unanimously to approve \$6.9 million in discretionary funds for Do’s district. According to public records obtained by The Times, Do’s office sent \$2.2 million of that money to the Viet America Society between December 2022 and March 2023 and an additional \$1 million in October 2023 for a Vietnam War Memorial. The board had decided that proper uses for the coronavirus relief money included parks, infrastructure, ‘projects and programs.’

“In June 2023, the board voted unanimously to approve \$3 million in discretionary funds, this time from the county’s general fund, for each of the districts. Do directed his \$3 million to the Viet America Society in August 2023. According to LAist, the news site that has spearheaded reporting on the controversy, Do has directed as much as \$13.5 million in government money to the nonprofit, often without placing it on a public agenda and without disclosing his daughter’s connection to the group.”⁴

According to Orange County, the Orange County Board of Supervisors agendaized and voted on all discretionary spending requested by individual supervisors. The process was initially noticed and approved by the Board on April 27, 2021 and included authorization to allow each Supervisor to develop their own approach to meet the needs of their respective districts.

- 5) **Conflict of Interest Rules.** Public officials in California are subject to two main conflict of interest laws that are intended to prevent public officials from using their official positions for personal financial benefit. The PRA generally prohibits a public official from using the person’s official position to influence *any* governmental decision, as defined, in which the official has a financial interest. The PRA’s conflict of interest rules also prohibit public officials from participating in decisions that have a material financial effect, as specified, on the official’s spouse or dependent child. Violations of the PRA’s conflict of interest rules are punishable by administrative penalties, and in certain cases, by civil or criminal penalties. Criminal violators of the PRA’s conflict of interest rules additionally are prohibited from being a candidate for elective office or from acting as a lobbyist for four years after the conviction.

Section 1090, on the other hand, applies only to contracting decisions. Section 1090

¹ <https://laist.com/news/politics/andrew-do-rhiannon-do-investigation-warner-wellness-orange-county-viet-america-society-pham>

² <https://laist.com/news/politics/orange-county-taxpayer-money-andrew-do-viet-america-society-warner-wellness>

³ <https://laist.com/news/politics/orange-county-supervisor-andrew-do-taxpayer-money-daughter-viet-america-society-warner-wellness-rhiannon-do>

⁴ <https://www.latimes.com/california/story/2024-04-08/scandal-shadows-andrew-dos-final-year-on-the-o-c-board-of-supervisors>

generally prohibits a public official or employee from making a contract in the person's official capacity in which the person has a financial interest. In addition, a public body or board is prohibited from making a contract in which *any* member of the body or board has a financial interest, even if that member does not participate in the making of the contract. For the purposes of Section 1090, an official or employee also has an interest in the property and income of the person's spouse. Contracts made in violation of Section 1090 are void, and willful violators of Section 1090 are subject to criminal penalties and a lifetime ban on holding public office in the state.

- 6) **Limitations on Section 1090.** Various provisions of state law provide exceptions to, or limitations on, Section 1090. State law provides that an officer or employee is not deemed to be interested in a contract if the person's financial interest meets one of 14 different specified conditions. Additionally, state law provides that an officer shall not be deemed to be financially interested in a contract entered into by a body or board of which the officer is a member if the officer has only a "remote interest" in the contract and if certain other conditions are met, including requirements that the officer disclose the remote interest to the officer's board or body, and that officer's vote not count in determining whether to award the contract. While the willful failure of an officer to disclose a remote interest in a contract would subject that officer to the penalties outlined above, the contract itself cannot be canceled due to the violation unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

This bill creates a new "remote interest" under Section 1090, establishing a situation under which the financial interests of an elected official's child could create a remote interest for the official. Most previously-established remote interests were designed to *narrow* the reach of Section 1090, by taking interests that were found by legal opinions to be financial interests under Section 1090, and redefining those interests as "remote interests." This bill, on the other hand, seeks to *expand* the scope of Section 1090 through the creation of a new remote interest.

- 7) **Breaking New Ground.** California's existing conflict of interest laws are designed to prevent public officials from using their governmental positions to enrich themselves financially. As a result, those laws regulate situations where a public official's actions may have a direct financial impact on the official. Because actions that affect the financial interests of a public official's spouse or dependent child may have a corresponding impact on the official, existing conflict of interest laws generally recognize that the financial interests of an official's spouse or dependent child can create a conflict of interest for the official. In essence, existing conflict of interest rules are based on an objective standard: namely, those rules apply to situations where a public official's finances may be affected by the person's official actions.

This bill seeks to protect against situations where a public official's finances are not directly affected by the person's official actions, but where the official's ability to act in a disinterested manner on an action may be called into question due to the effect that the action will have on the finances of the official's child. In contrast to the relatively objective standard that underlies existing conflict of interest rules, the determination about situations where a public official's ability to act in a disinterested manner may reasonably be called into question is more subjective. This bill deems a public official's ties with the official's child to be sufficiently important as to prohibit the official from participating in a contracting decision that will affect certain financial interests of a child. Such a change from the

traditional understanding of a financial interest raises policy issues that the committee should carefully consider.

The proposed amendments to this bill narrow it considerably and, in doing so, also reduce the likelihood that compliance will create major challenges for governance. That being said, if the precedent set by this bill fuels future efforts to require public officials to recuse themselves from decisions due to potential financial effects on family members, compliance with such laws could be considerably more challenging. It is not always easy or straightforward for a public official to assess whether the official has a financial interest in a governmental decision (as that term is used in state law) such that the official must recuse themselves from participating in the decision. It is even more challenging for a public official to assess whether another, financially independent adult has a financial interest in a governmental decision, particularly if the official does not have detailed information about that other person's financial interests.

- 8) **Common Law Doctrine against Conflicts of Interest.** Although the situation that was the impetus for this bill did not create a conflict of interest for the county supervisor under the PRA or under Section 1090, the common law doctrine against conflicts of interest may nonetheless deal with the situation that the author describes as the impetus for this bill.

In a January 2009 opinion by the Office of the Attorney General (No. 07-807), the common law doctrine against conflicts of interest was suggested as a potential source of authority in a situation where both the PRA and Section 1090 were found to be inapplicable to a redevelopment agency board member whose independent adult son sought a commercial loan from the board.

According to that opinion, "[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,'" and it notes 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 noted that even though the conflict of interest rules in the PRA and Section 1090 did not apply in that situation, "...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."

For that reason, 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."

- 9) **Arguments in Support.** None on file.
- 10) **Arguments in Opposition.** None on file.

11) **Related Legislation.** AB 2946 (Valencia) specifies that the board of supervisors of Orange County must only appropriate district discretionary funds if the board approves by majority vote. Requires the board to post a log of appropriated district discretionary funds on its website and places limitations on a member of the board who is on a ballot as a candidate. AB 2946 is pending in the Senate Local Government Committee.

AB 3130 (Quirk-Silva) requires a member of a county board of supervisors to disclose a known family relationship, as specified, with an officer or employee of a nonprofit entity before the board appropriates money to that nonprofit entity. AB 3130 is pending in the Senate Local Government Committee.

12) **Previous Legislation.** SB 1011 (Mendoza) of 2016 was substantially similar to this bill. SB 1011 was held by the Assembly Appropriations Committee.

SB 330 (Mendoza) of 2015 would have provided, beginning in 2017, that an elected officer of a state or local governmental entity was deemed to have a remote interest in a contract made by the governmental entity if the officer's spouse, child, parent, or sibling, or the spouse of the child, parent, or sibling, had a financial interest in the contract. SB 330 held by the Assembly Appropriations Committee.

AB 785 (Mendoza) of 2011 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 failed passage in the Assembly Local Government Committee

13) **Double-Referral.** This bill is double-referred to the Elections Committee, where it is set to be heard on June 26, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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