

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

SB 1011 (Mendoza) – As Amended June 21, 2016

**SENATE VOTE:** 38-0

**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) 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 if the officer's child, parent, sibling, or the spouse of the child, parent, or sibling, has a financial interest in the contract and that interest is actually known to the public officer.
- 2) Becomes operative on January 1, 2018.
- 3) Provides that no reimbursement is required by this bill 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, or changes the definition of a crime, as specified.

**EXISTING LAW:**

- 1) Prohibits, pursuant to 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 provides that such an officer is forever disqualified from holding any office in

this state. A violation of remote interest laws 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 that the FPPC 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 provides that a public officer is deemed to have a remote interest in a contract if the officer's child, parent, sibling, or the spouse of the child, parent, or sibling, has a financial interest in the contract and that interest is actually known to the public officer. The bill becomes operative on January 1, 2018. 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. Although Public officers are prohibited from entering into state contracts that directly benefit them financially, Public officers may be seen as having biases in their public contract decisions when the specific contract decision directly affects a child, parent, sibling, or the spouse of a child, parent, or sibling."
- 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 anybody 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 Regarding 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) **What is a Meaningful Financial Interest?** 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. Expanding the definition of a financial interest to encompass this much broader group of people begs a question the Committee may wish to consider: Do the financial interests of these individuals truly represent a financial interest for the related public official?
- b) **How Will Public Officials Disprove Knowledge?** While the penalty for violating the remote interest provisions of Section 1090 requires "willful failure" to disclose a remote interest, and while this bill provides that the remote interest would have to be "actually known to the public officer," it could be difficult for public officials to prove they were unaware of such a remote interest at the time a contract was approved. Given the penalties for violating Section 1090, the Committee may wish to consider whether the potential merits of this bill outweigh its potential unintended consequences.
- c) **Is Legislation Necessary?** Considering 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) **Previous Legislation.** SB 330 (Mendoza) of 2015 was substantially similar to this bill. SB 330 was held in 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 was held in the Assembly Local Government Committee.

- 7) **Arguments in Support.** None on file.
- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referred.** This bill was heard by the Elections and Redistricting Committee on June 15, 2016, where it passed with a 6-0.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file

##### **Opposition**

None on file

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