

PROPOSED AMENDMENTS

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05/29/19 04:25 PM
SUBSTANTIVE

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 626

AMENDED IN ASSEMBLY MAY 13, 2019

AMENDED IN ASSEMBLY MARCH 21, 2019

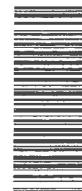
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 626

Introduced by Assembly Member Quirk-Silva

February 15, 2019



RN1916129

An act to amend Section 1091.5 of the Government Code, relating to conflicts of interest.

LEGISLATIVE COUNSEL'S DIGEST

AB 626, as amended, Quirk-Silva. Conflicts of 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 prohibits an officer or employee from being deemed to have an interest in a contract if the person's interest is one of certain types.

This bill would prohibit an officer or employee from being deemed interested in a contract, as described above, if the interest is that of ~~an engineer, geologist, architect, landscape architect, land surveyor, or planner, performing specified services on a project, including preliminary design and preconstruction services, when proposing to perform services on a subsequent portion or phase of the project, if the work product for prior phases is publicly available.~~ *a design professional, as defined, in performing services on a project when proposing to perform services on a subsequent part of the project, as*

specified. For this exception to being deemed interested in a contract to apply, the bill would require that the design professional's work product for prior phases be publicly available and that an agency not have delegated its responsibility for approving contracts or contractual terms to the design professional. The bill would define a design professional as a person or business entity, as specified, that the law permits to practice the profession of architecture, engineering, environmental services, geology, geophysics, land surveying, landscape architecture, planning, or program management. This exception to being deemed interested in a contract would not apply to a design-build contract for a public works project. The bill would provide that these provisions do not limit public agencies from establishing more restrictive conflict of interest requirements applicable to these services.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

Page 2 1 SECTION 1. Section 1091.5 of the Government Code is
2 amended to read:
3 1091.5. (a) An officer or employee shall not be deemed to be
4 interested in a contract if their interest is any of the following:
5 (1) The ownership of less than 3 percent of the shares of a
6 corporation for profit, provided that the total annual income to
7 them from dividends, including the value of stock dividends, from
8 the corporation does not exceed 5 percent of their total annual
9 income, and any other payments made to them by the corporation
10 do not exceed 5 percent of their total annual income.
11 (2) That of an officer in being reimbursed for the officer's actual
12 and necessary expenses incurred in the performance of official
13 duties.
14 (3) That of a recipient of public services generally provided by
15 the public body or board of which the recipient is a member, on
16 the same terms and conditions as if the recipient were not a member
17 of the body or board.
18 (4) That of a landlord or tenant of the contracting party if the
19 contracting party is the federal government or any federal
20 department or agency, this state or an adjoining state, any
21 department or agency of this state or an adjoining state, any county
22 or city of this state or an adjoining state, or any public corporation

Page 2 23 or special, judicial, or other public district of this state or an
24 adjoining state unless the subject matter of the contract is the
25 property in which the officer or employee has the interest as
26 landlord or tenant in which event their interest shall be deemed a
27 remote interest within the meaning of, and subject to, the provisions
28 of Section 1091.

29 (5) That of a tenant in a public housing authority created
30 pursuant to Part 2 (commencing with Section 34200) of Division
31 24 of the Health and Safety Code in which the tenant serves as a
32 member of the board of commissioners of the authority or of a
33 community development commission created pursuant to Part 1.7
Page 3 1 (commencing with Section 34100) of Division 24 of the Health
2 and Safety Code.

3 (6) That of a spouse of an officer or employee of a public agency
4 in their spouse's employment or officeholding if their spouse's
5 employment or officeholding has existed for at least one year prior
6 to their election or appointment.

7 (7) That of a nonsalaried member of a nonprofit corporation,
8 provided that this interest is disclosed to the body or board at the
9 time of the first consideration of the contract, and provided further
10 that this interest is noted in its official records.

11 (8) That of a noncompensated officer of a nonprofit, tax-exempt
12 corporation, which, as one of its primary purposes, supports the
13 functions of the body or board or to which the body or board has
14 a legal obligation to give particular consideration, and provided
15 further that this interest is noted in its official records.

16 For purposes of this paragraph, an officer is "noncompensated"
17 even though the officer receives reimbursement from the nonprofit,
18 tax-exempt corporation for necessary travel and other actual
19 expenses incurred in performing the duties of the office.

20 (9) That of a person receiving salary, per diem, or reimbursement
21 for expenses from a government entity, unless the contract directly
22 involves the department of the government entity that employs the
23 officer or employee, provided that the interest is disclosed to the
24 body or board at the time of consideration of the contract, and
25 provided further that the interest is noted in its official record.

26 (10) That of an attorney of the contracting party or that of an
27 owner, officer, employee, or agent of a firm which renders, or has
28 rendered, service to the contracting party in the capacity of
29 stockbroker, insurance agent, insurance broker, real estate agent,

Page 3 30 or real estate broker, if these individuals have not received and
 31 will not receive remuneration, consideration, or a commission as
 32 a result of the contract and if these individuals have an ownership
 33 interest of less than 10 percent in the law practice or firm, stock
 34 brokerage firm, insurance firm, or real estate firm.

35 (11) Except as provided in subdivision (b), that of an officer or
 36 employee of, or a person having less than a 10-percent ownership
 37 interest in, a bank, bank holding company, or savings and loan
 38 association with which a party to the contract has a relationship
 39 of borrower, depositor, debtor, or creditor.

Page 4 1 (12) That of (A) a bona fide nonprofit, tax-exempt corporation
 2 having among its primary purposes the conservation, preservation,
 3 or restoration of park and natural lands or historical resources for
 4 public benefit, which corporation enters into an agreement with a
 5 public agency to provide services related to park and natural lands
 6 or historical resources and which services are found by the public
 7 agency, prior to entering into the agreement or as part of the
 8 agreement, to be necessary to the public interest to plan for,
 9 acquire, protect, conserve, improve, or restore park and natural
 10 lands or historical resources for public purposes and (B) any officer,
 11 director, or employee acting pursuant to the agreement on behalf
 12 of the nonprofit corporation. For purposes of this paragraph,
 13 “agreement” includes contracts and grants, and “park,” “natural
 14 lands,” and “historical resources” shall have the meanings set forth
 15 in subdivisions (d), (g), and (i) of Section 5902 of the Public
 16 Resources Code. Services to be provided to the public agency may
 17 include those studies and related services, acquisitions of property
 18 and property interests, and any activities related to those studies
 19 and acquisitions necessary for the conservation, preservation,
 20 improvement, or restoration of park and natural lands or historical
 21 resources.

22 (13) That of an officer, employee, or member of the Board of
 23 Directors of the California Housing Finance Agency with respect
 24 to a loan product or programs if the officer, employee, or member
 25 participated in the planning, discussions, development, or approval
 26 of the loan product or program and both of the following two
 27 conditions exist:

28 (A) The loan product or program is or may be originated by any
 29 lender approved by the agency.

Page 4 30 (B) The loan product or program is generally available to
 31 qualifying borrowers on terms and conditions that are substantially
 32 the same for all qualifying borrowers at the time the loan is made.
 33 (14) That of a party to a contract for public services entered into
 34 by a special district that requires a person to be a landowner or a
 35 representative of a landowner to serve on the board of which the
 36 officer or employee is a member, on the same terms and conditions
 37 as if they were not a member of the body or board. For purposes
 38 of this paragraph, "public services" includes the powers and
 39 purposes generally provided pursuant to provisions of the Water

Page 5 1 Code relating to irrigation districts, California water districts, water
 2 storage districts, or reclamation districts.

3 (15) (A) That of ~~an engineer, geologist, architect, landscape~~
 4 ~~architect, land surveyor, or planner in performing its services,~~
 5 ~~including, but not limited to, master planning, capital improvement~~
 6 ~~planning, entitlement, environmental, assessments, feasibility~~
 7 ~~studies, conceptual analysis, surveying, preliminary design services,~~
 8 ~~preconstruction, or assisting with plans, specifications, or project~~
 9 ~~planning services~~ *a design professional performing services* on
 10 any portion or phase of a project when proposing to perform
 11 services on any subsequent portion or phase of the project, if the
 12 *design professional's work product for prior phases is publicly*
 + ~~available.~~ *available and the public agency has not delegated its*
 + *responsibility for approving the contract or any contractual terms*
 + *to the design professional.*

+ (B) *For purposes of this paragraph, design professional means*
 + *an individual, firm, partnership, corporation, association, or other*
 + *legal entity permitted by law to practice the profession of*
 + *architecture, engineering, environmental services, geology,*
 + *geophysics, land surveying, landscape architecture, planning, or*
 + *program management.*

13 ~~(B)~~
 14 (C) This exception shall not apply to a design-build contract for
 + a public works project.

15 ~~(C)~~
 + (D) This exception does not limit the authority of a public
 16 agency to establish more restrictive conflict of interest requirements
 17 applicable to these services.

18 (b) An officer or employee shall not be deemed to be interested
 19 in a contract made pursuant to competitive bidding under a

Amendment 1

Amendment 2
Amendment 3

Amendment 4

Amendment 5

PROPOSED AMENDMENTS

AB 626

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Page 5 20 procedure established by law if their sole interest is that of an
21 officer, director, or employee of a bank or savings and loan
22 association with which a party to the contract has the relationship
23 of borrower or depositor, debtor or creditor.

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