

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

July 26, 1993

To: Board of Directors (Executive Committee--Action)  
(Special Committee on Legislation--Action)

From: General Manager

Subject: AB 1869--(San Francisco-Brown)  
Conflicts of Interest

Report

AB 1869, introduced by Assembly Speaker Willie Brown, was recently amended to revise penalties applicable to certain conflict of interest violations by public officers and employees.

Under Section 1090 of the California Government Code, public officials are prohibited from being financially interested in any contract made by them in their official capacity and from being purchasers at any sale or vendors at any purchase made by them in their official capacity. Under current law, willful violation of this provision is punishable by a fine or imprisonment and disqualification from holding office in California.

This bill delineates two different levels of conflict of interest offenses and provides different penalties for each. Restitution is added as a penalty for these violations.

Under this proposal, an ordinary violation is a misdemeanor. Any person convicted of such a violation may be required to make restitution. If the violator is granted probation, restitution is mandatory. Disqualification from office is no longer a result of conviction of this type of violation.

A public official who makes a contract in his or her official capacity or acts as purchaser at any sale or vendor at any purchase made in his or her official capacity with the intent to defraud or with the purpose of personal enrichment faces a possible fine, imprisonment and disqualification from office. These intentional violators must make restitution.

Staff recommends support for this bill because its provision for restitution and its distinctions between intentional and other conflict of interest violations more closely makes the punishment fit the crime.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its jurisdiction to study, advise and make recommendations with regard to legislation affecting the District, pursuant to Administrative Code Section 2417, subdivision (a); and

The Special Committee on Legislation because of its jurisdiction to review and make recommendations based upon presentations of the General Manager regarding proposals for state legislation and amendments thereto, pursuant to Administrative Code Section 2581, subdivision (a).

Recommendation

**EXECUTIVE COMMITTEE AND SPECIAL COMMITTEE ON LEGISLATION  
FOR ACTION.**

It is recommended that the Board support AB 1869.

  
John R. Wodraska

SBB:gm  
bdltr\AB1869  
Attachment

AMENDED IN SENATE JULY 6, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1869**

Introduced by Assembly Member Willie Brown

March 5, 1993

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An act to amend ~~Section~~ *Sections 1090 and 1091* of the Government Code, relating to public officers and employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1869, as amended, W. Brown. Public officers and employees: conflicts of interest.

(1) Existing law prohibits certain public officers and employees from being financially interested in any contract made by them in their official capacity, or by any board of which they are members. *Existing law prohibits certain public officers and employees from being purchasers at any sale or vendors at any purchase made by them in their official capacity. Existing law punishes the violation of these prohibitions as a felony and disqualifies a person convicted of a violation from holding any office in the state.*

*This bill would make the violation of these prohibitions a misdemeanor, delete the disqualification from holding office, and permit restitution to be imposed on persons convicted of these violations. This bill would punish as a felony and disqualify from office such a public officer or employee who makes a contract in his or her official capacity with the intent to defraud or with the purpose of personal enrichment or such a public officer or employee who, as a purchaser at any sale or as a vendor at any purchase made in his or her official capacity, makes any purchase or sale with intent to defraud or the purpose of self-enrichment. The bill would require restitution to be made by a person convicted of a violation of*

these provisions. By changing the definition of several crimes, this bill would impose a state-mandated local program.

(2) Existing law provides that 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 if the officer has only a remote interest in the contract and other requirements are met. A remote interest is defined to include, among others, the interest of an officer, director, or employee of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

This bill would revise this definition of remote interest to include the interest of an officer, director, or employee of a credit union with which a party to the contract has the relationship of the borrower or depositor, debtor or creditor.

(3) 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: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Section 1090 of the Government Code  
2 is amended to read:

3 1090. (a) Members of the Legislature, state, county,  
4 district, judicial district, and city officers or employees  
5 shall not be financially interested in any contract made by  
6 them in their official capacity, or by any body or board of  
7 which they are members. ~~Nor shall state~~ State, county,  
8 district, judicial district, and city officers or employees  
9 shall not be purchasers at any sale or vendors at any  
10 purchase made by them in their official capacity.  
11 Notwithstanding Section 1097, a violation of this  
12 subdivision is a misdemeanor. A person convicted of a  
13 violation of this subdivision is not disqualified from  
14 holding any office in this state because of that conviction.

1 A person convicted of a violation of this subdivision may  
2 be required to make restitution, and, if granted  
3 probation, shall make restitution pursuant to Section  
4 1203.04 of the Penal Code.

5 (b) No Member of the Legislature, state, county,  
6 district, judicial district, or city officer or employee shall  
7 make a contract in his or her official capacity, or on behalf  
8 of any body or board of which he or she is a member, with  
9 the intent to defraud or with the purpose of personal  
10 enrichment. No state, county, district, judicial district, or  
11 city officer, as a purchaser at any sale or as a vendor at any  
12 purchase made in his or her official capacity, shall make  
13 any purchase or sale with the intent to defraud or with  
14 the purpose of personal enrichment. A violation of this  
15 subdivision shall be punishable as provided in Section  
16 1097. A person convicted of a violation of this subdivision  
17 shall be required to make restitution, whether granted  
18 probation or not.

19 As  
20 (c) As used in this article, "district" means any agency  
21 of the state formed pursuant to general law or special act,  
22 for the local performance of governmental or proprietary  
23 functions within limited boundaries.

24 SEC. 2. Section 1091 of the Government Code is  
25 amended to read:

26 1091. (a) An officer shall not be deemed to be  
27 interested in a contract entered into by a body or board  
28 of which the officer is a member within the meaning of  
29 this article if the officer has only a remote interest in the  
30 contract and if the fact of that interest is disclosed to the  
31 body of the board of which the officer is a member and  
32 noted in its official records, and thereafter the body or  
33 board authorizes, approves, or ratifies the contract in  
34 good faith by a vote of its membership sufficient for the  
35 purpose without counting the vote or votes of the officer  
36 or member with the remote interest.

37 (b) As used in this article, "remote interest" means  
38 any of the following:

39 (1) That of an officer or employee of a nonprofit  
40 corporation, except as provided in paragraph (8) of

1 subdivision (a) of Section 1091.5.

2 (2) That of an employee or agent of the contracting  
3 party, if the contracting party has 10 or more other  
4 employees and if the officer was an employee or agent of  
5 that contracting party for at least three years prior to the  
6 officer initially accepting his or her office.

7 For purposes of this paragraph, time of employment  
8 with the contracting party by the officer shall be counted  
9 in computing the three-year period specified in this  
10 paragraph even though the contracting party has been  
11 converted from one form of business organization to a  
12 different form of business organization within three years  
13 of the initial taking of office by the officer. Time of  
14 employment in that case shall be counted only if, after  
15 the transfer or change in organization, the real or  
16 ultimate ownership of the contracting party is the same  
17 or substantially similar to that which existed before the  
18 transfer or change in organization. For purposes of this  
19 paragraph, stockholders, bondholders, partners, or other  
20 persons holding an interest in the contracting party are  
21 regarded as having the "real or ultimate ownership" of  
22 the contracting party.

23 (3) That of an employee or agent of the contracting  
24 party, if all of the following conditions are met:

25 (A) The agency of which the person is an officer is a  
26 local public agency located in a county with a population  
27 of less than 4,000,000.

28 (B) The contract is competitively bid and is not for  
29 personal services.

30 (C) The employee or agent is not in a primary  
31 management capacity with the contracting party, is not  
32 an officer or director of the contracting party, and holds  
33 no ownership interest in the contracting party.

34 (D) The contracting party has 10 or more other  
35 employees.

36 (E) The employee or agent did not directly  
37 participate in formulating the bid of the contracting  
38 party.

39 (F) The contracting party is the lowest responsible  
40 bidder.

1 (4) That of a parent in the earnings of his or her minor  
2 child for personal services.

3 (5) That of a landlord or tenant of the contracting  
4 party.

5 (6) That of an attorney of the contracting party or that  
6 of an owner, officer, employee, or agent of a firm which  
7 renders, or has rendered, service to the contracting party  
8 in the capacity of stockbroker, insurance agent, insurance  
9 broker, real estate agent, or real estate broker, if these  
10 individuals have not received and will not receive  
11 remuneration, consideration, or a commission as a result  
12 of the contract.

13 (7) That of a member of a nonprofit corporation  
14 formed under the Food and Agricultural Code or a  
15 nonprofit corporation formed under the Corporations  
16 Code for the sole purpose of engaging in the  
17 merchandising of agricultural products or the supplying  
18 of water.

19 (8) That of a supplier of goods or services when those  
20 goods or services have been supplied to the contracting  
21 party by the officer for at least five years prior to his or  
22 her election or appointment to office.

23 (9) That of a person subject to the provisions of  
24 Section 1090 in any contract or agreement entered into  
25 pursuant to the provisions of the California Land  
26 Conservation Act of 1965.

27 (10) That of an officer, director, or employee of a  
28 bank, bank holding company, savings and loan  
29 association, or credit union with which a party to the  
30 contract has the relationship of borrower or depositor,  
31 debtor or creditor.

32 (11) That of an engineer, geologist, or architect  
33 employed by a consulting engineering or architectural  
34 firm. This paragraph applies only to an employee of a  
35 consulting firm who does not serve in a primary  
36 management capacity, and does not apply to an officer or  
37 director of a consulting firm.

38 (12) That of an elected officer otherwise subject to  
39 Section 1090, in any housing assistance payment contract  
40 entered into pursuant to Section 8 of the United States

1 Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended,  
2 provided that the housing assistance payment contract  
3 was in existence before Section 1090 became applicable  
4 to the officer and will be renewed or extended only as to  
5 the existing tenant, or, in a jurisdiction in which the  
6 rental vacancy rate is less than 5 percent, as to new  
7 tenants in a unit previously under a Section 8 contract.  
8 This section applies to any person who became a public  
9 official on or after November 1, 1986.

10 (c) This section is not applicable to any officer  
11 interested in a contract who influences or attempts to  
12 influence another member of the body or board of which  
13 he or she is a member to enter into the contract.

14 (d) The willful failure of an officer to disclose the fact  
15 of his or her interest in a contract pursuant to this section  
16 is punishable as provided in Section 1097. That violation  
17 does not void the contract unless the contracting party  
18 had knowledge of the fact of the remote interest of the  
19 officer at the time the contract was executed.

20 *SEC. 3. No reimbursement is required by this act*  
21 *pursuant to Section 6 of Article XIII B of the California*  
22 *Constitution because the only costs which may be*  
23 *incurred by a local agency or school district will be*  
24 *incurred because this act creates a new crime or*  
25 *infraction, changes the definition of a crime or infraction,*  
26 *changes the penalty for a crime or infraction, or*  
27 *eliminates a crime or infraction. Notwithstanding Section*  
28 *17580 of the Government Code, unless otherwise*  
29 *specified in this act, the provisions of this act shall become*  
30 *operative on the same date that the act takes effect*  
31 *pursuant to the California Constitution.*