



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2410

Introduced 2/19/2009, by Rep. Naomi D. Jakobsson

SYNOPSIS AS INTRODUCED:

50 ILCS 105/3

from Ch. 102, par. 3

65 ILCS 5/3.1-55-10

Amends the Public Officer Prohibited Activities Act and the Illinois Municipal Code. Provides that under either of the following circumstances, a municipal officer may hold a position on the board of not-for profit corporation that is interested in a contract, work, or business of the municipality: (1) if the municipal officer is appointed by the governing body of the municipality to represent the interests of the municipality on a not-for profit corporation's board, then the municipal officer may actively vote on matters involving either that board or the municipality, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal officer may be reimbursed by the non-for-profit board for expenses incurred as the result of membership on the non-for-profit board; and (2) if the municipal officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, then the municipal officer may continue to serve; however, the municipal officer shall abstain from voting on any proposition before the municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal governing body.

LRB096 09519 RLJ 19676 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Officer Prohibited Activities Act is
5 amended by changing Section 3 as follows:

6 (50 ILCS 105/3) (from Ch. 102, par. 3)

7 Sec. 3. Prohibited interest in contracts.

8 (a) No person holding any office, either by election or
9 appointment under the laws or Constitution of this State, may
10 be in any manner financially interested directly in his own
11 name or indirectly in the name of any other person,
12 association, trust, or corporation, in any contract or the
13 performance of any work in the making or letting of which such
14 officer may be called upon to act or vote. No such officer may
15 represent, either as agent or otherwise, any person,
16 association, trust, or corporation, with respect to any
17 application or bid for any contract or work in regard to which
18 such officer may be called upon to vote. Nor may any such
19 officer take or receive, or offer to take or receive, either
20 directly or indirectly, any money or other thing of value as a
21 gift or bribe or means of influencing his vote or action in his
22 official character. Any contract made and procured in violation
23 hereof is void. This Section shall not apply to any person

1 serving on an advisory panel or commission or to any director
2 serving on a hospital district board as provided under
3 subsection (a-5) of Section 13 of the Hospital District Law.

4 (b) However, any elected or appointed member of the
5 governing body may provide materials, merchandise, property,
6 services, or labor, subject to the following provisions under
7 either paragraph (1) or (2):

8 (1) If:

9 A. the contract is with a person, firm, partnership,
10 association, corporation, or cooperative association in
11 which such interested member of the governing body of the
12 municipality has less than a 7 1/2% share in the ownership;
13 and

14 B. such interested member publicly discloses the
15 nature and extent of his interest prior to or during
16 deliberations concerning the proposed award of the
17 contract; and

18 C. such interested member abstains from voting on the
19 award of the contract, though he shall be considered
20 present for the purposes of establishing a quorum; and

21 D. such contract is approved by a majority vote of
22 those members presently holding office; and

23 E. the contract is awarded after sealed bids to the
24 lowest responsible bidder if the amount of the contract
25 exceeds \$1500, or awarded without bidding if the amount of
26 the contract is less than \$1500; and

1 F. the award of the contract would not cause the
2 aggregate amount of all such contracts so awarded to the
3 same person, firm, association, partnership, corporation,
4 or cooperative association in the same fiscal year to
5 exceed \$25,000.

6 (2) If:

7 A. the award of the contract is approved by a majority
8 vote of the governing body of the municipality provided
9 that any such interested member shall abstain from voting;
10 and

11 B. the amount of the contract does not exceed \$2,000;
12 and

13 C. the award of the contract would not cause the
14 aggregate amount of all such contracts so awarded to the
15 same person, firm, association, partnership, corporation,
16 or cooperative association in the same fiscal year to
17 exceed \$4,000; and

18 D. such interested member publicly discloses the
19 nature and extent of his interest prior to or during
20 deliberations concerning the proposed award of the
21 contract; and

22 E. such interested member abstains from voting on the
23 award of the contract, though he shall be considered
24 present for the purposes of establishing a quorum.

25 (b-5) In addition to the above exemptions, any elected or
26 appointed member of the governing body may provide materials,

1 merchandise, property, services, or labor if:

2 A. the contract is with a person, firm, partnership,
3 association, corporation, or cooperative association in
4 which the interested member of the governing body of the
5 municipality, advisory panel, or commission has less than a
6 1% share in the ownership; and

7 B. the award of the contract is approved by a majority
8 vote of the governing body of the municipality provided
9 that any such interested member shall abstain from voting;
10 and

11 C. such interested member publicly discloses the
12 nature and extent of his interest before or during
13 deliberations concerning the proposed award of the
14 contract; and

15 D. such interested member abstains from voting on the
16 award of the contract, though he shall be considered
17 present for the purposes of establishing a quorum.

18 (c) A contract for the procurement of public utility
19 services by a public entity with a public utility company is
20 not barred by this Section by one or more members of the
21 governing body of the public entity being an officer or
22 employee of the public utility company or holding an ownership
23 interest of no more than 7 1/2% in the public utility company,
24 or holding an ownership interest of any size if the public
25 entity is a municipality with a population of less than 7,500
26 and the public utility's rates are approved by the Illinois

1 Commerce Commission. An elected or appointed member of the
2 governing body of the public entity having such an interest
3 shall be deemed not to have a prohibited interest under this
4 Section.

5 (d) Notwithstanding any other provision of this Section or
6 any other law to the contrary, until January 1, 1994, a member
7 of the city council of a municipality with a population under
8 20,000 may purchase real estate from the municipality, at a
9 price of not less than 100% of the value of the real estate as
10 determined by a written MAI certified appraisal or by a written
11 certified appraisal of a State certified or licensed real
12 estate appraiser, if the purchase is approved by a unanimous
13 vote of the city council members then holding office (except
14 for the member desiring to purchase the real estate, who shall
15 not vote on the question).

16 (e) For the purposes of this Section only, a municipal
17 officer shall not be deemed interested if the officer is an
18 employee of a company or owns or holds an interest of 1% or
19 less in the municipal officer's individual name in a company,
20 or both, that company is involved in the transaction of
21 business with the municipality, and that company's stock is
22 traded on a nationally recognized securities market, provided
23 the interested member: (i) publicly discloses the fact that he
24 or she is an employee or holds an interest of 1% or less in a
25 company before deliberation of the proposed award of the
26 contract; (ii) refrains from evaluating, recommending,

1 approving, deliberating, or otherwise participating in
2 negotiation, approval, or both, of the contract, work, or
3 business; (iii) abstains from voting on the award of the
4 contract though he or she shall be considered present for
5 purposes of establishing a quorum; and (iv) the contract is
6 approved by a majority vote of those members currently holding
7 office.

8 A municipal officer shall not be deemed interested if the
9 officer owns or holds an interest of 1% or less, not in the
10 officer's individual name but through a mutual fund, in a
11 company, that company is involved in the transaction of
12 business with the municipality, and that company's stock is
13 traded on a nationally recognized securities market.

14 (f) Under either of the following circumstances, a
15 municipal officer may hold a position on the board of not-for
16 profit corporation that is interested in a contract, work, or
17 business of the municipality:

18 (1) If the municipal officer is appointed by the
19 governing body of the municipality to represent the
20 interests of the municipality on a not-for profit
21 corporation's board, then the municipal officer may
22 actively vote on matters involving either that board or the
23 municipality, at any time, so long as the membership on the
24 not-for-profit board is not a paid position, except that
25 the municipal officer may be reimbursed by the
26 non-for-profit board for expenses incurred as the result of

1 membership on the non-for-profit board.

2 (2) If the municipal officer is not appointed to the
3 governing body of a not-for-profit corporation by the
4 governing body of the municipality, then the municipal
5 officer may continue to serve; however, the municipal
6 officer shall abstain from voting on any proposition before
7 the municipal governing body directly involving the
8 not-for-profit corporation and, for those matters, shall
9 not be counted as present for the purposes of a quorum of
10 the municipal governing body.

11 (Source: P.A. 90-197, eff. 1-1-98; 90-364, eff, 1-1-98; 90-655,
12 eff. 7-30-98.)

13 Section 10. The Illinois Municipal Code is amended by
14 changing Section 3.1-55-10 as follows:

15 (65 ILCS 5/3.1-55-10)

16 Sec. 3.1-55-10. Interests in contracts.

17 (a) A municipal officer shall not be financially interested
18 directly in the officer's own name or indirectly in the name of
19 any other person, association, trust, or corporation, in any
20 contract, work, or business of the municipality or in the sale
21 of any article whenever the expense, price, or consideration of
22 the contract, work, business, or sale is paid either from the
23 treasury or by an assessment levied by statute or ordinance. A
24 municipal officer shall not be interested, directly or

1 indirectly, in the purchase of any property that (i) belongs to
2 the municipality, (ii) is sold for taxes or assessments, or
3 (iii) is sold by virtue of legal process at the suit of the
4 municipality. For the purposes of this Section only, however, a
5 municipal officer shall not be deemed interested if the officer
6 is an employee of a company or owns or holds an interest of 1%
7 or less in the municipal officer's individual name in a
8 company, or both, that company is involved in the transaction
9 of business with the municipality, and that company's stock is
10 traded on a nationally recognized securities market, provided
11 the interested member (i) publicly discloses the fact that he
12 or she is an employee or holds an interest of 1% or less in a
13 company before deliberation of the proposed award of the
14 contract; (ii) refrains from evaluating, recommending,
15 approving, deliberating, or otherwise participating in the
16 negotiation, approval, or both, of the contract, work, or
17 business; (iii) abstains from voting on the award of the
18 contract though he or she shall be considered present for
19 purposes of establishing a quorum; and (iv) the contract is
20 approved by a majority vote of those members currently holding
21 office.

22 A municipal officer shall not be deemed interested if the
23 officer owns or holds an interest of 1% or less, not in the
24 officer's individual name but through a mutual fund, in a
25 company, that company is involved in the transaction of
26 business with the municipality, and that company's stock is

1 traded on a nationally recognized securities market.

2 This Section does not prohibit any person serving on a
3 municipal advisory panel or commission or nongoverning board or
4 commission from having an interest in a contract, work, or
5 business of the municipality unless the municipal officer's
6 duties include evaluating, recommending, approving, or voting
7 to recommend or approve the contract, work, or business.

8 (b) Any elected or appointed member of the governing body
9 may, however, provide materials, merchandise, property,
10 services, or labor, subject to the following provisions under
11 either (1) or (2):

12 (1) If:

13 (A) the contract is with a person, firm,
14 partnership, association, corporation, or cooperative
15 association in which the interested member of the
16 governing body of the municipality member has less than
17 a 7 1/2% share in the ownership;

18 (B) the interested member publicly discloses the
19 nature and extent of the interest before or during
20 deliberations concerning the proposed award of the
21 contract;

22 (C) the interested member abstains from voting on
23 the award of the contract (though the member shall be
24 considered present for the purposes of establishing a
25 quorum);

26 (D) the contract is approved by a majority vote of

1 those members presently holding office;

2 (E) the contract is awarded after sealed bids to
3 the lowest responsible bidder if the amount of the
4 contract exceeds \$1,500 (but the contract may be
5 awarded without bidding if the amount is less than
6 \$1,500); and

7 (F) the award of the contract would not cause the
8 aggregate amount of all contracts so awarded to the
9 same person, firm, association, partnership,
10 corporation, or cooperative association in the same
11 fiscal year to exceed \$25,000.

12 (2) If:

13 (A) the award of the contract is approved by a
14 majority vote of the governing body of the municipality
15 (provided that the interested member shall abstain
16 from voting);

17 (B) the amount of the contract does not exceed
18 \$2,000;

19 (C) the award of the contract would not cause the
20 aggregate amount of all contracts so awarded to the
21 same person, firm, association, partnership,
22 corporation, or cooperative association in the same
23 fiscal year to exceed \$4,000;

24 (D) the interested member publicly discloses the
25 nature and extent of his interest before or during
26 deliberations concerning the proposed award of the

1 contract; and

2 (E) the interested member abstains from voting on
3 the award of the contract (though the member shall be
4 considered present for the purposes of establishing a
5 quorum).

6 (b-5) In addition to the above exemptions, any elected or
7 appointed member of the governing body may provide materials,
8 merchandise, property, services, or labor if:

9 (1) the contract is with a person, firm, partnership,
10 association, corporation, or cooperative association in
11 which the interested member of the governing body of the
12 municipality, advisory panel, or commission has less than a
13 1% share in the ownership; and

14 (2) the award of the contract is approved by a majority
15 vote of the governing body of the municipality provided
16 that any such interested member shall abstain from voting;
17 and

18 (3) such interested member publicly discloses the
19 nature and extent of his interest before or during
20 deliberations concerning the proposed award of the
21 contract; and

22 (4) such interested member abstains from voting on the
23 award of the contract, though he shall be considered
24 present for the purposes of establishing a quorum.

25 (c) A contract for the procurement of public utility
26 services by a municipality with a public utility company is not

1 barred by this Section by one or more members of the governing
2 body being an officer or employee of the public utility
3 company, or holding an ownership interest in no more than 7
4 1/2% in the public utility company, or holding an ownership
5 interest of any size if the municipality has a population of
6 less than 7,500 and the public utility's rates are approved by
7 the Illinois Commerce Commission. An elected or appointed
8 member of the governing body or a nongoverning board or
9 commission having an interest described in this subsection (d)
10 does not have a prohibited interest under this Section.

11 (d) An officer who violates this Section is guilty of a
12 Class 4 felony. In addition, any office held by an officer so
13 convicted shall become vacant and shall be so declared as part
14 of the judgment of the court.

15 (e) Nothing contained in this Section, including the
16 restrictions set forth in subsections (b) and (c), shall
17 preclude a contract of deposit of moneys, loans, or other
18 financial services by a municipality with a local bank or local
19 savings and loan association, regardless of whether a member of
20 the governing body of the municipality is interested in the
21 bank or savings and loan association as an officer or employee
22 or as a holder of less than 7 1/2% of the total ownership
23 interest. A member holding an interest described in this
24 subsection (e) in a contract does not hold a prohibited
25 interest for purposes of this Act. The interested member of the
26 governing body must publicly state the nature and extent of the

1 interest during deliberations concerning the proposed award of
2 the contract but shall not participate in any further
3 deliberations concerning the proposed award. The interested
4 member shall not vote on the proposed award. A member
5 abstaining from participation in deliberations and voting
6 under this Section may be considered present for purposes of
7 establishing a quorum. Award of the contract shall require
8 approval by a majority vote of those members presently holding
9 office. Consideration and award of a contract in which a member
10 is interested may only be made at a regularly scheduled public
11 meeting of the governing body of the municipality.

12 (f) Notwithstanding any other provision of this Section or
13 any other law to the contrary, until January 1, 1994, a member
14 of the city council of a municipality with a population under
15 20,000 may purchase real estate from the municipality, at a
16 price of not less than 100% of the value of the real estate as
17 determined by a written MAI certified appraisal or by a written
18 certified appraisal of a State certified or licensed real
19 estate appraiser, if the purchase is approved by a unanimous
20 vote of the city council members then holding office (except
21 for the member desiring to purchase the real estate, who shall
22 not vote on the question).

23 (g) Under either of the following circumstances, a
24 municipal officer may hold a position on the board of not-for
25 profit corporation that is interested in a contract, work, or
26 business of the municipality:

1 (1) If the municipal officer is appointed by the
2 governing body of the municipality to represent the
3 interests of the municipality on a not-for profit
4 corporation's board, then the municipal officer may
5 actively vote on matters involving either that board or the
6 municipality, at any time, so long as the membership on the
7 not-for-profit board is not a paid position, except that
8 the municipal officer may be reimbursed by the
9 non-for-profit board for expenses incurred as the result of
10 membership on the non-for-profit board.

11 (2) If the municipal officer is not appointed to the
12 governing body of a not-for-profit corporation by the
13 governing body of the municipality, then the municipal
14 officer may continue to serve; however, the municipal
15 officer shall abstain from voting on any proposition before
16 the municipal governing body directly involving the
17 not-for-profit corporation and, for those matters, shall
18 not be counted as present for the purposes of a quorum of
19 the municipal governing body.

20 (Source: P.A. 92-651, eff. 7-11-02.)