

SB1364



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1364

Introduced 2/8/2011, by Sen. Tim Bivins

SYNOPSIS AS INTRODUCED:

50 ILCS 105/3

from Ch. 102, par. 3

Amends the Public Officer Prohibited Activities Act. Exempts from certain provisions concerning prohibited interests in contracts directors serving on a public hospital board under Article 11 of the Illinois Municipal Code.

LRB097 05283 KMW 45337 b

A BILL FOR

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 or
4 a public hospital board as provided under Article 11 of the
5 Illinois Municipal Code.

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

10 (1) If:

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

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

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

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

26 E. the contract is awarded after sealed bids to the

1 lowest responsible bidder if the amount of the contract
2 exceeds \$1500, or awarded without bidding if the amount
3 of the contract is less than \$1500; and

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

9 (2) If:

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

14 B. the amount of the contract does not exceed
15 \$2,000; and

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

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

25 E. such interested member abstains from voting on
26 the award of the contract, though he shall be

1 considered present for the purposes of establishing a
2 quorum.

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

6 A. the contract is with a person, firm, partnership,
7 association, corporation, or cooperative association in
8 which the interested member of the governing body of the
9 municipality, advisory panel, or commission has less than a
10 1% share in the ownership; and

11 B. the award of the contract is approved by a majority
12 vote of the governing body of the municipality provided
13 that any such interested member shall abstain from voting;
14 and

15 C. such interested member publicly discloses the
16 nature and extent of his interest before or during
17 deliberations concerning the proposed award of the
18 contract; and

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

22 (c) A contract for the procurement of public utility
23 services by a public entity with a public utility company is
24 not barred by this Section by one or more members of the
25 governing body of the public entity being an officer or
26 employee of the public utility company or holding an ownership

1 interest of no more than 7 1/2% in the public utility company,
2 or holding an ownership interest of any size if the public
3 entity is a municipality with a population of less than 7,500
4 and the public utility's rates are approved by the Illinois
5 Commerce Commission. An elected or appointed member of the
6 governing body of the public entity having such an interest
7 shall be deemed not to have a prohibited interest under this
8 Section.

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

20 (e) For the purposes of this Section only, a municipal
21 officer shall not be deemed interested if the officer is an
22 employee of a company or owns or holds an interest of 1% or
23 less in the municipal officer's individual name in a company,
24 or both, that company is involved in the transaction of
25 business with the municipality, and that company's stock is
26 traded on a nationally recognized securities market, provided

1 the interested member: (i) publicly discloses the fact that he
2 or she is an employee or holds an interest of 1% or less in a
3 company before deliberation of the proposed award of the
4 contract; (ii) refrains from evaluating, recommending,
5 approving, deliberating, or otherwise participating in
6 negotiation, approval, or both, of the contract, work, or
7 business; (iii) abstains from voting on the award of the
8 contract though he or she shall be considered present for
9 purposes of establishing a quorum; and (iv) the contract is
10 approved by a majority vote of those members currently holding
11 office.

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

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

23 (1) If the municipal officer is appointed by the
24 governing body of the municipality to represent the
25 interests of the municipality on a not-for-profit
26 corporation's board, then the municipal officer may

1 actively vote on matters involving either that board or the
2 municipality, at any time, so long as the membership on the
3 not-for-profit board is not a paid position, except that
4 the municipal officer may be reimbursed by the
5 non-for-profit board for expenses incurred as the result of
6 membership on the non-for-profit board.

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

16 (Source: P.A. 96-277, eff. 1-1-10; 96-1058, eff. 7-14-10.)