

APPENDIX IV:

GOVERNMENT CODE SECTIONS 1090 – 1097.6

§ 1090.

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

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

(Amended by Stats. 2014, Ch. 483, Sec. 1. (SB 952) Effective January 1, 2015.)

§ 1090.1.

No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

(Added by Stats. 1957, Ch. 812.)

§ 1091.

(a) 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 within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, “remote interest” means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

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

the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the “real or ultimate ownership” of the contracting party.

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

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

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

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

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

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

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

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

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

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

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

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

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

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

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

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

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.

(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.

(C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.

(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.

(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.

(C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.

(D) The contract implements a program authorized by the Public Utilities Commission.

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

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

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation 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.

(Amended by Stats. 2015, Ch. 495, Sec. 1. (SB 704) Effective January 1, 2016.)

§ 1091.1.

The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

(Amended by Stats. 1975, Ch. 24.)

§ 1091.2.

Section 1090 shall not apply to any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

(Amended by Stats. 2000, Ch. 108, Sec. 3. Effective July 10, 2000.)

§ 1091.3.

Section 1090 shall not apply to any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 (Division 108 (commencing with Section 130100) of the Health and Safety Code), except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way

attempting to use his or her official position to influence a decision on the grant or grants.

(Amended by Stats. 2002, Ch. 664, Sec. 88. Effective January 1, 2003.)

§ 1091.4.

(a) As used in Section 1091, "remote interest" also includes a person who has a financial interest in a contract, if all of the following conditions are met:

(1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.

(2) The contract is for either of the following:

(A) The maintenance or repair of the district's property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.

(B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.

(3) The person did not participate in the formulation of the contract on behalf of the district.

(4) At a public meeting, the governing body of the district, after review of written documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price and that the contract is in the best interests of the district, and adopts a resolution stating why the contract is necessary and in the best interests of the district.

(b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.

(Amended by Stats. 2004, Ch. 183, Sec. 132. Effective January 1, 2005.)

§ 1091.5.

(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the

total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

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

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

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

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

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual

expenses incurred in performing the duties of his or her office.

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

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

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

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

(13) That of an officer, employee, or member of the Board of Directors of the California Housing

Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:

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

(B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.

(14) That of a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the board of which the officer or employee is a member, on the same terms and conditions as if he or she were not a member of the body or board. For purposes of this paragraph, "public services" includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(Amended by Stats. 2013, Ch. 650, Sec. 1. (AB 1090) Effective January 1, 2014.)

§ 1091.6.

An officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain shall not vote on any matter affecting that organization.

(Added by Stats. 2006, Ch. 594, Sec. 9. Effective January 1, 2007.)

§ 1092.

(a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.

(b) An action under this section shall be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation described in subdivision (a).

(Amended by Stats. 2007, Ch. 68, Sec. 1. Effective January 1, 2008.)

§ 1092.5.

Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

(Added by Stats. 1981, Ch. 66, Sec. 1.)

§ 1093.

(a) The Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any state, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof.

(b) An individual shall not aid or abet the Treasurer, Controller, a county or city officer, or their deputy or clerk in violating subdivision (a).

(c) This section shall not apply to evidences of indebtedness issued to or held by an officer, deputy, or clerk for services rendered by them, nor to evidences of the funded indebtedness of the state, county, or city.

(Amended by Stats. 2014, Ch. 483, Sec. 2. (SB 952) Effective January 1, 2015.)

§ 1094.

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who wilfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

(Amended by Stats. 1951, Ch. 385.)

§ 1095.

Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

(Enacted by Stats. 1943, Ch. 134.)

§ 1096.

Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed.

(Enacted by Stats. 1943, Ch. 134.)

§ 1097.

(a) Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of those laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

(b) An individual who willfully aids or abets an officer or person in violating a prohibition by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

(Amended by Stats. 2014, Ch. 483, Sec. 3. (SB 952) Effective January 1, 2015.)

§ 1097.1.

(a) The Commission shall have the jurisdiction to commence an administrative action, or a civil action, as set forth within the limitations of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, against an officer or person prohibited by Section 1090 from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from

purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who violates any provision of those laws or who causes any other person to violate any provision of those laws.

(b) The Commission shall not have jurisdiction to commence an administrative or civil action or an investigation that might lead to an administrative or civil action pursuant to subdivision (a) against a person except upon written authorization from the district attorney of the county in which the alleged violation occurred. A civil action alleging a violation of Section 1090 shall not be filed against a person pursuant to this section if the Attorney General or a district attorney is pursuing a criminal prosecution of that person pursuant to Section 1097.

(c) (1) The Commission's duties and authority under the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) to issue opinions or advice shall not be applicable to Sections 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, 1091.6, or 1097, except as provided in this subdivision.

(2) A person subject to Section 1090 may request the Commission to issue an opinion or advice with respect to his or her duties under Section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, and 1091.6. The Commission shall decline to issue an opinion or advice relating to past conduct.

(3) The Commission shall forward a copy of the request for an opinion or advice to the Attorney General's office and the local district attorney prior to proceeding with the advice or opinion.

(4) When issuing the advice or opinion, the Commission shall either provide to the person who made the request a copy of any written communications submitted by the Attorney General or a local district attorney regarding the opinion or advice, or shall advise the person that no written communications were submitted. The failure of the Attorney General or a local district attorney to submit a written communication pursuant to this paragraph shall not give rise to an inference that the Attorney General or local district attorney agrees with the opinion or advice.

(5) The opinion or advice, when issued, may be offered as evidence of good faith conduct by the requester in an enforcement proceeding, if the requester truthfully disclosed all material facts and committed the acts complained of in reliance on the opinion or advice. Any opinion or advice of the Commission issued pursuant to this subdivision shall not be admissible by any person other than the requester in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any opinion or advice that it issues pursuant to this subdivision a

statement that the opinion or advice is not admissible in a criminal proceeding against any individual other than the requester.

(d) A decision issued by the Commission pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) shall not be admissible in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any decision it issues pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) a statement that the decision applies only to proceedings brought by the Commission.

(e) The Commission may adopt, amend, and rescind regulations to govern the procedures of the Commission consistent with the requirements of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5. These regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

(f) For purposes of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, "Commission" means the Fair Political Practices Commission.

(Amended by Stats. 2014, Ch. 71, Sec. 67. (SB 1304) Effective January 1, 2015.)

§ 1097.2.

(a) Upon the sworn complaint of a person or on its own initiative, the Commission shall investigate possible violations of Section 1090, as provided in Section 1097.1. After complying with subdivision (b) of Section 1097.1, the Commission shall provide a written notification to the person filing a complaint in the manner described in Section 83115.

(b) The Commission shall not make a finding of probable cause to believe Section 1090 has been violated unless the Commission has notified the person who is alleged to have violated Section 1090 in the manner described in Section 83115.5.

(c) If the Commission determines there is probable cause to believe Section 1090 has been violated, it may hold a hearing to determine if a violation has occurred, subject to the requirements of subdivision (b) of Section 1097.1 and in the manner described in Section 83116.

(d) If the Commission rejects the decision of an administrative law judge made pursuant to Section 11517, the Commission shall state the reasons in writing for rejecting the decision, as required by Section 83116.3.

(e) The Commission shall have all of the subpoena powers provided in Section 83118 to assist

in the performance of the Commission's duties under this section.

(f) The Commission may refuse to excuse any person from testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Commission notwithstanding an objection that the testimony or evidence required of the person may tend to incriminate the person. A person who is compelled, after having claimed the privilege against self-incrimination, to testify or produce testimonial evidence, shall not have that testimony or the testimonial evidence the person produced used against that person in a separate and subsequent prosecution. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The Commission shall not compel any person to testify or produce testimonial evidence after the person has claimed the privilege against self-incrimination unless the Commission has obtained written authorization from the Attorney General and the district attorney of the county in which the alleged violation occurred.

(g) The Commission shall not commence an administrative action pursuant to this section against a person who is subject to Section 1090 alleging a violation of that section if the Commission has commenced a civil action pursuant to Section 1097.3 against that person for the same violation. For purposes of this subdivision, the commencement of the administrative action shall be the date of the service of the probable cause hearing notice, as required by subdivision (b), upon the person alleged to have violated Section 1090.

(h) An administrative action brought pursuant to this section shall be subject to the requirements of Section 91000.5.

(Added by Stats. 2013, Ch. 650, Sec. 3. (AB 1090) Effective January 1, 2014.)

§ 1097.3.

(a) Subject to the requirements of Section 1097.1, the Commission may file a civil action for an alleged violation of Section 1090. A person held liable for such a violation shall be subject to a civil fine payable to the Commission for deposit in the General Fund of the state in an amount not to exceed the greater of ten thousand dollars (\$10,000) or three times the value of the financial benefit received by the defendant for each violation.

(b) The Commission shall not commence a civil action pursuant to this section alleging a violation of Section 1090 if the Commission has commenced an administrative action pursuant to Section 1097.1 against the person for the same violation.

(c) A civil action brought by the Commission pursuant to this section shall not be filed more than four years after the date the violation occurred.

(Added by Stats. 2013, Ch. 650, Sec. 4. (AB 1090) Effective January 1, 2014.)

§ 1097.4.

In addition to any other remedies available, the Commission may obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to Section 1097.1, 1097.2, or 1097.3. Penalties shall be collected in accordance with Section 91013.5.

(Added by Stats. 2013, Ch. 650, Sec. 5. (AB 1090) Effective January 1, 2014.)

§ 1097.5.

(a) If the time for judicial review of a final Commission order or decision issued pursuant to Section 1097.2 has lapsed, or if all means of judicial review of the order or decision have been exhausted, the Commission may apply to the clerk of the superior court for a judgment to collect the penalties imposed by the order or decision, or the order as modified in accordance with a decision on judicial review.

(1) The application, which shall include a certified copy of the order or decision, or the order as modified in accordance with a decision on judicial review, and proof of service of the order or decision, constitutes a sufficient showing to warrant issuance of the judgment to collect the penalties. The clerk of the court shall enter the judgment immediately in conformity with the application.

(2) An application made pursuant to this section shall be made to the clerk of the superior court in the county where the monetary penalties, fees, or civil penalties were imposed by the Commission.

(3) A judgment entered in accordance with this section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.

(4) The Commission may bring an application pursuant to this section only within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.

(b) The remedy available under this section is in addition to those available under Section 1097.4 or any other law.

(Added by Stats. 2013, Ch. 650, Sec. 6. (AB 1090) Effective January 1, 2014.)

§ 1097.6.

(a) (1) For a public entity that has entered into a contract with an independent contractor to perform one phase of a project and seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project, the independent contractor is not an “officer” under this article if the independent contractor’s duties and services related to the initial contract did not include engaging in or advising on public contracting on behalf of the public entity.

(2) For purposes of this section, “engaging in or advising on public contracting” means preparing or assisting the public entity with any portion of the public entity’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity.

(b) (1) If an independent contractor is an officer under subdivision (a), then it is not a violation of this article for the public entity to enter into a subsequent contract with that independent contractor for a later phase of the same project if the independent contractor did not engage in or advise on the making of the subsequent contract during its performance of the initial contract.

(2) For purposes of this section, an independent contractor does not “engage in or advise on the making of the subsequent contract” by participating in the planning, discussions, or drawing of plans or specifications during an initial stage of a project if that participation is limited to conceptual, preliminary, or initial plans or specifications and all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.

(c) A person who acts in good faith reliance on this section is not in violation of this article and shall not be subject to criminal, civil, or administrative enforcement under this article if both of the following conditions are met:

(1) A statement identical or substantially similar to the following is included in the initial contract between the public entity and the independent contractor:

“Contractor/consultant’s duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant’s

participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.”

(2) The independent contractor is not in breach of the contractual obligations set forth in paragraph (1).

(d) If a person acts in good faith reliance on this section but fails to include the language set forth in paragraph (1) of subdivision (c) in the initial contract between the public entity and the independent contractor, it is a complete defense to a violation of this article in any criminal, civil, or administrative proceeding if either of the following apply:

(1) The independent contractor is not an officer pursuant to subdivision (a).

(2) If the independent contractor is an officer pursuant to subdivision (a), the independent contractor did not engage in or advise on the making of the subsequent contract as provided in subdivision (b).

(Added by Stats. 2023, Ch. 263, Sec. 1 (AB 334) Effective January 1, 2024.)