

SB3313



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3313

Introduced 2/10/2010, by Sen. Michael Bond

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

LRB096 19415 RLJ 34807 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.

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,
10 partnership, association, corporation, or cooperative
11 association in which such interested member of the
12 governing body of the municipality has less than a 7
13 1/2% share in the ownership; 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
19 the award of the contract, though he shall be
20 considered present for the purposes of establishing a
21 quorum; and

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

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

1 of the contract is less than \$1500; and

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

7 (2) If:

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

12 B. the amount of the contract does not exceed
13 \$2,000; and

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

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

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

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

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

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

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

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

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

1 entity is a municipality with a population of less than 7,500
2 and the public utility's rates are approved by the Illinois
3 Commerce Commission. An elected or appointed member of the
4 governing body of the public entity having such an interest
5 shall be deemed not to have a prohibited interest under this
6 Section.

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

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

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

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

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

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

1 not-for-profit board is not a paid position, except that
2 the municipal officer may be reimbursed by the
3 non-for-profit board for expenses incurred as the result of
4 membership on the non-for-profit board.

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

14 (Source: P.A. 96-277, eff. 1-1-10.)

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

17 (65 ILCS 5/3.1-55-10)

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

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

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

24 A municipal officer shall not be deemed interested if the
25 officer owns or holds an interest of 1% or less, not in the
26 officer's individual name but through a mutual fund or

1 exchange-traded fund, in a company, that company is involved in
2 the transaction of business with the municipality, and that
3 company's stock is traded on a nationally recognized securities
4 market.

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

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

15 (1) If:

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

21 (B) the interested member publicly discloses the
22 nature and extent of the interest before or during
23 deliberations concerning the proposed award of the
24 contract;

25 (C) the interested member abstains from voting on
26 the award of the contract (though the member shall be

1 considered present for the purposes of establishing a
2 quorum);

3 (D) the contract is approved by a majority vote of
4 those members presently holding office;

5 (E) the contract is awarded after sealed bids to
6 the lowest responsible bidder if the amount of the
7 contract exceeds \$1,500 (but the contract may be
8 awarded without bidding if the amount is less than
9 \$1,500); and

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

15 (2) If:

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

20 (B) the amount of the contract does not exceed
21 \$2,000;

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

1 (D) the interested member publicly discloses the
2 nature and extent of his interest before or during
3 deliberations concerning the proposed award of the
4 contract; and

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

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

12 (1) the contract is with a person, firm, partnership,
13 association, corporation, or cooperative association in
14 which the interested member of the governing body of the
15 municipality, advisory panel, or commission has less than a
16 1% share in the ownership; and

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

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

25 (4) such interested member abstains from voting on the
26 award of the contract, though he shall be considered

1 present for the purposes of establishing a quorum.

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

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

18 (e) Nothing contained in this Section, including the
19 restrictions set forth in subsections (b) and (c), shall
20 preclude a contract of deposit of moneys, loans, or other
21 financial services by a municipality with a local bank or local
22 savings and loan association, regardless of whether a member of
23 the governing body of the municipality is interested in the
24 bank or savings and loan association as an officer or employee
25 or as a holder of less than 7 1/2% of the total ownership
26 interest. A member holding an interest described in this

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

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

26 (g) Under either of the following circumstances, a

1 municipal officer may hold a position on the board of a
2 not-for-profit corporation that is interested in a contract,
3 work, or business of the municipality:

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

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

23 (Source: P.A. 96-277, eff. 1-1-10.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.