

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1620 (Dababneh) – As Amended March 28, 2017

AS PROPOSED TO BE AMENDED

SUBJECT: Political Reform Act of 1974: postgovernment employment.

SUMMARY: Extends the length of the "revolving door" ban when a member of the Legislature resigns from office so that it remains in effect until a year has passed since the end of the term to which the person was elected. Specifically, **this bill:**

- 1) Provides that when a member of the Legislature resigns from office, the existing prohibition against that member appearing before or communicating with the Legislature as a compensated representative of another person for the purpose of influencing legislative action applies from the time the member resigns until a year after the final date of the term of office to which the person was elected, instead of applying for a period of one year after the person leaves office, as is the case under existing law.
- 2) Makes corresponding and technical changes.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Prohibits a member of the Legislature, for a period of one year after leaving office, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making appearances before or communications with the Legislature if the appearance or communication is made for the purpose of influencing legislative action.
- 3) Defines "legislative action," for the purpose of the restrictions on post-legislative employment activities by former members of the Legislature, to mean the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. Provides that "legislative action" also includes the action of the Governor in approving or vetoing any bill.
- 4) Prohibits an elected state officer, *other than a member of the Legislature*, for a period of one year after leaving office, from acting as a compensated agent or attorney for, or otherwise representing any other person by making any formal or informal appearance, or by making any oral or written communication before any state administrative agency if the appearance or communication is for the purpose of influencing specified administrative actions.

- 5) Provides that the above prohibitions do not apply to any individual who is or becomes any of the following:
 - a) An officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the state agency, board, or commission; or,
 - b) An official holding an elective office of a local government agency if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the local government agency.
- 6) Prohibits a state or local public official from making, participating in making, or using his or her official position to influence, any governmental decision directly relating to any person or other entity with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed amendments to narrow the scope of this bill by eliminating provisions that would have expanded the Legislative revolving door ban to include communications with the Governor. This analysis reflects those proposed author's amendments. The proposed author's amendments are as follows:

On page 2, line 13, strike out "Legislature or the Governor," and insert "Legislature,"

On page 3, lines 10-11, strike out "Legislature or the Governor," and insert "Legislature,"

- 2) **Purpose of the Bill:** According to the author:

It is the job of elected officials to serve California's residents. These people elect candidates they feel will protect, serve and work for their interests and well-being and they expect them to serve the entire term. When an elected official resigns mid-term to take a governmental relations position for a private industry, they not only ruin the public's confidence and trust of elected officials but also pass the huge costs of a special election on to those that they've essentially abandoned.

Currently, the Political Reform Act has instituted a one-year ban on legislators from the time they resign from having direct communication with their former agency in an attempt to influence decisions. This generally serves to prevent former legislators from taking advantage of their relationships with former colleagues for the benefit of a private company.

However, this one-year ban hasn't halted the practice of leaving mid-term to

ultimately pursue a governmental relations job. When a member of the Legislature leaves office mid-term, it triggers a costly special election. These can cost anywhere from \$500,000 to \$1,000,000 depending on the county.

This bill proposes a lobbying ban that would be the remainder of the term plus one year. This is intended to discourage elected officials from leaving mid-term, which triggers a special election to be paid for by the county and ultimately putting the burden on those who elected and trusted this individual in the first place.

- 3) **Revolving Door Restrictions:** The PRA restricts the post-governmental activities of certain former public officials, including members of the Legislature. These restrictions are commonly known as a "revolving door ban." Specifically, members of the Legislature are prohibited, for one year after leaving the Legislature, from representing any other person by appearing before or communicating with, for compensation, the Legislature, any committee or subcommittee thereof, any legislator, or any officer or employee of the Legislature, if the appearance or communication is made for the purpose of influencing legislative action. The one-year ban generally serves to prevent former legislators from taking advantage of their relationships with former colleagues and subordinates for the benefit of third parties by prohibiting former legislators from having direct communications with the Legislature in an attempt to influence decisions. This one-year ban applies regardless of whether a former legislator is registered as a lobbyist; even if a former legislator does not qualify as a lobbyist under the PRA, that person nonetheless can violate the revolving door ban by making appearances or communications before the Legislature in the year after the person leaves office.

At the same time, however, the one-year ban does not prohibit a former legislator from providing strategic advice to others about business before the Legislature in the year after the person leaves office, as long as the former legislator does not appear before or directly contact the Legislature.

- 4) **Resignations from the California Legislature:** Since the 2001-2002 Legislative Session, there have been 32 instances in which a member of the Legislature resigned from office before the completion of his or her term. Of those 32 resignations, 28 resulted in a special election being held to fill the resulting vacancy (in the other four cases, the resignation occurred close enough to the end of the member's term that a special election was not held, and the seat was left vacant for the remainder of the term instead). More than 84% of the resignations were the result of members being elected to other public offices by the voters (25 cases) or being appointed by the Governor to fill vacancies in other elective offices (two cases). In the five cases where a member of the Legislature resigned for a reason other than assuming another public office, one resigned after a criminal conviction, one resigned amid press reports about comments he made regarding an alleged relationship with a lobbyist, and three resigned from office and subsequently accepted governmental relations jobs with private organizations.
- 5) **Will This Bill Achieve Its Goal?** The author states that the purpose of this bill is to discourage elected officials from leaving office before the completion of their terms in order

to take governmental relations jobs with private industry. As stated above, since 2001, only three sitting legislators resigned from office and subsequently accepted governmental relations jobs with private organizations – most of the members who resigned did so in order to serve in other elective offices. Furthermore, none of the three former legislators who resigned from office and subsequently accepted governmental relations jobs have registered as lobbyists, which may be an indication that those individuals are not engaged in communications or appearances that are covered by the revolving door ban (though, as detailed above, the revolving door ban applies even in situations where a person is not registered as a lobbyist). Given that relatively few members of the Legislature have resigned to take governmental relations jobs with private industry, and the fact that none of those former members subsequently engaged in a level of lobbying activity sufficient to require them to register as lobbyists, the degree to which this bill will serve to discourage resignations from the Legislature is unclear.

- 6) **Technical Amendment:** In order to correct a drafting error, committee staff recommends the following technical amendment:

On page 3, line 33, strike out "foreseeable" and insert "foreseeably".

- 7) **Related and Previous Legislation:** SB 679 (Morrell) proposes to extend the existing revolving door ban to two years after leaving office for members of the Legislature who resign from office. SB 679 is pending in the Senate Appropriations Committee.

SB 976 (Vidak) of 2016 was similar to SB 679. SB 976 was approved by the Senate Elections & Constitutional Amendments Committee, but was then referred to the Senate Rules Committee where it was held.

AB 2284 (Patterson) of 2016 would have required a legislator who resigned before the completion of his or her term to use surplus campaign funds to pay for any resulting special election, among other provisions. AB 2284 failed passage in this committee on a 2-3 vote.

ACA 9 (Gomez) of 2016 would have would have prohibited a legislator who vacated his or her seat prior to the expiration of the term of office for reasons other than personal medical reasons from being permitted to lobby for compensation before the Legislature until 12 months had passed from the date his or her term of office would have expired, among other provisions. Those provisions subsequently were amended out of ACA 9, and it was never heard in committee.

- 8) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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