

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2628 (Levine) – As Amended April 6, 2016

SUBJECT: Political Reform Act of 1974: employment restrictions.

SUMMARY: Prohibits elected and appointed officers of an agency from being employed by that agency in another capacity, or from being compensated to assist another entity with a permit, regulatory action, or enforcement action before that agency, while that officer is in office and for a period of a year after leaving office. Requires Statements of Economic Interests (SEIs) that are filed by specified elected or appointed officials to be posted online. Specifically, **this bill:**

- 1) Prohibits an elected or appointed officer of a state or local agency, while holding office and for a period of one year after leaving office, from doing either of the following:
 - a) Maintaining employment with, in a position other than the currently held elected or appointed office, or being a compensated consultant of the state or local agency; or,
 - b) Aiding, advising, consulting with, or assisting an entity, for compensation, with a permit, regulatory, or enforcement action pending before the agency.
- 2) Requires every state and local agency that maintains an Internet Web site to make SEIs that are filed with the agency by specified high-ranking agency officials available on that site.
- 3) Makes a corresponding change.

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) Restricts the post-governmental activities of specified former public officials, commonly known as a "revolving door ban," as follows:
 - a) A one-year ban prohibits certain officials, for one year after leaving public service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. Members of the Legislature, members of state boards and commissions with decision-making authority, local elected officials, members of air quality management districts, and individuals who manage public investments are examples of people who are subject to the one-year ban.
 - b) A permanent ban prohibits former state officials from working on proceedings that they participated in while working for the state. The ban prohibits appearances and

communications to represent any other person, as well as aiding, advising, counseling, consulting or assisting in representing any other person, for compensation, before any state administrative agency in a proceeding involving specific parties (such as a lawsuit, a hearing before an administrative law judge, or a state contract) if the official previously participated in the proceeding.

- 3) Prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest.
- 4) Prohibits a public official from making, participating in making, or using his or her official position to influence any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.
- 5) Requires candidates for, and current holders of, specified elected or appointed state and local offices and designated employees of state and local agencies to file SEIs disclosing their financial interests, including investments, real property interests, and income.
- 6) Lists certain high-ranking public officials in Government Code Section 87200 (these officials are known, and hereinafter are referred to, as "87200 filers") who are subject to the most expansive disclosure requirements under the PRA. These 87200 filers include all of the following:
 - a) Elected state officers;
 - b) Judges and commissioners of courts of the judicial branch of government;
 - c) Members of the Public Utilities Commission;
 - d) Members of the State Energy Resources Conservation and Development Commission;
 - e) Members of the FPPC;
 - f) Members of the California Coastal Commission;
 - g) Members of the High-Speed Rail Authority;
 - h) Members of planning commissions;
 - i) Any of the following county offices: Members of the board of supervisors; district attorneys; county counsels; county treasurers; and county chief administrative officers;
 - j) Any of the following city offices: Mayors; members of the city council; city managers; city attorneys; city treasurers; city chief administrative officers;
 - k) Other public officials who manage public investments; and,

- l) Candidates for any of the offices listed above.
- 7) Requires each city clerk or county clerk who maintains an Internet Web site to post all of the following information on that Web site:
 - a) A list of 87200 filers who are elected officers and who file their SEIs with that city or county clerk;
 - b) A statement informing the public that a copy of the SEI for specified filers may be obtained by visiting either the FPPC office, or the office of the city clerk or county clerk where the SEI is filed, including the physical address for the office of the FPPC, the city clerk, or the county clerk where the SEI is filed; and,
 - c) A link to the FPPC's Internet Web site including a statement that certain SEIs for state and local government agency officers may be available in electronic format on the FPPC's Internet Web site.

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

COMMENTS:

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

AB 2628 will help assure that elected or appointed officers of a state or local agency serve the public and do not use their positions for personal gain. Recently, two agencies have acted in a manner raising questions about the motivations of public officials. On March 4th, the South Coast Air Quality Management District board voted to dismiss longtime executive officer Barry Wallerstein. Likewise, on February 10th Commissioners voted to dismiss the Coastal Commission's longtime executive director, Charles Lester.

Media accounts of the firings included tremendous criticism of those appointed to the Commission and the District. The media accounts asserted that the public officials may have been acting at the behest of special interests that had issues pending before the Commission and the District.

Currently, District Members and Commissioners are allowed to have outside economic interests that are related to their public service, and to use their positions to directly benefit those outside interests. This should not be allowed and disclosure of outside economic interests must be easily available to the public. AB 2628 will help restore public trust in agencies like the Commission and the District.

- 2) **"Revolving Door" Restrictions on Former Government Officials:** Existing law restricts the post-governmental activities of certain former public officials. These restrictions are commonly known as a "revolving door ban." There are two main types of revolving door restrictions in the PRA that may apply to former public officials.

A one-year ban prohibits certain officials, for one year after leaving public service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. Members of the Legislature, members of state boards and commissions with decision-making authority, local elected officials, and individuals who manage public investments are examples of people who are subject to the one-year ban. The one-year ban generally serves to prevent former officials and employees from taking advantage of their relationships with former colleagues for the benefit of third parties by prohibiting former officials from having direct communications with their former agency in an attempt to influence decisions. To that end, the one-year ban is an *appearance* ban: it prohibits a former official from appearing before, or directly contacting employees of, the official's former agency in an attempt to influence certain decisions, but does not prohibit former officials from providing strategic advice to others about business before that agency.

The second main type of revolving door restriction permanently prohibits former state administrative officials from being paid to work on proceedings that they participated in while working for the state. The ban prohibits appearances and communications to represent any other person, as well as aiding, advising, counseling, consulting, or assisting in representing any other person, for compensation, before any state administrative agency in a proceeding involving specific parties (such as a lawsuit, a hearing before an administrative law judge, or a state contract) if the official previously participated in the proceeding. This permanent ban on "switching sides" does not apply to local officials, though some local jurisdictions have adopted similar rules. This "permanent ban" generally serves to protect the interests of the government in adversarial proceedings by preventing former employees from using proprietary information that they obtained as a part of their governmental employment to benefit private parties in those proceedings. Because the "permanent ban" is designed to protect against certain *information* being used in a way that is contrary to the government's interests, the "permanent ban" not only prohibits a former official from *appearing* before his or her former agency, but also prohibits the former official from assisting or advising anyone else with respect to the proceeding in which the former official may have proprietary information.

This bill would create a new one-year ban, prohibiting former public officers, for a year after leaving public service, from aiding, advising, counseling, consulting, or assisting in representing any other person, for compensation, with a permit, regulatory, or enforcement action pending before the official's former agency. This new one-year ban is loosely modeled after the existing "permanent ban," in that it not only prevents a former official from *appearing* before his or her former agency for the purposes of influencing governmental decisions, but it also prohibits the former official from assisting or advising *others* that are appearing before the former official's agency. That restriction applies even with respect to actions that the former official was not involved in during his or her time at the agency.

This new one-year ban represents a fundamental shift in the policy rationale that underlies

the existing revolving door restrictions, as it would prevent a former officer from using his or her expertise to advise others about business before the former officer's agency, even in situations where the officer does not possess proprietary information that would unfairly disadvantage the government's position. The new one-year ban established by this bill is also broader in another significant respect than the existing one-year ban in that it applies to enforcement actions. Although the "permanent ban" already prohibits a former official from "switching sides" in a *specific* enforcement action, the existing one-year ban does not prohibit a former official from appearing before his or her former agency to represent someone in an enforcement matter that the former official did not participate in during his or her time at the agency. This new one-year ban would impose substantial new limits on the postgovernmental employment of former elected and appointed officers of state and local agencies.

- 3) **Restrictions on Public Agency Employment:** In addition to prohibiting a former public official from aiding or assisting other individuals with respect to appearances that those individuals are making before the official's former agency, this bill prohibits a former official of an agency from being employed by that agency in any other capacity for one year after leaving office. Background materials submitted by the author's office indicate that this provision is in response to recent situations in which the California Coastal Commission (Commission) and the South Coast Air Quality Management District (District) both removed long-tenured staff from high-ranking positions. The author expresses a concern that nothing in existing law would prevent a member of the Commission or the District from applying for and serving in top staff positions that were made vacant due to the recent controversial actions of the Commission and District.

Notwithstanding the concerns about these two particular instances, however, the committee may wish to consider whether it is appropriate to prohibit former officials at an agency from working for that agency for a year after the official leaves office. Officials of an agency are likely to have a high level of expertise with respect to the agency's functions, so this prohibition could deprive public agencies of the ability to fill staff positions with highly qualified individuals who have agency and subject-matter specific expertise.

- 4) **Technical Amendment:** As currently drafted, this bill could be construed to prohibit an officer of an agency from being a candidate for a *different* elective office at the same agency. This does not appear to be consistent with the author's intent. Committee staff recommends that this bill be amended to clarify that it will not prohibit a person from being a candidate for, or being elected to, an elective office.
- 5) **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

Azul (prior version)*

California Coastal Protection Network (prior version)*

California Coastkeeper Alliance (prior version)*

Sierra Club California (prior version)*

Surfrider Foundation (prior version)*

Opposition

None on file.

*Note: The letter of support from these five organizations that was received by the committee refers to a prior version of the bill. Recent amendments to this bill substantially narrowed its scope.

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