Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Evan Low, Chair
AB 551 (Levine) – As Amended March 13, 2017

SUBJECT: Political Reform Act of 1974: postemployment restrictions.

SUMMARY: Prohibits a former local elected official or top administrator for a local agency, for a year after leaving that position, from appearing before or communicating with the former agency, for compensation, on behalf of another government agency. Specifically, **this bill** repeals a provision of law that allows a person who is a former local elected official, former chief administrative officer of a county, former city manager, or former general manager or chief administrator of a special district, for a year after leaving that position, to communicate with or appear before the person's former agency for compensation on behalf of another government agency, notwithstanding a provision of law that otherwise generally prohibits such appearances or communications on behalf of non-governmental entities.

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 former members and specified former employees of state administrative agencies from representing any other person by appearing before or communicating with the agencies of which those individuals were members, or by which they were employed, for 12 months after leaving office if the appearance or communication is for the purpose of influencing legislative or administrative action. Provides that this restriction does not apply to any individual who is an officer or employee of another state agency, board, or commission and is appearing or communicating on behalf of that agency, board, or commission. Provides that this prohibition does not apply to an official holding an elective office of a local government agency who is appearing or communicating on behalf of that agency.

3) Prohibits former local elected officials and specified former employees of local governments from representing any other person by appearing before or communicating with 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. Provides that this restriction does not apply to an individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local government agency, or an employee or representative of a public agency, and is appearing or communicating on behalf of that agency.

4) 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.

5) 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.

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

COMMENTS:

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

> In 2016, Supervisor Kinsey from the County of Marin engaged in a contract with the City of San Rafael to serve as an advisor to the city on transportation issues. The City of San Rafael is concerned with the Sonoma Marin Area Rail Transit's plan to extend to Larkspur, which will potentially disrupt the city's downtown Bettini Transit Center. Supervisor Kinsey negotiated a contract that would be capped at $50,000 dollars while he was still sitting on the County Board of Supervisors and the Metropolitan Transportation Commission. His contract was to begin after he left office…
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> Current law prohibits County Board of Supervisors from taking lobbying positions for one year after they leave office that will require them to appear in any way before the boards they previously sat on. This one year cooling off period is meant to prevent any self-dealing in the member's final year, as well as to prohibit any organization from taking advantage of the relationships that member had built while sitting on the Board.
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> In recent years, the top spender on lobbying power has not been oil and gas or business interests, but local government. According to KQED "The money spent on lobbying by government agencies — cities, counties, school districts, water agencies, even rent control boards across the Golden State — consistently ranks at or near the top of the heap. Recent state filings show the government sector spent $22.3 million on lobbying and influence efforts in the first six months of 2015, on top of the $87.8 million spent in the previous two year legislative session."…
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> While our current laws account for the revolving door into the private industry, they exempt what has become a recent trend of government spending on lobbyists. As a result of existing law, the contract Supervisor Kinsey took for up to $50,000 while still serving as an elected official was allowed because of an exemption for taking positions as a lobbyist for local government…
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> This bill recognizes the reality that local governments are spending more for lobbying by requiring a one year cooling off period for local government officials from taking lobbyist positions immediately upon leaving their jobs.

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." One of the main types of revolving door restrictions in the PRA is a one-year ban that 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.

When this one-year ban was first enacted, it applied only to former Members of the Legislature, former elected state officers, and specified officers, employees, and consultants of state administrative agencies. The ban included an exemption that allows a person who is subject to the ban to communicate with or appear before his or her former agency on behalf of another state agency, board, or commission of which the person becomes an officer or employee. This exception ensures that the one-year ban does not serve to restrict a state officer or employee's ability to act on behalf of the state when interacting with other state agencies. Additionally, the one-year ban subsequently was amended to create an additional exception that permits a local elected official to appear before his or her former agency as a representative of the local government body to which he or she was elected.

After the state one-year ban was enacted, subsequent measures adopted by the Legislature imposed similar bans on specified air district officials and employees, and on other specified local officials and employees. AB 3214 (Pringle), Chapter 747, Statutes of 1994, created a one-year ban for former board members and designated employees of air pollution control districts and air quality management districts. An early version of the bill contained an exception to the one-year ban to allow a former air district board member or designated employee to appear before the air district on behalf of another district; after questions were raised in committee about whether the exception was broad enough, that exception subsequently was broadened to apply to appearances made by an employee or representative of *any* public agency. SB 8 (Soto), Chapter 680, Statutes of 2005, created a one-year ban for specified former *local* officials and employees that is similar to the one-year ban that applies to specified former state officials and employees, and to specified former air district board members and employees. SB 8 included an exception that allows former local officials and employees to appear before their former agencies on behalf of other public agencies; this exception was modeled after the exception to the one-year ban for former air district board members and employees.

3) **Broad Application and Suggested Amendment**: As detailed above, the "revolving door" bans that have been enacted by the Legislature generally have included exceptions for government-to-government communications. These exceptions may reflect a policy determination that communications made between governmental entities do not present the same types of potential conflict-of-interest concerns as communications that are made by private entities to governmental entities. By eliminating the government-to-government communication exception to the local one-year revolving door ban, this bill will significantly restrict the employment options of certain former local officials and employees. Additionally, this bill will significantly restrict flexibility that public agencies otherwise have to employ former local officials and employees who may have governmental and subject-matter expertise.

Eliminating the government-to-government exception to the local one-year revolving door ban would not necessarily *prevent* a former local official or employee from going to work for another governmental agency. That's because the one-year ban only prohibits a former official or employee from appearing before or communicating with the person's former agency. A former city council member, for example, could be hired by a county, and could advise the county on projects and issues pending before the city that the person previously represented, as long as the former council member did not appear before or communicate with the city. For certain governmental positions, however, appearances before and communications with other governmental agencies are an inevitable and essential part of the job, and this bill could prevent qualified individuals from being eligible to serve in such positions.

For example, if a county was in the process of hiring a new executive officer, the pool of applicants for that position might include current city managers from cities located in the county. Under this bill, however, if a city manager was hired to become the county executive officer, that person would be prohibited from appearing before or communicating with the city in an attempt to influence certain city decisions. It is unclear whether a county executive officer could effectively perform his or her job, and appropriately advocate on behalf of the county's interests, if that officer is prohibited from communicating with one of the cities in that county.

As another example, if a member of the Legislature hired a former school board member to serve as a staff member in his or her office, this bill could prohibit that person from working with the school district where he or she previously served as a board member to develop legislation related to education policy and funding.

Finally, as currently drafted, the provisions of this bill could even prevent elected officials from advocating on behalf of their constituents. A county supervisor who was termed out of office and who was elected to serve on the city council could not, in his or her position as a city council member, appear before the board of supervisors for a year after leaving the board.

The situation described by the author as being the impetus for this bill involved a county supervisor who agreed to work as a contractor for one of the cities in the county once the supervisor's term of office ended. To more directly address the situation cited by the author, while still ensuring that governmental agencies have the flexibility to communicate with each other, the committee may wish to consider amending this bill to provide that the government-to-government exception to the local one-year ban does not apply to individuals who are working as contractors for or on behalf of public agencies while communicating with or appearing before their former agency. In other situations, the government-to-government exception to the local one-year ban would remain in place. Such a policy change would allow public officials and direct employees of public agencies to communicate or appear before local agencies where they previously worked, while still addressing the concerns expressed by the author.

4) **Arguments in Opposition**: In opposition to this bill, the California Special Districts Association, California State Association of Counties, and League of California Cities write:

> **AB 551 is an Unnecessary Measure that Creates an Uneven Playing Field**
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> At the present we are unaware of what problem requires the solution set forth in AB 551… While each local agency is unique in the services they provide and the necessary delivery methods of those services, often the skills gained by employees at one agency are applicable and transferable to another agency. However, AB 551 would prevent a board member or an employee from moving from one agency to another that would work with their current agency…
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> **AB 551 Creates Unintended Consequences**
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> Applying the provisions of AB 551 to all local public agencies will have significant unintended consequences. This bill would prevent some agency boards from recruiting board members based on their board structure. For example, a water district in southern California has a 38-member board of directors, representing each of their 26 member agencies. Each member agency is represented by one or more directors based on the assessed property valuation of its jurisdiction. Under AB 551, after one of the 38-member board of directors has completed his or her term, they would not be able to represent their home agency to the 38-member board, which they would continue to have significant business dealings with.
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> **AB 551 does not Increase Transparency and Will Discourage Qualified Candidates to Serve the Public**
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> …[B]y placing a one year general employment ban on all employment activity relating to specific skills or experience that makes that person a qualified local government official or staff, AB 551 will discourage qualified local agency officials whose intent is to serve in their communities from engaging in local government employment.

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

None on file.

Opposition

California Special Districts Association
California State Association of Counties
League of California Cities

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