

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1431 (Gonzalez) – As Amended: March 19, 2014

SUBJECT: School district and community college administrators: conflict of interest.

SUMMARY: Prohibits a school or community college district administrator from soliciting campaign contributions for district board members and candidates for the district board, except as specified. Specifically, this bill:

- 1) Prohibits an administrator of a school district or of a community college district from knowingly soliciting, accepting, or receiving a political contribution from any person for the campaign of an elected official of the district employing the administrator, or for a candidate for that office, unless the person making the contribution is a member of the same school labor organization as the administrator.
- 2) Requires the Fair Political Practices Commission (FPPC) to enforce the provisions of this bill.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Prohibits a member of the FPPC, during his or her tenure, from participating in or contributing to an election campaign, or from seeking election to any other public office during his or her term of appointment.
- 3) Prohibits school district or community college district funds, services, supplies, or equipment from being used for the purpose of urging the support or defeat of any candidate, including, but not limited to, any candidate for election to the governing board of the district.
- 4) Prohibits a person who holds, or who is seeking election or appointment to, the governing board of a school district or community college district from using, or promising or threatening to use, the power of office to positively or adversely affect any person's compensation or position within the district based on the vote or political activities of that person.
- 5) Prohibits restrictions from being placed on the political activities of officers or employees of a school district or community college district, except as otherwise provided in specified provisions of state law or as necessary to meet requirements of federal law.
- 6) Prohibits an officer or employee of a local agency, other than a school district, from soliciting a political contribution from an officer or employee of that agency, except as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

Assembly Bill 1431 seeks to prohibit administrators at school and community college districts from soliciting funds for the campaigns of candidates – including incumbents – for the board elections to govern the districts where they are employed. Most recently, administrators' practice of soliciting campaign funds for board members was held as the common thread in 3 major government corruption cases in San Diego County. This bill will reduce the real and perceived conflicts of interest that is created by this dynamic and has contributed to these major corruption scandals in California's school districts and community college districts.

2) Hatch Act: Enacted in response to allegations that federal government employees were using their positions to assist candidates for federal office in the late 1930s, the federal Hatch Act (5 U.S.C. §§ 7321-7326) generally restricts certain political activities of most civilian federal government employees. The nature of the political activities that are restricted under the Hatch Act vary, depending on the position held by an employee. Employees in intelligence and enforcement agencies, for instance, typically are subject to broader restrictions on political activities than other public employees. Individuals who violate the Hatch Act are subject to "removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000."

One provision of the Hatch Act prohibits federal employees from soliciting, collecting, or receiving political contributions, except from other members of the same federal labor organization under certain conditions. The provisions of this bill are modeled after that portion of the Hatch Act.

It should be noted, however, that the provisions of this bill that allow school administrators to solicit contributions from members of the same school labor organization as the administrator are more lenient than the related provision in the Hatch Act. While the Hatch Act does include an exception to permit federal employees to solicit contributions from members of the same federal labor organization, that exception applies only if the person being solicited is not a subordinate employee, and only if the solicitation is for a contribution to the labor organization's political action committee. This bill does not impose similar restrictions on contributions that are solicited by a school or community college district administrator from a member of the same labor organization as the administrator.

3) Constitutional Issues: It could be argued that this bill violates the United States and California Constitutions' guarantees to free speech and freedom of association. While the right to freedom of speech is not absolute, when a law burdens core political speech, the restrictions on speech generally must be "narrowly tailored to serve an overriding state interest," McIntyre v. Ohio Elections Commission (1995), 514 US 334.

As noted above, this bill is modeled after a provision of the Hatch Act which prohibits certain federal employees from soliciting, collecting, or receiving political contributions. The United States Supreme Court has upheld prior versions of the Hatch Act that restricted the political activities of federal employees even more broadly than the current version of the Hatch Act does. In Civil Service Commission v. Letter Carriers (1973), 413 U.S. 548, the Supreme Court upheld a provision of the Hatch Act that prohibited federal employees from taking "an active part in political management or in political campaigns." In upholding that provision, the court found that "plainly identifiable acts of political management and political campaigning on the part of federal employees may constitutionally be prohibited" by Congress in recognition of the governmental interests that are advanced by that policy. Among other interests, the court noted that placing restrictions on the political activities of federal employees helps the government to operate effectively and fairly, by protecting against enforcement and execution of the law in a manner that favors specific political parties or groups; ensures that elections "play their proper part in representative government," by preventing the government workforce from being used as a "powerful, invincible, and perhaps corrupt political machine"; and protects government employees from improper influences by making sure that employees are "free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs."

The restrictions placed on school and community college administrators under this bill are narrower than the Hatch Act restrictions that were upheld by the Supreme Court in Civil Service Commission v. Letter Carriers. This bill prohibits school and community college administrators from soliciting campaign contributions only for members of and candidates for the governing board of the district by which the administrator is employed, but does not restrict the ability of school and community college administrators to solicit contributions for candidates for other offices.

- 4) Definition of Administrator: This bill proposes to restrict the political activities of school district and community college district administrators, but it does not define the term "administrator" for the purposes of this bill. Furthermore, there does not appear to be a general definition in the Education Code of the term "administrator" in the context of school districts or community college districts. Without a definition of that term, it is unclear exactly which school officials would be affected by this bill. In light of that fact, the committee may wish to consider whether the term "administrator" should be defined for the purposes of this bill.
- 5) No Penalty Specified & Suggested Amendments: While this bill provides for the FPPC to enforce its provisions, the new restrictions created by this bill are not a part of the PRA. As a result, any violations of the restrictions imposed by this bill would not be subject to the penalties available for violations of the PRA. Furthermore, this bill does not specify any penalty or remedy for violations of the bill. In light of that fact, the scope of the FPPC's enforcement authority is unclear, and if the FPPC determined that a violation of the provisions of this bill had occurred, it is unclear whether the FPPC would be able to impose any penalty whatsoever against the violator.

If it is the author's intent that violations of the provisions of this bill would be subject to the penalties that currently apply for violations of the PRA, the committee and the author may

wish to consider amending this bill to move the restrictions on fundraising activities out of the Education Code, and place those restrictions into the PRA instead. With that amendment, a violation of the provisions of this bill would be subject to potential civil or administrative fines of up to \$5,000 per violation or, in the case of knowing or willful violations of the provisions of the bill, to potential misdemeanor penalties and fines of up to \$10,000 per violation.

- 6) School Administrator Candidates & Suggested Amendments: Existing law prohibits an employee of a school district from being sworn into office as a member of that school district's governing board unless that person first resigns as an employee. Similarly, an employee of a community college district must resign his or her position as an employee prior to being sworn into office as a member of the community college district's governing board. Nothing in state law, however, prohibits a school district administrator or a community college administrator from being a candidate for the governing board of the district by which they are employed.

By prohibiting school and community college district administrators from soliciting campaign contributions for candidates for the district board, this bill appears to prohibit an administrator who is a candidate for the governing board of the district in which the administrator is employed from soliciting any contributions on his or her own behalf. The author's stated purpose for this bill—to reduce the potential for conflicts of interest that may exist when an administrator solicits contributions on behalf of a candidate or board member that will oversee the work of the administrator—do not appear to be served by restricting an administrator from soliciting campaign funds for his or her own candidacy. In light of that fact, the author and the committee may wish to consider an amendment to specify that the provisions of this bill shall not prohibit a school or community college administrator from soliciting campaign contributions for his or her own candidacy.

- 7) Arguments in Support: In support of this bill, the County of San Diego writes:

AB 1431...would prohibit school district and community college district administrators from soliciting funds for campaign or legal defense funds for an elected official of the district employing the administrator, or any candidate for an elected office of the district.

This longstanding practice has become all too common and has resulted in scandals and criminal charges for some school districts within the San Diego County region. It allows administrators inappropriate influence over their own job security by assisting in campaign fundraising for their board members and allows current board members to pressure administrators into campaign fundraising. We want to ensure that elected officials are devoting their time and public resources to the public good, and we believe AB 1431 is a good step in that direction.

- 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 must further the purposes of the initiative and

require a two-thirds vote of both houses of the Legislature. Although this bill does not directly amend the PRA, it does so indirectly because it makes the FPPC responsible for enforcing the provisions of this bill. As a result, this bill requires a two-thirds vote for passage on the Assembly and Senate Floors.

9) Double-Referral: This bill has been double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

County of San Diego

Opposition

None on file.

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