

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 359 (Melendez) – As Introduced February 4, 2019

**SUBJECT:** Political Reform Act of 1974: postgovernment employment.

**SUMMARY:** Extends, from one year to five years, the length of the "revolving door" ban on lobbying the Legislature when a member of the Legislature leaves office, as specified.

Specifically, **this bill:**

- 1) Prohibits a Member of the Legislature, for a period of five years after leaving office, instead of one year, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making formal or informal appearances before or communications with the Legislature, any committee, or subcommittee, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.
- 2) Prohibits a Member of the Legislature who resigns from office, for a period commencing with the effective date of the resignation and concluding five years, instead of one year, after the adjournment sine die of the session in which the resignation occurred, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making formal or informal appearances before or communications with the Legislature, any committee, or subcommittee, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

**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 formal or informal appearances before or communications with the Legislature, any committee, or subcommittee, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.
- 3) Prohibits a Member of the Legislature who resigns from office, for a period commencing with the effective date of the resignation and concluding one year after the adjournment sine die of the session in which the resignation occurred, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making formal or informal appearances before or communications with the Legislature, any committee, or subcommittee, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.
- 4) 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 the member's official capacity. Provides that "legislative action" also includes the action of the Governor in approving or vetoing any bill.

- 5) 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 appearances before or communications with any state administrative agency, as specified, if the appearance or communication is for the purpose of influencing specified administrative actions.
- 6) 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.
- 7) Prohibits a state or local public official from making, participating in making, or using their official position to influence, any governmental decision directly relating to any person or other entity with whom the official is negotiating, or has any arrangement concerning, prospective employment.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

California legislators have continued to leave office or resign to take high paying lobbying jobs.

For example, a former legislator resigned in December 2017 for "health concerns;" many speculate his quick departure was done in fear of his sexual misconduct records being released by the Assembly. One year later, he is now a registered lobbyist for a new firm.

With a two year legislative cycle, former legislators can heavily influence policy negotiations they took part of as a legislator the year prior – except this time they can influence negotiations with fiscal promises.

Prohibiting legislators from lobbying for only one year does not nearly go far enough to combat political corruption. Californians deserve to have a transparent government without having special interests dollars involved.

AB 359 will extend the prohibition on former Assemblymembers and Senators lobbying in the Legislature to 5 years, allowing a buffer between a legislator's time in office and their ability to influence current policy negotiations.

- 2) **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 the end of the session during which the member leaves 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.

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.

- 3) **Resignations from the California Legislature and Previous Legislation:** From 2001-2016, there were 32 instances in which a member of the Legislature resigned from office before the completion of the member's 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.

In an effort to discourage mid-term resignations by legislators who leave office or resign to take high paying lobbying jobs, the Legislature approved and the Governor signed AB 1620 (Dababneh), Chapter 800, Statutes of 2017, which extended 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 legislative session in which the member resigns.

Since the enactment of AB 1620, six more legislators have resigned office prior to the end of their terms. Out of the six, two legislators resigned to assume other public offices, one resigned citing health reasons, and three resigned amid allegations of sexual harassment. While there have been press reports that one of those six former legislators has lobbied the Legislature since resigning, that former member resigned before AB 1620 took effect. In light of that fact, it may be appropriate to allow more time to evaluate the effects of AB 1620

before contemplating further changes to the state's "revolving door" laws.

Since AB 1620 took effect on January 1, 2018, three members of the Legislature have resigned – two to assume other elective offices, and one who resigned amid sexual harassment allegations.

- 4) **Practical Effect:** As mentioned above, under current law a when a member of the Legislature resigns from office the "revolving door" ban remains in effect until a year has passed since the end of the legislative session in which the member resigns. As a result, the revolving door ban will be longer than one year for any member of the Legislature who resigns before the completion of their term. Similarly, this bill, should it be signed into law, would result in a ban that is longer than 5 years for any member of the Legislature who resigns before the completion of their term.

- 5) **Arguments in Support:** In the support, the League of Women Voters of California writes:

The League believes that the revolving door between industry and government is inherently undemocratic. It gives wealthy, corporate interests personal access to government officials, inside information, and undue influence over legislation. The League of Women Voters of the United States has, in fact, supported federal legislation that would institute lifetime lobbying bans on members of Congress.

- 6) **Previous Legislation:** SB 679 (Morrell) of 2017, would have extended the length of the "revolving door" ban, for a member of the Legislature who resigns from office, from one year to two years after the person leaves office. SB 679 passed out of this committee on a 7-0 vote. It was not taken up in the Assembly 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 Members of the Legislature who resign before the end of their term to reimburse counties from their campaign funds for the expense of holding a special election to fill that vacancy. AB 2284 failed passage in this committee on a 2-3 vote.

ACA 9 (Gomez) of 2016 would have prohibited a legislator who vacated their 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 that the member's 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.

- 7) **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**

League of Women Voters of California

**Opposition**

None on file.

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