

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1716 (Garcia) – As Introduced: February 13, 2014

SUBJECT: Political Reform Act of 1974: Postemployment activity restrictions.

SUMMARY: Makes former local administrative officials subject to the permanent ban on "switching sides" in a governmental proceeding that currently applies to state administrative officials. Specifically, this bill:

- 1) Prohibits a former local administrative official, after the termination of his or her employment or term of office, from doing either of the following for compensation:
 - a) Acting as an agent or attorney for, or otherwise representing, any person other than the former official's agency, before a court, local government agency, state administrative agency, or officer or employee of those courts or agencies, by making an appearance or an oral or written communication with the intent to influence a judicial, quasi-judicial, or other proceeding, if both of the following apply:
 - i) The former local administrative official's agency is a party or has a direct and substantial interest; and,
 - ii) The proceeding is one in which the former local administrative official participated; or,
 - b) Aiding, advising, counseling, or assisting in representing any other person, except the local government agency, in any proceeding in which the official would be prohibited from appearing as detailed above.
- 2) Provides that the prohibitions outlined above do not apply to the following:
 - a) To prevent a former official from making or providing a statement based on the official's own special knowledge in the area that is the subject of the statement, provided that no compensation is received other than that regularly provided by law or regulation for witnesses;
 - b) To communications made solely for the purpose of furnishing information by a former official if the court or agency to which the communication is directed makes the following findings in writing:
 - i) The former official has outstanding and otherwise unavailable qualifications;
 - ii) The former official is acting with respect to a matter that requires such qualifications; and,

- iii) The public interest is served by the participation of the former official; or,
- c) With respect to appearances or communications in a proceeding in which the court or agency has issued a final order, decree, decision, or judgment but has retained jurisdiction if the local government agency that formerly employed the official gives consent by making both of the following determinations:
 - i) At least five years has elapsed since the termination of the former official's employment or term of office; and,
 - ii) The public interest will not be harmed.
- 3) Provides that the restrictions of this bill do not apply to any person who left government service before the effective date of this bill.
- 4) Defines "local administrative official," for the purposes of this bill, to mean every member, officer, employee, or consultant of a local government agency who as a part of his or her official responsibilities engages in any judicial, quasi-judicial, or other proceeding in other than a purely clerical, secretarial, or ministerial capacity.

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 state administrative officials from being compensated to work on proceedings that they participated in while working for the state. This "switching sides" 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) Permits a court or agency to exclude any person found to have violated the "switching sides" ban, as detailed above, from any further participation in the proceeding, as specified.
- 4) Makes violations of the PRA subject to administrative, civil, and criminal penalties.

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

COMMENTS:

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

Pursuant to Government Code sections 87401 and 87402, State administrative officials are prohibited from providing aid, advice, or consultation in any judicial

or quasi-judicial proceedings where the State of California is a party, after they have left state service.

Essentially, state officials are subject to a lifetime ban from 'switching sides' or being compensated for appearances, or helping others in making such appearances for entities that are engaged in [adversarial] proceedings with the state [entity] of which they were previous[ly] [employed] –eliminating the possibility of being able to profit from [privileged] information they may have acquired during their previous employment with the State of California.

AB 1716 amends existing law to also ban local administrative officials from switching sides where their former agency was a party to the proceeding in which the official was involved.

- 2) "Revolving Door" Restrictions: 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. (A related, but slightly different, one-year ban applies to former air pollution control district and air quality management district members.) When originally adopted, this one-year ban applied primarily to former state employees, but subsequent legislation (see "Previous Legislation," below) also made the one-year ban applicable to specified former local officials.

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 bill would make that permanent ban applicable to local jurisdictions.

- 3) Is There a Problem? There is nothing in existing law to prohibit a city or county from adopting prohibitions on switching sides in a proceeding that are similar to those that currently apply to state officials. In fact, at least two cities, Los Angeles and San Francisco, have adopted prohibitions on switching sides in a proceeding that are similar to those proposed by this bill, while other local jurisdictions have adopted policies that limit the

ability of former local officials to switch sides in a proceeding, but in ways that differ from the ban proposed by this bill.

The author contends that a single, statewide policy against switching sides is appropriate in order to ensure that former local officials cannot use insider information that they obtained from working on a project for their government employer in a way that harms the public interest or otherwise unfairly advantage a third party. Notwithstanding those concerns, the author has not provided any information to indicate that the absence of a prohibition against "switching sides" has resulted in inappropriate behavior at the local level. Furthermore, this bill would make the FPPC responsible for enforcement of another revolving door prohibition for local governmental entities, potentially straining the FPPC's resources. Given this, it is unclear whether it is desirable to adopt a single approach at the state level to prohibit the switching of sides in local governmental proceedings.

- 4) Previous Legislation: SB 8 (Soto), Chapter 680, Statutes of 2005, prohibits a local elected official from lobbying the local government agency of which that official was a member for a period of one year after leaving 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

None on file.

Opposition

None on file.

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