

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2661 (Bradford) – As Amended: March 28, 2014

SUBJECT: Political Reform Act of 1974: conflicts of interests: Energy Commission.

SUMMARY: Limits the ability of a person to be appointed to the California Energy Commission (CEC) if he or she received income from a load serving entity in the two years prior to his or her appointment. Moves conflict of interest provisions relative to the CEC into the Political Reform Act (PRA). Specifically, this bill:

- 1) Moves the following conflict of interest provisions that are applicable to the CEC from the Public Resources Code to the PRA, and gives the Fair Political Practices Commission (FPPC), instead of the Attorney General, the authority to waive these provisions if the interest is not sufficiently substantial to affect the integrity of services that the state may expect:
 - a) A prohibition on a person from being a member of the CEC if, during the two years prior to appointment to the CEC, the person received any substantial portion of his or her income directly or indirectly from any electric utility or engages in the sale or manufacture of any major component of any facility.
 - b) A prohibition on members of the CEC (except for the Secretary of the Resources Agency and the President of the Public Utilities Commission (PUC), who are ex officio members of the CEC) from holding any other elected or appointed public office or position.
 - c) A prohibition on members or employees of the CEC maintaining a relationship as a partner, employer, employee, or consultant with a person who acts as an attorney, agent, or employee for a person other than the state in connection with a judicial or other proceeding, hearing, application, request for ruling, or other determination; contract; claim; controversy; study; plan; or other particular matter in which the CEC is a party or has a direct and substantial interest.
- 2) Expands the prohibition described in (1)(a) above, by additionally prohibiting the appointment of an individual who received a substantial portion of his or her income directly or indirectly from any load serving entity, as defined, or from any person engaged in or authorized to engage in generating, transmitting, or distributing electricity in the state.
- 3) Repeals the following restrictions on members and employees of the CEC:
 - a) A prohibition on a member being employed by an electric utility, applicant, or, within two years after he or she ceases to be a member of the CEC, by any person who engages in the sale or manufacture of any major component of a facility.
 - b) A prohibition on a member or employee participating personally and substantially in his or her official capacity in a proceeding in which any of the following has a direct or

indirect financial interest:

- i) The member or employee;
 - ii) The member or employee's spouse or minor child;
 - iii) The member or employee's partner; or,
 - iv) An organization for which the following are true:
 - (1) The organization is not a governmental organization or an educational or research institution that qualifies as a nonprofit organization; and,
 - (2) The member or employee is serving or has served as an officer, director, trustee, partner, or employee while serving as a member or employee of the CEC or, for members of the CEC, during the two year period prior to the member's appointment.
- 4) Defines the following terms, for the purposes of this bill:
- a) "Facility" to mean the structure or equipment necessary for generating, transmitting, or distributing electricity, including electric transmission lines and thermal, wind, hydroelectric, and photovoltaic plants.
 - b) "Load serving entity" to mean a person, including an electrical corporation, electric service provider, or community choice aggregator, who sells or provides, or is authorized to sell or provide, electricity to end users located in the state.
 - c) "Major component" to mean any product or equipment integral to facility construction or operation or to electrical generation, transmission, or distribution.
- 5) Provides that the term "income," for the purposes of the conflict of interest provisions that are specific to the CEC, includes the following payments that are not otherwise considered income for the purposes of the PRA: salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency, and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- 6) Makes technical and conforming changes.

EXISTING LAW:

- 1) Establishes the State Energy Resources Conservation and Development Commission, also known as the CEC, within the Resources Agency, consisting of five members appointed by the Governor. Requires the CEC to be made up of members with the following backgrounds:

- a) One member with a background in the field of engineering or physical science who has knowledge of energy supply or conservation systems;
 - b) One member who is an attorney and a member of the State Bar of California with administrative law experience;
 - c) One member with a background and experience in the field of environmental protection or the study of ecosystems;
 - d) One member who is an economist with a background and experience in the field of natural resource management; and,
 - e) One member from the public at large.
- 2) Prohibits a person from being a member of the CEC if, during the two years prior to appointment to the CEC, the person received any substantial portion of his or her income directly or indirectly from any electric utility or engaged in the sale or manufacture of any major component of any facility.
 - a) Defines "electric utility" to mean any person engaged in, or authorized to engage in, generating, transmitting, or distributing electric power by any facilities, including, but not limited to, any such person who is subject to the regulation of the PUC.
 - b) Defines "facility" to mean any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant, regulated according to specified provisions of the Public Resources Code.
 - 3) Prohibits a member of the CEC from being employed by an electric utility or applicant or, within two years after the person ceases to be a member of the CEC, by any person who engages in the sale or manufacture of any major component of any facility.
 - 4) Provides that the Secretary of the Resources Agency and the President of the PUC are ex officio members of the CEC and, with the exception of these two positions, prohibits members of the CEC from holding any other elected or appointed public office or position.
 - 5) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.
 - 6) Prohibits a public official, pursuant to the PRA, 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 that he or she has a financial interest.
 - 7) Provides that violations of the PRA are subject to criminal, civil, and administrative penalties.

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

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

Public Resources Code (PRC) Section 25205 specifies conflicts of interest and incompatible activities only applicable to Commissioners of the California Energy Commission (CEC). The section was adopted when the CEC was established, in 1974, prior to statutes that created competitive electricity markets.

Also in 1974, voters enacted the Political Reform Act (Government Code sections 81000 et seq.), which - along with other later-enacted statutes - addresses the same issues that are the focus of PRC Section 25205: prohibiting financial conflicts of interests of public officials in public contracting, post-agency employment, and prohibiting the holding of incompatible public offices.

PRC Section 25205 is exceedingly vague and, therefore, difficult to interpret. As a result, CEC Commissioners decline to participate in matters that the language of the statute may prohibit, but where no actual conflict exists.

PRC Section 25205 may have made sense at the time of its adoption, but the subsequent adoption and development of generally-applicable conflicts law, shifts in the electricity market structure, and the ambiguity of many of its terms render it obsolete.

2) California Energy Commission Background: The CEC was created by the Legislature in 1974 through the passage of AB 1575 (Warren), Chapter 276, Statutes of 1974 as the state's primary energy policy and planning agency. The CEC's primary responsibilities include (1) forecasting future energy needs; (2) promoting energy efficiency and conservation by setting appliance and building efficiency standards; (3) supporting energy research that advances energy science and technology through research, development and demonstration programs; (4) developing renewable energy resources and alternative renewable energy technologies for buildings, industry and transportation; (5) licensing thermal power plants 50 megawatts or larger; and (6) planning for and directing state response to energy emergencies.3) Effect of Moving Energy Commission Conflict Rules to the Political Reform Act: Legislation that created the CEC was signed into law two weeks prior to the adoption of the PRA by the voters through the passage of Proposition 9 at the June 1974 statewide primary election. As a result, at the time that the CEC was created, and its specific conflict of interest rules were established, the FPPC did not exist, and the state did not have the conflict of interest rules that were enacted through the PRA and through subsequent amendments to the PRA (although general conflict of interest rules existed prior to the adoption of the PRA, the PRA enacted more comprehensive rules, including a requirement for governmental agencies to adopt a conflict of interest code).

Notwithstanding the fact that the CEC has its own set of conflict of interest rules, the conflict of interest provisions in the PRA apply generally to all public officials and public agencies, including the CEC and its members and employees. As noted above, this bill repeals certain provisions of the CEC's conflict of interest rules that limit the ability of members and

employees of the CEC to participate in governmental decisions that affect their financial interests. The PRA's conflicts of interest rules, however, will continue to apply to those governmental actions by the CEC and its members and employees.

This bill proposes transferring certain other conflict of interest rules that are specific to the CEC from the Public Resources Code into the PRA. This move, along with corresponding changes made in this bill, has two primary effects. First, by including these restrictions in the PRA, the FPPC will be primarily responsible for the enforcement and interpretation of the CEC's conflict rules. Second, violations of the CEC's conflict of interest rules will no longer be subject only to felony penalties. Instead, violations of these rules will be subject to the same penalties that apply to other violations of the PRA, namely misdemeanor criminal penalties, or civil or administrative fines.

- 4) Broadening of Energy Commission Conflict Rules & Suggested Amendments: In addition to moving the CEC's conflict of interest rules from the Public Resources Code to the PRA and repealing certain conflict rules, this bill also broadens existing restrictions on who can become a member of the CEC such that former employees of electricity providers other than electric utilities are also subject to restrictions on being appointed to the CEC. The author argues that this expansion appropriately reflects changes in the electricity market since the CEC was created, and would result in restrictions that apply to all electricity producers that are active in the energy markets today.

The language of this bill, however, may inadvertently prohibit a person from being appointed to the CEC if that person is employed by a company that receives even a small portion of its income from energy-related activities. This bill, for instance, could prevent an employee of Home Depot from being appointed to the CEC because Home Depot sells solar panels, even though the sale of solar panels amounts to only a small portion of Home Depot's overall business. In order to ensure that this bill does not apply in such a broad manner, committee staff recommends that this bill be amended to provide that a person is prohibited from being appointed to the CEC only if that person receives a substantial portion of his or her income from an entity that receives a substantial portion of its income from energy-related activities.

- 5) Income from Governmental Bodies and Conflicts of Interest: Generally, the conflict of interest rules in the PRA do not treat income from governmental entities as a potential source for a conflict of interest. This bill, by contrast, provides that income from governmental entities can be a source of a conflict that would prevent a person from being appointed to the CEC. According to the author's office, the reason for making income from governmental entities a potential source for a conflict of interest is that municipal utilities, which are responsible for a sizeable share of electricity sales in the state, are subject to CEC oversight with respect to their procurement of renewable energy, energy efficiency program progress, and implementation of incentive programs.
- 6) 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.

- 7) Double-Referral: This bill has been double-referred to the Assembly Natural Resources Committee. Due to upcoming committee deadlines, if this bill is approved in committee today, it would need to be heard in the Assembly Natural Resources Committee next week. As a result, to ensure that this bill can be heard in both policy committees before the upcoming deadline, this bill should not be amended in committee today. Instead, if it is the committee's desire that this bill be amended, this bill should be passed out of committee with the author's commitment to amend the bill subsequent to passage by this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094