

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 679 (Morrell) – As Amended April 26, 2017

SENATE VOTE: 38-0

SUBJECT: Political Reform Act of 1974: postgovernment employment.

SUMMARY: Extends 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. Specifically, **this bill:**

- 1) Prohibits a member of the Legislature who resigns from office, for a period of two years after the person leaves office, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making appearances before or communications with the Legislature if the appearance or communication is made for the purpose of influencing legislative action. Former members of the Legislature who did *not* resign from office would continue to be subject to a one year prohibition on such appearances and communications.
- 2) Makes conforming and technical changes.

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 appearances before or communications with the Legislature, as specified, if the appearance or communication is made for the purpose of influencing legislative action.
- 3) 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 his official capacity. Provides that "legislative action" also includes the action of the Governor in approving or vetoing any bill.
- 4) 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.
- 5) 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.
- 6) Prohibits a state or local public official from making, participating in making, or using his or her official position to influence, any governmental decision directly relating to any person or other entity with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

While the current 12 month limitation has helped to address the revolving door, unfortunately, it doesn't go quite far enough. We have continued to see legislators resign office to take highly paid lobbying jobs.

This is particularly a problem, as employment negotiations, especially those for high caliber positions, can easily go on for months. Furthermore, the legislature works within a two year legislative cycle, which means policy negotiations can go well beyond one year. This misalignment allows legislators to inappropriately influence policy that they may have been party to prior to leaving office. This bill takes a step in the right direction towards addressing this problem by extending the revolving door ban for a [legislator] who resigns to two years.

In addition to these obvious conflicts of interest, a legislator resigning from office causes significant costs to local governments that have to pay for a special election to fill their vacancy.

- 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 leaving 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:** From 2001-2016, there were 32 instances in which a member of the Legislature resigned from office before the completion of his or her 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.
- 4) **Will This Bill Achieve Its Goal?** The author maintains that the existing one year revolving door ban is insufficient because "[w]e have continued to see legislators resign office to take highly paid lobbying jobs." As detailed above, however, since 2001, only three sitting legislators resigned from office and subsequently accepted governmental relations jobs with private organizations – most of the members who resigned did so in order to serve in other elective offices. Furthermore, two of the three former legislators who resigned from office and accepted governmental relations jobs have not subsequently registered as lobbyists, which may be an indication that those individuals are not engaged in communications or appearances that are covered by the revolving door ban (though, as detailed above, the revolving door ban applies even in situations where a person is not registered as a lobbyist). Given that relatively few members of the Legislature have resigned to take governmental relations jobs with private industry, and the fact that the revolving door ban does not prohibit a former legislator from working in governmental relations as long as the legislator does not appear before or directly contact the Legislature, the degree to which this bill will serve to discourage resignations from the Legislature is unclear.
- 5) **Arguments in Support:** In support of this bill, the California Clean Money Campaign writes:

In recent years, several legislators have left office in the middle of their term to take government affairs positions with big businesses. This is a major disruption of California's legislature because the abandoned seats remain open for many months until expensive and low-turnout special elections can be held. Worse, this practice might raise questions in the public's mind about whether the legislator's plan to leave office early and take a highly-paid position might have influenced their legislative positions and actions...

Although there are many legitimate reasons for leaving office early, elected officials who do so should not benefit by becoming paid lobbyists earlier than

their colleagues who serve out their full terms. Doubling the normal one-year ban on becoming lobbyists for elected officials who do so, as SB 679, is a very reasonable step to stop legislators who resign in the middle of their terms from benefiting financially by lobbying for the very interests whose bills they may be voting on.

- 6) **Related Legislation:** AB 1620 (Dababneh), provides that if a Member of the Legislature resigns from office, his or her "revolving door" ban will commence with the effective date of the resignation and continue until one year after the last day of the second year of the legislative session during which he or she resigned. AB 1620 is pending in the Senate Appropriations Committee. AB 1620 previously proposed extending the length of the "revolving door" ban when a member of the Legislature resigns from office so that it remained in effect until a year had passed since the end of the term to which the person was elected. That version of AB 1620 was approved by this committee on a 7-0 vote, and was approved on the Assembly Floor by a 69-0 vote.

Both this bill and AB 1620 would ensure that no former member of the Legislature would be able to legally lobby the Legislature at any time within the same two-year legislative session during which he or she resigned. However, AB 1620 could provide for a shorter or longer ban than this bill, depending on the effective date of the resignation. For instance, if a member resigned prior to the half-way point in the session, the ban would be longer under AB 1620 but if the resignation occurs after the half-way point the total length of the ban would be shorter than the two years provided in this bill.

- 7) **Previous Legislation:** SB 976 (Vidak) of 2016 was similar to this bill. 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 a legislator who resigned before the completion of his or her term to use surplus campaign funds to pay for any resulting special election, among other provisions. AB 2284 failed passage in this committee on a 2-3 vote.

ACA 9 (Gomez) of 2016 would have prohibited a legislator who vacated his or her 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 his or her 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.

- 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, 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

California Clean Money Campaign

Opposition

None on file.

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