

Date of Hearing: June 19, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 31 (Correa) – As Amended: January 10, 2012

SENATE VOTE: 38-0

SUBJECT: Postgovernment employment: restrictions.

SUMMARY: Extends the post-government employment prohibitions of the Political Reform Act of 1974 (PRA) to include officials who are appointed to a local governing board or commission, as specified. Specifically, this bill:

- 1) Extends the one year post-government employment prohibition, which restricts for a period of one year, a local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district, that leaves his or her office or employment, from acting or otherwise representing for compensation any other person or entity by appearing before, or communicating with, the local government agency of which the official was a member for the purpose of influencing administrative or legislative action, to include all public officials serving as members of local governing boards or commissions with decision-making authority, regardless of whether those officials are elected or appointed.
- 2) Provides that the one year post-government employment prohibition does not apply to an individual who is a member of a local board or commission that is solely advisory.

EXISTING LAW:

- 1) Prohibits, for a period of one year after an official leaves his or her office or employment, a local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency, from representing for compensation any other person by appearing before, or communicating with, that local government agency (or any committee, subcommittee, member of that local government agency, or any officer or employee of the local government agency) if the appearance or communication is made for the purpose of influencing administrative or legislative action or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.
- 2) Provides that the post-government employment prohibition detailed above does not apply to any individual who is appearing or communicating on behalf of another public agency.
- 3) Defines the following terms for the purposes of the post-government employment prohibition described above:
 - a) "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether

quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.

- b) "Legislative action" means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.
- 4) Permits a local government agency to adopt a similar post-government employment ordinance or policy that is more restrictive than the current prohibition stated above.
- 5) Prohibits, for a period of one year, air pollution control and air quality management district former board members, officers, and certain employees from representing any other person by appearing before or communicating with, their former district in an attempt to influence any regulatory action.
- 6) Prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement.

FISCAL EFFECT: According to the Senate Appropriations Committee, the Fair Political Practices Commission (FPPC) administrative costs to General Fund are \$108,000 for 2012-13; \$174,000 for 2013-14, and \$174,000 for 2014-15. The FPPC indicates the following costs associated with personal services: 0.1 Personnel Year (PY) for a Senior Commission Counsel in the Legal Division, 1 PY for a Political Reform Consultant in the Technical Assistance Division, and 0.5 PY for each of an Enforcement Counsel and Special Investigator in the Enforcement Division. Additionally, the FPPC will incur one-time costs of \$8,200 and ongoing communication/training expenses of approximately \$4,600 annually.

COMMENTS:

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

SB 31 closes a loophole in existing law that allows many local government officials to lobby their former agencies immediately after leaving office.

Under existing revolving door laws, only local elected officials are banned from lobbying their former agencies for a year after leaving office. However, appointed members of local governing boards and those who serve by virtue of holding a separate office are not covered.

This loophole was recently exploited in Orange County where a former public member of the Orange County Transportation Authority [OCTA] was immediately hired by a private financial firm to represent them in discussions with OCTA.

This bill expands the existing revolving door law to include not only local elected official, but any other public official serving as a member of a governing board or

commission with decision-making authority.

- 2) Overview of Post-Government Employment Restrictions: Also known as "revolving door" prohibitions, post-government employment restrictions are intended to address situations whereby former state and local elected officers and other officials return to represent clients who have business before, or are seeking to influence policy decisions made by, their former agencies. Additionally, "revolving door" policies seek to prevent former officials from taking advantage of "insider" information to unfairly benefit the clients they represent. The PRA currently places several restrictions on the activities of public officials who are leaving governmental employment. Existing law currently restricts former state officials by both the general "one year" ban and the "permanent" ban. The one year ban, in general, restricts state officials, for a period of one year after leaving their office, from being paid to communicate with their former agency in an attempt to influence certain actions or proceedings. While there are subtle differences, the one year restriction also applies to certain local officials and air pollution control and air quality management district members, officers, and employees. Additionally, former state officials are permanently banned from being paid to appear in a proceeding involving specific parties, such as a lawsuit, administrative law judge hearing, or a state contract, in which the official previously participated.

Furthermore, the PRA also restricts the activities of public officials who are anticipating leaving public service. Currently, all public officials are prohibited from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement.

- 3) Local Ordinances: As the author mentions, the existing post-government employment restrictions do not apply to public officials who are appointed, rather than elected, to local governing boards or commissions.

However, it should be noted that nothing in current law prohibits local jurisdictions from adopting stricter revolving door ordinances which could address this loophole. In fact, according to various news articles, other local jurisdictions are working on passing similar local ordinances to close this loophole. Critics, however, argue that while these local ordinances may serve as a deterrent, they lack the necessary means for enforcement.

- 4) Technical Amendment: The author proposes to make a nonsubstantive technical amendment to the bill. On page 3, in line 7, strike out the word "governing." This amendment is needed as serving on a governing board could never be solely advisory.
- 5) Arguments in Support: The American Federation of State, County and Municipal Employees, AFL-CIO writes in support:

Although revolving door restrictions exist on local elected officials and high-level employees, appointed government officials are not prohibited from lobbying their former offices or agencies. These officials may unfairly use insider knowledge to make financial gain or influence policy. Given the special nature of public service and the responsibility government officials hold to constituents and taxpayers, appointed local government officials should not be excluded from revolving door plans.

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

American Federation of State, County and Municipal Employees, AFL-CIO
California Special Districts Association
Fair Political Practices Commission (Support if funded)
Regional Council of Rural Counties

Opposition

None on file.

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