

Date of Hearing: January 9, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 785 (Mendoza) – As Amended: January 4, 2012

SUBJECT: Political Reform Act of 1974: public officers: financial interest.

SUMMARY: Provides that a public official has a financial interest in a governmental contracting decision if an immediate family member of the public official, as defined, lobbies the agency of the official on that decision or is a high ranking official in a business entity on which it is reasonably foreseeable that the decision will have a material financial effect. Specifically, this bill:

- 1) Provides that a public official who is an elected or appointed member of a state or local government agency has a financial interest in a decision, for the purposes of the Political Reform Act (PRA), if the decision involves a vote by the public official relating to the approval, modification, or cancellation of a contract and if an immediate family member of the public official is either of the following:
 - a) A person acting as an agent for, or otherwise representing, any other person by making a formal or informal appearance before, or by making an oral or written communication to, the state or local government agency, or an officer or employee thereof, for the purpose of influencing the contracting decision; or,
 - b) A person who is a director, officer, or partner of a business entity on which it is reasonably foreseeable that the contracting decision will have a material financial impact.
- 2) Defines "immediate family member," for the purposes of this bill, to mean a spouse or domestic partner, child, parent, sibling, or the spouse or domestic partner of a child, parent, or sibling.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Prohibits a public official, at any level of state or local government, from making, participating in the making, or in any way attempting to use his or her official position to influence, a governmental decision in which he or she knows or has reason to know that he or she has a financial interest. Provides that a public official can be deemed to have a financial interest in a decision on the basis of the decision's financial effect on the official's spouse or dependent child.

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

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

AB 785 states that any elected member of any state or local body, board, or commission shall be deemed to have a financial interest in a contract if the elected member's spouse, domestic partner, child, parent, or sibling, or the spouse of the child, parent or sibling, has a financial interest in that contract. On the occasion of financial interest as defined by this bill, the elected official would recuse him or herself from voting on the contract.

2) Additional Background: In background information provided to the committee in support of this bill, the author's office references several recent news reports of immediate family members of prominent government officials who work as lobbyists, and who lobby on behalf of clients that potentially stand to benefit from governmental decisions made by those officials. The author argues that such arrangements create an ethical gray area for elected officials, and that it is appropriate to clarify state laws governing the interaction between elected officials and their immediate family members when those immediate family members stand to benefit from a contract under review in the official's elected capacity.3) Breaking New Ground: California's existing conflict of interest laws are designed to prevent public officials from using their governmental positions to enrich themselves financially. As a result, those laws regulate situations where a public official's actions may have a direct financial impact on the public official. Because actions that affect the financial interests of a public official's spouse or dependent child may have a corresponding impact on the official, existing conflict of interest laws recognize that the financial interests of an official's spouse or dependent child can create a conflict of interest for the official.

This bill, however, would break new ground by extending the conflict of interest provisions of the PRA to situations where a governmental decision does not have the potential for having a financial impact on an elected official. Under the provisions of this bill, for instance, a public official could be deemed to be financially interested in a governmental contracting decision if the estranged sibling of that public official was an officer in a company that was materially impacted by the decision.

By extending the state's conflict of interest rules to decisions which cannot reasonably be expected to financially impact the public officials making those decisions, this bill would significantly broaden the situations in which elected officials would have to recuse themselves from participating in governmental decisions. The committee may wish to consider whether this broadening of the state's conflict of interest laws is appropriate.

4) 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, generally must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.5) Double-Referral: This bill has been double-referred to the Assembly Committee on Local Government. Due to impending committee deadlines, if this bill is approved in this

committee today, it is scheduled to be heard in the Assembly Committee on Local Government on Wednesday. However, this bill cannot be amended in committee today and still be heard in the Assembly Committee on Local Government before this week's deadline for policy committees to hear and report fiscal bills to the Appropriations Committee. As a result, if this committee reports this bill out with amendments at today's hearing, the bill would need a Joint Rule waiver to be heard in subsequent committees this year.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teachers Association (prior version)

Opposition

League of California Cities

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