

Date of Hearing: May 1, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2410 (Fuentes) – As Amended: April 24, 2012

SUBJECT: Elective office: felony conviction.

SUMMARY: Prohibits a person from running for elected office if that person has been convicted of a felony involving certain factors in the last 20 years, as specified. Specifically, this bill:

- 1) Provides a person is not considered a candidate for, and not eligible to be elected to, any elective office in the state if the election occurs within 20 years of the date upon which the person completes a sentence, including probation, for conviction of a felony that involved a conflict of interests, an act of fraud, dishonesty, a breach of public trust, or money laundering.
- 2) Provides, for purposes of this bill, that "conviction of a felony" includes a conviction of a felony in this state and a conviction under the laws of any other state, the United States, or any foreign government or country of a crime that, if committed in this state, would be a felony, and for which a person has not received a pardon from the Governor of this state, the governor or other officer authorized to grant pardons in another state, the President of the United States, or the officer of the foreign government or country authorized to grant pardons in that foreign jurisdiction.

EXISTING LAW:

- 1) Provides that a person who is convicted of any of the following crimes is disqualified from holding public office in this state:
 - a) Giving or offering a bribe to procure personal election or appointment (Article VII, Section 8, California Constitution).
 - b) Bribery, perjury, forgery, malfeasance in office, or other high crimes (Article VII, Section 8, California Constitution).
 - c) As a public officer, for gratuity or reward, appointing another person to public office, or permitting another person to exercise or discharge the duties of his or her office (Penal Code section 74).
 - d) While a member of the Legislature, refusing to appear before the Senate, Assembly, or any committee of the Legislature after being summoned to testify, or while appearing before the Senate, Assembly, or any committee, refusing to be sworn or to answer any material and proper question, or refusing to produce, upon reasonable notice, any material and proper books, papers, or documents in his or her possession and under his or her control (Government Code section 9412).

- e) While an executive or ministerial officer, employee, or appointee of the state, a county, a city, or another political subdivision of the state, asking for, receiving, or agreeing to receive any bribe to influence any decision made by that person in his or her official capacity (Penal Code section 68).
 - f) While a member of the Legislature or of a legislative body of a city, county, city and county, school district, or other special district, committing any of various crimes against the Legislative power, including bribery and logrolling (Penal Code section 88, Government Code section 9055).
 - g) While an officer, committing any of various bribery and corruption crimes against the public justice, including bribing or threatening judges or jurors (Penal Code section 98).
 - h) Giving or offering a bribe to a member of a city council or a board of supervisors to influence any decision made by that member in his or her official capacity (Penal Code section 165).
 - i) While a public official, aiding the illegal casting of a vote at an election or otherwise facilitating the perpetration of election fraud (Elections Code section 18501).
 - j) While a public official, being financially interested in a contract made in his or her official capacity, or by any body or board of which he or she is a member (Government Code section 1097).
 - k) Giving or offering a bribe to any executive officer in the state to influence any decision made by that officer in his or her official capacity (Penal Code section 67).
 - l) While an officer of the state or of any county, city, town, or district of the state, or while otherwise charged with the receipt, safekeeping, transfer, or disbursement of public moneys, appropriating such moneys for personal use, or refusing to pay any public moneys as required by law (Penal Code section 424).
 - m) Interfering with the work of prisoners employed at a road camp, or giving or attempting to give such prisoners any controlled substances, intoxicating liquors, firearms, weapons, or explosives of any kind (Penal Code section 2772).
 - n) Interrupting the work of prisoners employed at a public park or camp, or giving or attempting to give such prisoners any controlled substances, intoxicating liquors, firearms, weapons, or explosives of any kind (Penal Code section 2790).
- 2) Provides a person is disqualified from holding public office upon conviction of designated crimes as specified in the Constitution and laws of the State (Government Code section 1021).

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

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

AB 2410 (Fuentes) would ban ex-felons who were convicted a felony that violates the public trust from running for public office for 20 years. The intent of this bill is to create accountability and ensure that those seeking to represent Californians have proven to uphold the public's trust in more ways than just serving time and probation.

Specifically, the bill would disqualify ex-felons who have committed a felony related to the following: payment and receipt of bribes and gratuities, honest services fraud, Theft of government property, Financial conflict of interest, fraud offenses committed against both the government and private citizens, mail and wire fraud, mortgage fraud, tax offenses, false claims, perjury, government contract fraud, receipt and payment of kickbacks on government contracts, bank fraud, perjury, and Money laundering. The ban would be lifted 20 years after a felon has served the required sentence and probation.

2) Federal Level: In setting qualifications for federal office, the United States (US) Constitution does not prohibit felons from holding elected federal office. Additionally, the US Constitution provides that "[e]ach house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." According to a 2012 Congressional Research Report, congressional practice provides that Members of Congress may be removed from office before the expiration of their constitutional terms by an "expulsion" from the Senate (if a Senator) or from the House of Representatives (if a Representative) upon formal vote on a resolution agreed to by two-thirds of the membership of each body. While there are no specific grounds for an expulsion expressed in the US Constitution, an expulsion is characterized as a self-disciplinary action necessary to protect the integrity of the institution and its proceedings. For example, expulsion actions in both the House and the Senate generally concern cases of perceived disloyalty to the US government, or the conviction of a criminal statutory offense which involved the abuse of one's official position. According to the report, although expulsion is rare, there have been approximately five House Members expelled, one occurring in the last decade. It should be noted that many Members of Congress have chosen to resign from office rather than face expulsion. Furthermore, the report argues that "the apparent reticence of the Senate or the House to expel a Member for past misconduct after the Member has been duly elected or re-elected by the electorate, with the knowledge of the Member's conduct, appears to reflect in some part the deference traditionally paid in our heritage to the popular will and election choice of the people. In 1914, the Judiciary Committee of the House detailed various policy considerations in expulsions for past misconduct:

In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves

But in considering this question and in arriving at the conclusions we have reached, we

would not have you unmindful of the fact that we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greatest caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its standards and ideals for the standards and ideals of the constituency of the Member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government.

Moreover, the report expresses that the authority to expel has been cautiously used, especially when it may be perceived as usurping the judgment and will of the electorate.

Additionally, according to a US Department of Justice report entitled, "Civil Disabilities of Convicted Felons," there are various federal statutes which provide that a conviction may result in loss of or ineligibility for office. For example, federal statute provides that a person convicted of treason is prohibited from holding any office in the US.

- 3) Will of Voters vs. Public Trust: The author argues that the intent of the bill is to create accountability and ensure that those seeking to represent Californians have proven to uphold the public's trust. This same sentiment has been made in a court cases relating to the interpretation of Article VII, Section 8 of the California Constitution pertaining to public officers and employees and disqualification from holding office. For instance, in Lubin v. Wilson (1991), 232 Cal.App.3d 1422, a case surrounding former Senator Paul B. Carpenter's conviction of racketeering, extortion, and conspiracy and his attempt to appeal his disqualification and forfeiture of public office on the Board of Equalization. Part of the court's opinion acknowledged that the "[r]emoval from public office is simply a consequence of a reasonable and sound public policy, and a condition imposed upon a public official in furtherance of the public interest in good government. Public officials are elected for the benefit of the community and can and should be removed, irrespective of detriment to the individuals involved if the interests of the community so require (State v. Twitchell, supra, 367 P.2d at p. 992.)."

In addition, the court opinion stated that, "[a] person holds office subject to conditions imposed by the state and, where cause for removal is provided by law, the person is deemed to have accepted the office on condition he or she could be removed for cause and in the manner provided (Cline v. Superior Court (1920) 184 Cal. 331, 336)."

It should also be pointed out that, as mentioned above, there are laws in place that prohibit nefarious actions on the part of elected officials. Should the electorate find itself unsatisfied with the actions of their elected official, voters have procedures available to make changes. For instance, the constitution provides the electorate with the power to recall and remove any state or local elected official before their term has expired. A prime example of this occurred in 2003, when former Governor Gray Davis was successfully recalled. According to the SOS's office, since 1913, there have been 154 recall attempts of state elected officials in

California. Nine recall efforts collected enough signatures to qualify for the ballot and of those, the elected official was recalled in five instances. Moreover, should the electorate believe a candidate has violated the public trust, they maintain the ability to vote against the candidate or vote the elected official out of office.

- 4) Is There a Problem?: As mentioned above, the California Constitution directs that “laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office or serving on juries” and although this section is mandatory, it is not self-executing and requires legislation to give it effect. To effectuate the constitutional prohibitions, various state laws were enacted. For instance, various Penal and Government Code sections listed above enumerate events and actions which cause certain crimes to result in an elected official being disqualified from holding public office in the state.

While the author has provided anecdotal evidence to suggest current law is insufficient in its ability to deter such behavior from California’s elected officials, no empirical or statistical evidence was presented to the committee. Moreover, the committee is unaware of any information that demonstrates convicted felons are being elected to office in California. The lack of evidence may demonstrate that California voters are not electing convicted felons as their representatives and consequently question the need for this bill. The committee may wish to consider whether this is a widespread problem in California, and whether the proposal is necessary.

- 5) Enforcement: This bill restricts a person from being eligible for elective office in the state for 20 years if convicted of a felony involving certain elements, such as a felony involving a conflict of interest, an act of fraud, dishonesty, a breach of public trust, or money laundering. While this approach may sound reasonable, and while it can be argued that elected officials should be held to a higher ethical standard, it does raise questions regarding the practical application of those provisions, mainly with regards to enforcement. For instance, what constitutes dishonesty or a breach of the public trust? The terminology used in the bill is ambiguous, broad, and not defined by current law.

To provide clarity and specificity for the practical application of this bill, the committee may wish to adopt the following amendments suggested by committee staff. On page 2, starting on line 7, strike "a conflict of interests, an act of fraud, dishonesty, a breach of a public trust, or money laundering" and insert the following:

accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office

Opposition

None on file.