
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: SB 251 **Hearing Date:** 4/18/23
Author: Newman
Version: 3/8/23
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: elected officers: conflicts of interest

DIGEST

This bill prohibits an elected officer from being employed by another elected officer with the same constituency.

ANALYSIS

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 of 1974 (PRA).
- 2) Prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. Specifies that this provision does not prevent any public official from making or participating in the making of a governmental decision to the extent the official's participation is legally required for the action or decision to be made. Provides that the fact that an official's vote is needed to break a tie does not make the official's participation legally required for purposes of this provision.
- 3) Provides that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any of the following:
 - a. Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more.
 - b. Any real property in which the public official has a direct or indirect interest worth \$2,000 or more.
 - c. Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value

- provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- d. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
 - e. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified shall be adjusted biennially by the FPPC to equal the same amount determined by the FPPC pursuant to a specified provision of the PRA.
 - f. For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.
- 4) Requires every state and local governmental agency to adopt and promulgate a conflicts of interest (COI) code. Requires each COI code to include a specific enumeration of the positions within the agency, with the exception of certain high-ranking public officials who are identified in statute, that involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. Requires each person who holds such an enumerated position to file periodic statements of economic interests (SEIs) disclosing his or her financial interests in accordance with the provisions of the COI Code.

This bill:

- 1) Prohibits an elected officer from being employed by any other elected officer with the same constituency.
- 2) Specifies that "elected officer" does not include a person holding a statewide elective office, as defined.
- 3) Specifies that elected officers share a constituency if any individual is represented by both officers.
- 4) Provides that an elected officer may be employed by any other elected officer with the same constituency if that employment began on or before December 31, 2023.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, an initiative commonly known as the PRA. Proposition 9 created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The Legislature is permitted to amend the PRA, but the amendments must further the purposes of the PRA and requires a two-thirds vote of both houses of the Legislature.

Statements of Economic Interests. As part of the PRA's comprehensive scheme to prevent conflicts of interest by state and local public officials, existing law identifies certain elected and other high-level state and local officials who must file SEIs. Similarly, candidates for those positions must file SEIs. Other state and local public officials and employees are required to file SEIs if the position they hold is designated in an agency's conflict of interest code. A position is designated in an agency's conflict of interest code when the position entails the making or participation in the making of governmental decisions that may foreseeably have a material financial effect on the decision maker's financial interests.

The information that must be disclosed on an SEI, and the location at which an SEI is filed, varies depending on the position held by the individual. Although there are some exceptions, individuals who are required to file an SEI typically must file that document with the agency of which they are an elected official or by which they are employed.

Holding Two Positions. According to the FPPC, nothing in the PRA or its conflict of interest rules prevents a public official from seeking or holding a particular employment position, whether public or private. A conflict of interest may arise only after a person takes office and is subsequently dependent on that person's conduct. A conflict of interest does not prohibit a person from seeking or holding office. Rather, the conflict of interest provisions of the Act prohibit a public official from participating in a decision that will have a financial effect on his or her financial interests. This prohibition is applied on a case-by-case basis.

Incompatible Offices. Government Code Section 1099 codifies the common law prohibition against the holding of "incompatible offices." This doctrine restricts the ability of public officials to hold two different public offices simultaneously if the offices have overlapping and conflicting public duties. For this section to apply, each position must be a "public office."

Pursuant to Section 1099, a person may not simultaneously hold two public offices if: either of the offices exercises a supervisory, auditing or removal power over the other office or body, there is a significant clash of duties or loyalties between the offices, or there are public policy considerations that make it improper. The consequence of holding an incompatible office is that the person is "deemed to have forfeited the first office upon acceding to the second." (Gov. Code Section 1099(b).) In addition, the California Constitution has provisions addressing the holding of two government positions.

The doctrine of incompatible offices is outside the jurisdiction of the FPPC, but the Attorney General's office has issued numerous opinions on the subject which are available on the Attorney General's web site.

COMMENTS

- 1) According to the author: Throughout the state of California, service as a local elected official—on city councils, school boards, community college boards, etc.—generally entails compensation only on a part-time or stipend basis. Consequently, the vast majority of local elected officials depend on other types of work for the bulk

of their earnings. This is the natural byproduct of the design of our governing systems by their framers, who viewed participation in the public sphere as an act of civic altruism and generosity, where the privilege of service was assumed to be the main enticement and reward. Under this construct, able and civic-minded citizens would be inspired to canvas their neighbors and stand for election and, having been selected, find the time in their otherwise busy lives to attend to the community's civic affairs within the jurisdiction of a particular office. Whether this is a good or effective basis, in the current day and age, for sourcing talent to fill the daises of California's local governing bodies is a matter of debate, but it is nevertheless the framework in which public service currently takes place.

What the framers of this system did not have in mind, though, were scenarios where a person would serve in one local elective office while simultaneously serving as the paid staff for another elected official with overlapping constituents. To do so is fairly self-evidently problematic, since it is bound to create situations characterized by actual or perceived conflict of interest at any time.

In California government offices, it's fairly commonplace to find members of an elected official's professional staff who are simultaneously serving as elected officials in their own right (e.g., a legislative district office staffer who is also an elected member of a local city council, school board, or water board). While this has long been a standard feature of legislative and county supervisorial staffs, this practice presents profound issues with respect to conflicted interests, particularly from the perspective of constituents reasonably concerned about their ability to receive a fair hearing and impartial service from those tasked with dutifully serving them in the public sphere.

In order to provide the public with the assurance of unconflicted representation and service, SB 251 would prohibit any full-time, salaried elected official in California from employing any other elected official with common constituents as a member of their paid staff.

- 2) Working For or Directly Hired? SB 251 prohibits an elected officer from being employed by any other elected officer with the same constituency. This could include a multitude of scenarios. For example, someone who is elected to a local parks board may work for the county Sheriff. Under the bill, the employee may need to find other employment because they would be an elected official who is employed by another elected official with an overlapping constituency. The author and committee should consider if the bill should be narrowed to only affect employees are elected officials who are directly hired and employed by another elected official.
- 3) Recusals. The author and the committee should consider whether the elected official employed by an elected official who has an overlapping constituency should recuse themselves from voting on issues that they have worked or advocated for on behalf of their employer (i.e. the elected official employing an elected official).
- 4) Voters Have the Final Say. At the end of the day, voters have the ability to keep someone in office or replace them with someone new. Voters may decide their vote for a variety of reasons. With this, as well as many other issues on the minds of voters, they ultimately decide if there is an inherent conflict by having an elected

official be employed by another elected official and if that conflict warrants keeping the incumbent or elected a replacement.

- 5) Argument in Support. In a letter supporting SB 251, the League of Women Voters of California stated, in part, the following:

The League of Women Voters seeks to promote an open governmental system that is representative, accountable, and responsive, and we support an efficient, effective, and equitable balance of responsibility and authority among the levels of government with accountability to the public. We support SB 251 to limit conflicts of interest, or the appearance of them, on the part of elected officials.

- 6) Argument in Opposition. In a letter opposing SB 251, the California Contract Cities Association stated, in part, the following:

It is our understanding that the legislation's goal is to address conflict of interest issues. However, in its current form, the PRA already provides comprehensive regulation in regards to the conflicts of interest of public officials. Specifically, Chapter 7 of the PRA outlines many detailed requirements to reduce conflicts of interest such as disclosure requirements and postgovernmental employment restrictions. With the existing requirements in mind, it is our position that SB 251 unnecessarily attempts to broaden the scope of the PRA in a way that unfairly targets local elected officers, as state officers are explicitly exempt from the proposed legislation. Further, as written SB 251 is very broad, and therefore we are concerned the legislation could have vast, negative impacts on municipal employment in cities across the State of California.

RELATED/PRIOR LEGISLATION

AB 10 (Gatto) of 2015 would have, among other provisions, required a public official who holds an office listed in Government Code Section 87200 to disclose on his or her SEI, as specified, each governmental decision for which a financial interest resulted in the official's disqualification from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision. AB 10 was vetoed by Governor Brown. In the Governor Brown's veto message, the Governor stated, in part, the following:

The Political Reform Act already requires public officials to disclose their income, investments and business activities with enough particularity so that conflicts of interest can be identified. This bill adds yet more complexity to existing reporting requirements without commensurate benefit, and I am not convinced that this bill will provide more useful information to the public.

POSITIONS

Sponsor: Author

Support: League of Women Voters of California

Oppose: California Cities
California Contract Cities Association
California School Boards Association

-- END --