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

Bill No: SB 573 **Hearing Date:** 4/18/23
Author: Wahab
Version: 3/22/23
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: Conflicts of Interest

DIGEST

This bill prohibits an employee designated in the Conflict of Interest Code for the Senate or the Assembly, for a period of two years after leaving office and for compensation from engaging in lobbying activities, unless certain conditions are met and as specified.

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 (PRA).
- 2) Prohibits a designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position that entails the making, or participation in the making, of decisions that may foreseeably have a material effect on any financial interest, and a member of a state administrative agency, for a period of one year after leaving office or employment for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which the individual worked or represented during the 12 months before leaving office or employment, 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. Provides, for this provision, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board. Provides that the prohibition only applies to designated employees employed by a state administrative agency on or after January 7, 1991.
 - a) Defines "state administrative agency" to mean every state office, department, division, bureau, board, and commission, but does not include the Legislature, the courts, or any agency in the judicial branch of government.

- 3) 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 formal or informal appearances before or communications with the Legislature, any committee or subcommittee, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.
- 4) Prohibits a Member of the Legislature who resigns from office, for a period commencing with the effective date of the resignation and concluding one year after the adjournment sine die of the session in which the resignation occurred, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making formal or informal appearances before or communications with the Legislature, any committee or subcommittee, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.
- 5) 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 the member's official capacity. Provides that "legislative action" also includes the action of the Governor in approving or vetoing any bill.
- 6) 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.
- 7) 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.
- 8) Prohibits a state or local public official from making, participating in making, or using their official position to influence any governmental decision directly relating to any person or other entity with whom the official is negotiating, or has any arrangement concerning, prospective employment.
- 9) Defines "lobbyist," unless certain conditions are met and as specified, to mean either of the following:

- a) Any individual who receives \$2,000 or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through that individual's agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.
- b) An individual directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager, and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a state public retirement system in California or an investment vehicle, as specified in the PRA. This is referred to as a placement agent.

This bill:

- 1) Prohibits an employee designated in the Conflict of Interest Code for the Senate or the Assembly, for a period of two years after leaving office and for compensation from:
 - a) Engaging in any activity that would require the individual to register as a lobbyist under the PRA.
 - b) Engaging in any activity on behalf of a lobbying firm that is registered or has, within the previous three years, been registered or been required to register as a lobbying firm under the PRA.
 - c) Engaging in any activity for the purpose of directly or indirectly influencing legislative or administrative action on behalf of a lobbyist employer that is registered or has, within the previous three years, been registered or been required to register as a lobbyist employer under the PRA.
- 2) Provides that the prohibitions do not apply to an individual engaging in the above activities in 1) on behalf of a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- 3) Provides that the prohibitions established by this bill do not apply to an individual who is or becomes either 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.
 - 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.

BACKGROUND

Postgovernment Employment - One Year Ban. The one-year ban prohibits certain officials, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. Additionally, beginning January 1, 2018, the one-year ban applies to a Member of the Legislature who resigns from office, beginning with the date of resignation and ending one year after the end of the session in which the resignation occurred.

The following persons are subject to the one-year ban:

- 1) Members of the Legislature and other elected state officials.
- 2) Members of state boards and commission with decision-making authority.
- 3) Any individual who holds a position designated in Government Code Section 87200 appointed or employed by a state agency.
- 4) Any individual who manages public investments appointed or employed by a state agency.
- 5) Any state official designated in his or her agency's conflict-of-interest code.
- 6) Any state official that should be designated in his or her agency's conflict-of-interest code. State agency employees, officers, and consultants should be designated in their respective agency's conflict-of-interest code if they make or participate in making governmental decisions.

It should be noted that non-elected employees and consultants of the Legislature, the courts, and any agency in the judicial branch are not subject to the one-year ban unless they held other positions or offices subject to the ban.

Permanent Ban. Existing law also contains a permanent ban for specific former state officials. The permanent ban on "switching sides" prohibits former state officials from working on proceedings that they participated in while working for the state. The ban prohibits appearances and communications to represent any other person as well as aiding, advising, counseling, consulting or assisting in representing any other person, for compensation before any state administrative agency in a proceeding involving specific parties (such as a lawsuit, a hearing before an administrative law judge, or a state contract) if the official previously participated in the proceeding.

The permanent ban applies to every "state administrative official," which is defined as "every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity." However, the ban does not apply to Members, officers, employees, or consultants of the Legislature, the courts, or any agency in the judicial branch of government, unless they held other positions or offices subject to the ban.

Am I a Lobbyist? Existing law generally defines "lobbyist" as any individual who receives \$2,000 or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective

state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.

Regulations promulgated by the Fair Political Practices Commission further define non-contract lobbyists as individuals who spend one-third or more of their time, in any calendar month, for which they receive compensation from his or her employer, engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.

The existing revolving door prohibitions apply whether or not the former elected state officeholder qualifies as a "lobbyist" under this current definition.

COMMENTS

- 1) According to the author: Working in the Legislature confers a lot of knowledge upon legislators and staff regarding the inner workings of the legislative process. This knowledge is often achieved through hard work, trust, and relationship building. When members and employees of the Legislature depart to work with lobbying firms, established trust can be compromised as they depart with sensitive information. This is information their colleagues may not have wanted to share with lobbyists, but entrusted to their fellow Members or employees. In some cases, the information entrusted to a former colleague may undermine ongoing legislative efforts. Further, we can reduce the likelihood of lobbying firms enticing legislative staff to join their organizations in exchange for sensitive information or influencing positions on legislation.

Revolving door policies are critical in maintaining the integrity of our legislative processes. Without them, employees become highly susceptible to undue influence from people who seek to exploit their knowledge, experience, and relationships for private gain and in service of special interests. Additionally, employees themselves may choose to use that same knowledge, experience, and breadth of contacts to benefit themselves upon leaving employment with the Legislature. SB 573 would address both these situations and bolster the integrity of our legislative process.

- 2) Affecting All Staffers? This bill only affects legislative employees designated in each legislative house's Conflict of Interest Code. This does not include all legislative employees. The author and the committee should consider whether or not this ban should include all employees as well as what effect a potential lobbying ban would have on attracting and retaining legislative staff.
- 3) One Way. This bill would only affect a specific number of legislative staffers, as noted above. However, there is nothing prohibiting a lobbyist from being hired immediately by either legislative house. The committee should consider whether there should be an equitable type of ban for lobbyists, who may have been compensated for specific legislative victories or defeats, from serving in government or as an employee of the Legislature.
- 4) Argument in Opposition. In a letter opposing SB 573, We Said Enough stated, in part, the following:

SB 573 would place excessive and unnecessary restrictions on the future employment opportunities of legislative staff and have a chilling effect on public service as well as reducing the availability and overall expertise of the state's workforce.

The restrictions outlined in SB 573 are unfairly burdensome, extending far beyond what current law imposes on elected Legislative officials. Under current law, elected officials are prohibited from lobbying before the Legislature for one year after leaving elected office. However, they are allowed to hold positions in public policy and analysis in an advisory, educational or consulting capacity. These limitations exist to ensure that elected and appointed officials who author and vote on various laws, regulations and budget items are subject to a higher level of scrutiny. In theory, these policies prevent or deter the exchange of political favors for future employment opportunities.

[...]

By prohibiting employment at a lobbyist employer for two years, SB 573 will effectively prohibit most businesses and major industries in the fourth largest economy in the world from hiring qualified public policy staff. It will also eliminate the bulk of employment options in a typical and reasonable career trajectory for public servants following their tenure with the legislature, and will reduce the quality of public policy crafted within the state. Legislators have set terms but at any time are free to leave their office to pursue other elected roles, or leave public life completely. If SB 573 were in place, legislative staff, through no fault of their own, would be left with limited options as a result of the unfair limitations proposed by this measure.

RELATED/PRIOR LEGISLATION

AB 1620 (Dababneh), Chapter 800, Statutes of 2017, provided that if a Member of the Legislature resigns from office, his or her "revolving door" prohibition will commence with the effective date of the resignation and continue until one year after adjournment sine die of the legislative session during which he or she resigned.

POSITIONS

Sponsor: Author

Support: None received

Oppose: We Said Enough

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