

AMENDED IN ASSEMBLY MAY 10, 2010

AMENDED IN ASSEMBLY MARCH 17, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1743**

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**Introduced by Assembly Member Hernandez**  
**(Principal coauthor: Assembly Member Lieu)**  
**(Coauthors: Assembly Members Block, Blumenfield, Buchanan,**  
**Ma, Portantino, Saldana, and Audra Strickland)**  
(Coauthor: Senator Correa)

February 8, 2010

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An act to amend Sections 7513.8, 82002, and 82039 of, and to add Sections ~~7513.86~~, 7513.86, 7513.87, 82025.3, and 82047.3 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1743, as amended, Hernandez. Political Reform Act of 1974: placement agents.

Existing law regulates investments made by public pension and retirement systems and defines the term "placement agent" to mean a person or entity hired, engaged, or retained by an external manager, as defined, to raise money or investment from a public retirement system in California. Existing law, the Political Reform Act of 1974, provides for the comprehensive regulation of the lobbying industry, including defining the term "lobbyist" and regulating the conduct of lobbyists. Among its provisions, the act requires lobbyists to register with the Secretary of State and to file periodic disclosure reports, and it prohibits lobbyists from engaging in certain activities in connection with legislative and administrative actions, as defined.

This bill would amend the existing definition of “placement agent” to mean a person or entity hired, engaged, or retained by an external manager, as defined, to raise money or investment from a public retirement system in California, ~~but for compensation, and~~ would exclude from that definition an employee, officer, director, equityholder, partner, member, or trustee of an external manager who spends  $\frac{1}{3}$  or more of his or her time, during a calendar year, managing the assets controlled by the external manager. The bill would define “placement agent” in a similar way for purposes of the Political Reform Act of 1974, except that the definition would ~~also include~~ *be limited to* an individual acting ~~independently~~ to raise money or investment from a *state* public retirement system in California *and would not include in-house sales employees, officers, or directors of specified external managers*. In addition, the bill would prohibit a person from acting as a placement agent in connection with any potential system investment made by a state public retirement system unless that person is registered as a lobbyist and is in full compliance with the Political Reform Act of 1974 as that act applies to lobbyists. The bill would also require a person acting as a placement agent in connection with any potential system investment made by a local public retirement system to file any applicable reports with a local government agency that requires lobbyists to register and file reports and to comply with any applicable requirements imposed by a local government agency ~~in addition to those imposed by state law~~. The bill would provide that an individual acting as a placement agent is a lobbyist for purposes of the Political Reform Act of 1974 and is thereby required to comply with all regulations and restrictions imposed on lobbyists by the act, and the bill would further expand the definition of “administrative action” for purposes of the act to include, with regard only to placement agents, the decision by any state agency to enter into a contract to invest state public retirement system assets on behalf of a *state* public retirement system.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a 2/3 vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7513.8 of the Government Code is  
2 amended to read:

3 7513.8. As used in Sections 7513.85, 7513.86, 7513.87, 7513.9,  
4 and 7513.95:

5 (a) “Board” means the retirement board of a public pension or  
6 retirement system, as defined in subdivision (h) of Section 17 of  
7 Article XVI of the California Constitution.

8 (b) “External manager” means an asset management firm that  
9 is seeking to be, or has been, retained by a public retirement system  
10 in California to manage a portfolio of assets, including securities,  
11 for a fee.

12 (c) (1) “Placement agent” means any person or entity hired,  
13 engaged, or retained by, or acting on behalf of, an external  
14 manager, or on behalf of another placement agent, to act or having  
15 acted *for compensation* as a finder, solicitor, marketer, consultant,  
16 broker, or other intermediary to raise money or investment from,  
17 or to obtain access to, a public retirement system in California,  
18 directly or indirectly, including, without limitation, through an  
19 investment vehicle.

20 ~~Notwithstanding the foregoing~~

21 (2) *Notwithstanding paragraph (1)*, an employee, officer,  
22 director, equityholder, partner, member, or trustee of an external  
23 manager who spends one-third or more of his or her time, during  
24 a calendar year, managing the assets controlled by the external  
25 manager is not a placement agent.

26 (3) *For purposes of this subdivision, “investment vehicle” means*  
27 *a partnership, limited partnership, limited liability company, or*  
28 *other investment vehicle managed by an external manager in which*

1 *a public retirement system in California is the majority investor*  
2 *and that is organized in order to invest in other external managers.*

3 SEC. 2. Section 7513.86 is added to the Government Code, to  
4 read:

5 7513.86. A person shall not act as a placement agent in  
6 connection with any potential system investment made by a state  
7 public retirement system unless that person is registered as a  
8 lobbyist in accordance with Chapter 6 (commencing with Section  
9 86100) of Title 9 and is in full compliance with the Political  
10 Reform Act of 1974 (Title 9 (commencing with Section 81000))  
11 as that act applies to lobbyists.

12 SEC. 3. Section 7513.87 is added to the Government Code, to  
13 read:

14 7513.87. (a) A person acting as a placement agent in  
15 connection with any potential system investment made by a local  
16 public retirement system shall file any applicable reports with a  
17 local government agency that requires lobbyists to register and  
18 file reports and shall comply with any applicable requirements  
19 imposed by a local government agency pursuant to Section 81013;  
20 ~~in addition to the applicable requirements of this chapter.~~

21 (b) This section does not apply to an employee, officer, director,  
22 equityholder, partner, member, or trustee of an external manager  
23 who spends one-third or more of his or her time, during a calendar  
24 year, managing the assets controlled by the external manager.

25 SEC. 4. Section 82002 of the Government Code is amended  
26 to read:

27 82002. (a) “Administrative action” means either of the  
28 following:

29 (1) The proposal, drafting, development, consideration,  
30 amendment, enactment, or defeat by any state agency of any rule,  
31 regulation, or other action in any ratemaking proceeding or any  
32 quasi-legislative proceeding, which shall include any proceeding  
33 governed by Chapter 3.5 (commencing with Section 11340) of  
34 Part 1 of Division 3 of Title 2.

35 (2) With regard only to placement agents, the decision by any  
36 state agency to enter into a contract to invest state public retirement  
37 system assets on behalf of a *state* public retirement system.

38 (b) “Ratemaking proceeding” means, for the purposes of a  
39 proceeding before the Public Utilities Commission, any proceeding  
40 in which it is reasonably foreseeable that a rate will be established,

1 including, but not limited to, general rate cases, performance-based  
2 ratemaking, and other ratesetting mechanisms.

3 (c) “Quasi-legislative proceeding” means, for purposes of a  
4 proceeding before the Public Utilities Commission, any proceeding  
5 that involves consideration of the establishment of a policy that  
6 will apply generally to a group or class of persons, including, but  
7 not limited to, rulemakings and investigations that may establish  
8 rules affecting an entire industry.

9 SEC. 5. Section 82025.3 is added to the Government Code, to  
10 read:

11 82025.3. “External manager” means an asset management firm  
12 that is seeking to be, or has been, retained by a public retirement  
13 system in California to manage a portfolio of assets, including  
14 securities, for a fee.

15 SEC. 6. Section 82039 of the Government Code is amended  
16 to read:

17 82039. (a) “Lobbyist” means either of the following:

18 (1) Any individual who receives two thousand dollars (\$2,000)  
19 or more in economic consideration in a calendar month, other than  
20 reimbursement for reasonable travel expenses, or whose principal  
21 duties as an employee are, to communicate directly or through his  
22 or her agents with any elective state official, agency official, or  
23 legislative official for the purpose of influencing legislative or  
24 administrative action.

25 (2) A placement agent, as defined in Section 82047.3.

26 (b) An individual is not a lobbyist by reason of activities  
27 described in Section 86300.

28 (c) For the purposes of subdivision (a), a proceeding before the  
29 Public Utilities Commission constitutes “administrative action” if  
30 it meets any of the definitions set forth in subdivision (b) or (c) of  
31 Section 82002. However, a communication made for the purpose  
32 of influencing this type of Public Utilities Commission proceeding  
33 is not within subdivision (a) if the communication is made at a  
34 public hearing, public workshop, or other public forum that is part  
35 of the proceeding, or if the communication is included in the  
36 official record of the proceeding.

37 SEC. 7. Section 82047.3 is added to the Government Code, to  
38 read:

39 82047.3. (a) “Placement agent” means an individual ~~acting~~  
40 ~~independently,~~ or hired, engaged, or retained by, or acting on behalf

1 of, an external manager, or on behalf of another placement agent,  
2 to act or having acted; *for compensation* as a finder, solicitor,  
3 marketer, consultant, broker, or other intermediary to raise money  
4 or investment from, or to obtain access to, a *state* public retirement  
5 system in California, directly or indirectly, including, without  
6 limitation, through an investment vehicle.

7 ~~Notwithstanding the foregoing~~

8 *(b) Notwithstanding subdivision (a), an employee, officer,*  
9 *director, equityholder, partner, member, or trustee of an external*  
10 *manager who spends one-third or more of his or her time, during*  
11 *a calendar year, managing the assets controlled by the external*  
12 *manager is not a placement agent.*

13 *(c) Notwithstanding subdivision (a), an in-house sales employee,*  
14 *officer, or director of an external manager registered with the*  
15 *Securities and Exchange Commission who is selected by a*  
16 *competitive bidding process subject to subdivision (a) of Section*  
17 *20153 and agrees to a fiduciary standard of care when managing*  
18 *a portfolio of assets of a state public retirement system in*  
19 *California is not a placement agent.*

20 *(d) For purposes of this subdivision, “investment vehicle” means*  
21 *a partnership, limited partnership, limited liability company, or*  
22 *other investment vehicle managed by an external manager in which*  
23 *a public retirement system in California is the majority investor*  
24 *and that is organized in order to invest in other external managers.*

25 SEC. 8. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

34 SEC. 9. The Legislature finds and declares that this bill furthers  
35 the purposes of the Political Reform Act of 1974 within the  
36 meaning of subdivision (a) of Section 81012 of the Government  
37 Code.

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