

AMENDED IN SENATE JUNE 17, 2010

AMENDED IN ASSEMBLY MAY 10, 2010

AMENDED IN ASSEMBLY MARCH 17, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1743

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

February 8, 2010

An act to amend Sections 7513.8, 82002, and 82039 of, and to add Sections 7513.86, 7513.87, 82025.3, ~~and 82047.3~~ 82047.3, and 86206 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~~, *including accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action*, 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 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 be limited to an individual acting 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 *or of affiliates of those 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. 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. *The bill would specify that a placement agent who is registered with the Securities and Exchange Commission and regulated by the Financial Industry Regulatory Authority is permitted to receive a payment of fees for contractual services provided to an investment manager, except to the extent that payment of fees is*

prohibited by the proscription on contingency payments to placement agents. Additionally, the bill would require the Public Employees' Retirement System and the State Teachers' Retirement System to each provide to the Legislature, not later than August 1, 2012, a report on the use of placement agents in connection with investments made by those retirement systems.

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

1 acted for compensation as a finder, solicitor, marketer, consultant,
2 broker, or other intermediary to raise money or investment from,
3 or to obtain access to, a public retirement system in California,
4 directly or indirectly, including, without limitation, through an
5 investment vehicle.

6 (2) Notwithstanding paragraph (1), an employee, officer,
7 director, equityholder, partner, member, or trustee of an external
8 manager who spends one-third or more of his or her time, during
9 a calendar year, managing the assets controlled by the external
10 manager is not a placement agent.

11 (3) For purposes of this subdivision, “investment vehicle” means
12 a partnership, limited partnership, limited liability company, or
13 other investment vehicle managed by an external manager in which
14 a public retirement system in California is the majority investor
15 and that is organized in order to invest ~~in~~ with other external
16 managers.

17 SEC. 2. Section 7513.86 is added to the Government Code, to
18 read:

19 7513.86. A person shall not act as a placement agent in
20 connection with any potential system investment made by a state
21 public retirement system unless that person is registered as a
22 lobbyist in accordance with Chapter 6 (commencing with Section
23 86100) of Title 9 and is in full compliance with the Political
24 Reform Act of 1974 (Title 9 (commencing with Section 81000))
25 as that act applies to lobbyists.

26 SEC. 3. Section 7513.87 is added to the Government Code, to
27 read:

28 7513.87. (a) A person acting as a placement agent in
29 connection with any potential system investment made by a local
30 public retirement system shall file any applicable reports with a
31 local government agency that requires lobbyists to register and
32 file reports and shall comply with any applicable requirements
33 imposed by a local government agency pursuant to Section 81013.

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

38 SEC. 4. Section 82002 of the Government Code is amended
39 to read:

1 82002. (a) “Administrative action” means either of the
2 following:

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

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

12 (b) “Ratemaking proceeding” means, for the purposes of a
13 proceeding before the Public Utilities Commission, any proceeding
14 in which it is reasonably foreseeable that a rate will be established,
15 including, but not limited to, general rate cases, performance-based
16 ratemaking, and other ratesetting mechanisms.

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

23 SEC. 5. Section 82025.3 is added to the Government Code, to
24 read:

25 82025.3. “External manager” means an asset management firm
26 that is seeking to be, or has been, retained by a public retirement
27 system in California to manage a portfolio of assets, including
28 securities, for a fee.

29 SEC. 6. Section 82039 of the Government Code is amended
30 to read:

31 82039. (a) “Lobbyist” means either of the following:

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

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

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

3 (c) For the purposes of subdivision (a), a proceeding before the
4 Public Utilities Commission constitutes “administrative action” if
5 it meets any of the definitions set forth in subdivision (b) or (c) of
6 Section 82002. However, a communication made for the purpose
7 of influencing this type of Public Utilities Commission proceeding
8 is not within subdivision (a) if the communication is made at a
9 public hearing, public workshop, or other public forum that is part
10 of the proceeding, or if the communication is included in the
11 official record of the proceeding.

12 SEC. 7. Section 82047.3 is added to the Government Code, to
13 read:

14 82047.3. (a) “Placement agent” means an individual hired,
15 engaged, or retained by, or acting on behalf of, an external
16 manager, or on behalf of another placement agent, to act or having
17 acted for compensation as a finder, solicitor, marketer, consultant,
18 broker, or other intermediary to raise money or investment from,
19 or to obtain access to, a state public retirement system in California,
20 directly or indirectly, including, without limitation, through an
21 investment vehicle.

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

27 (c) Notwithstanding subdivision (a), an in-house ~~sales~~ employee,
28 officer, or director of an external manager, *or of an affiliate of an*
29 *external manager*, registered with the Securities and Exchange
30 Commission, *or operating under an exemption from the Securities*
31 *and Exchange Commission*, who is selected by a competitive
32 bidding process subject to *subdivision (a) of Section 22364 of the*
33 *Education Code* or subdivision (a) of Section 20153 of this code,
34 *as applicable*, and agrees to a fiduciary standard of care, *as defined*
35 *by the standards of conduct applicable to the retirement board of*
36 *a public pension or retirement system and set forth in Section 17*
37 *of Article XVI of the California Constitution*, when managing a
38 portfolio of assets of a state public retirement system in California
39 is not a placement agent.

1 (d) For purposes of this ~~subdivision~~ *section*, “investment
2 vehicle” means a partnership, limited partnership, limited liability
3 company, or other investment vehicle managed by an external
4 manager in which a *state* public retirement system in California
5 is the majority investor and that is organized in order to invest ~~in~~
6 *with* other external managers.

7 *SEC. 8. Section 86206 is added to the Government Code, to*
8 *read:*

9 *86206. Nothing in this article prohibits the payment of fees for*
10 *contractual services provided to an investment manager by a*
11 *placement agent, as defined in Section 82047.3, who is registered*
12 *with the Securities and Exchange Commission and regulated by*
13 *the Financial Industry Regulatory Authority, except as provided*
14 *in subdivision (f) of Section 86205.*

15 *SEC. 9. Not later than August 1, 2012, the Public Employees’*
16 *Retirement System and the State Teachers’ Retirement System*
17 *shall each provide to the respective chairpersons of the Assembly*
18 *Committee on Public Employees, Retirement, and Social Security*
19 *and the Senate Committee on Public Employment and Retirement*
20 *a report on the use of placement agents in connection with*
21 *investments made by those retirement systems. Each report shall*
22 *include all of the following:*

23 *(a) The number of, and descriptions of, those investments made*
24 *by the retirement system through external managers that have*
25 *compensated placement agents in connection with the investments.*

26 *(b) A description of those external managers based on the size*
27 *of assets under their control.*

28 *(c) The annual performance of investments secured through*
29 *placement agents.*

30 ~~SEC. 8.~~

31 *SEC. 10. No reimbursement is required by this act pursuant to*
32 *Section 6 of Article XIII B of the California Constitution because*
33 *the only costs that may be incurred by a local agency or school*
34 *district will be incurred because this act creates a new crime or*
35 *infraction, eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section 17556 of*
37 *the Government Code, or changes the definition of a crime within*
38 *the meaning of Section 6 of Article XIII B of the California*
39 *Constitution.*

1 ~~SEC. 9.~~

2 *SEC. 11.* The Legislature finds and declares that this bill
3 furthers the purposes of the Political Reform Act of 1974 within
4 the meaning of subdivision (a) of Section 81012 of the Government
5 Code.

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