

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Furutani
(Coauthor: Assembly Member Allen)

February 17, 2011

An act to add ~~Section 7508.6~~ *Sections 87408, 87409, and 87410* to the Government Code, relating to ~~public employees' retirement the Political Reform Act of 1974.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as amended, Furutani. ~~Public employees' retirement: pension fund management. Political Reform Act of 1974: postgovernment employment restrictions.~~

The Public Employees' Retirement Law creates the Public Employees' Retirement Fund, which is a trust fund created and administered solely for the benefit of the members and retired members of this system and their survivors and beneficiaries. The Board of Administration of the Public Employees' Retirement System (PERS) has the exclusive control of the administration and investment of the retirement fund.

The Teachers' Retirement Law establishes the State Teachers' Retirement System (STRS) in order to provide a financially sound plan for the retirement, with adequate retirement allowances, for teachers in public schools of the state, teachers in schools supported by the state, and other persons employed in connection with the schools. The plan and the system are administered by the Teachers' Retirement Board.

~~This bill would prohibit an individual, who was a member of the retirement board of PERS or STRS or an administrator, executive officer, investment officer, or general counsel of the system, from~~

~~accepting employment, within 2 years after separation from the system, with any employer with which the individual participated personally and substantially with contracts or investments valued greater than \$10 million any time in the previous 5 years while the individual was employed by, or served on the board of, the system, as specified. The bill would except from that prohibition a former employee of PERS or STRS working for any entity whose principal market is unrelated to the individual's prior service.~~

~~The bill would also prohibit an individual from, for 2 years after separation from the system, accepting employment with any placement agent who has successfully placed an investment with either PERS or STRS during the prior 10 years.~~

The Political Reform Act of 1974 imposes specified restrictions on the postgovernment employment activities of elected state officers and designated employees of state administrative agencies, including prohibiting those individuals from representing another person, by means of an appearance or communication, before a state administrative agency for the purpose of influencing specified actions for a period of one year after leaving state service.

This bill would prohibit members of the Board of Administration of PERS, members of the Teachers' Retirement Board, and specified officers and employees of PERS and STRS from engaging in certain employment activities after leaving service with PERS or STRS. Specifically, the bill would prohibit those individuals from representing another person, by means of an appearance or communication, before PERS or STRS for the purpose of influencing specified actions for a period of 4 years after leaving service with PERS or STRS. The bill would also prohibit those individuals from assisting a business entity, for a period of 2 years after leaving service with PERS or STRS, to perform, implement, or execute a contract if the individuals participated in awarding, negotiating, or administering a contract of greater than \$10,000,000 with that business entity within 2 years prior to leaving service with PERS or STRS. In addition, the bill would prohibit those individuals from accepting compensation for providing services as a placement agent, for a period of 10 years after leaving service with PERS or STRS, in connection with investments or other business of PERS or STRS.

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: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 87408 is added to the Government Code,
- 2 to read:
- 3 87408. (a) A member of the Board of Administration of the
- 4 Public Employees’ Retirement System, an individual in a position
- 5 designated in subdivision (a) or (e) of Section 20098 or in an
- 6 equivalent senior management position, or an information
- 7 technology or health benefits manager with a career executive
- 8 assignment designation with the Public Employees’ Retirement
- 9 System, for a period of four years after leaving that office or
- 10 position, shall not, for compensation, act as an agent or attorney
- 11 for, or otherwise represent, any other person, except the state, by
- 12 making a formal or informal appearance before, or an oral or
- 13 written communication to, the Public Employees’ Retirement
- 14 System, or an officer or employee thereof, if the appearance or
- 15 communication is made for the purpose of influencing
- 16 administrative or legislative action, or influencing an action or
- 17 proceeding involving the issuance, amendment, awarding, or
- 18 revocation of a permit, license, grant, or contract, or the sale or
- 19 purchase of goods or property.
- 20 (b) A member of the Teachers’ Retirement Board, an individual
- 21 in a position designated in subdivision (a) or (d) of Section 22212.5
- 22 of the Education Code, or an information technology manager

1 *with a career executive assignment designation with the State*
2 *Teachers' Retirement System, for a period of four years after*
3 *leaving that office or position, shall not, for compensation, act as*
4 *an agent or attorney for, or otherwise represent, any other person,*
5 *except the state, by making a formal or informal appearance*
6 *before, or an oral or written communication to, the State Teachers'*
7 *Retirement System, or an officer or employee thereof, if the*
8 *appearance or communication is made for the purpose of*
9 *influencing administrative or legislative action, or influencing an*
10 *action or proceeding involving the issuance, amendment, awarding,*
11 *or revocation of a permit, license, grant, or contract, or the sale*
12 *or purchase of goods or property.*

13 *SEC. 2. Section 87409 is added to the Government Code, to*
14 *read:*

15 *87409. (a) A member of the Board of Administration of the*
16 *Public Employees' Retirement System, an individual in a position*
17 *designated in subdivision (a) or (e) of Section 20098 or in an*
18 *equivalent senior management position, or an information*
19 *technology or health benefits manager with a career executive*
20 *assignment designation with the Public Employees' Retirement*
21 *System, for a period of two years after leaving that office or*
22 *position, shall not assist a business entity to perform, implement,*
23 *or execute a contract if, during the period of two years prior to*
24 *leaving that office or position, the individual participated, as an*
25 *official or employee of the Public Employees' Retirement System,*
26 *in the award, negotiation, or administration of a contract, or an*
27 *amendment to a contract, that has or had a value of greater than*
28 *ten million dollars (\$10,000,000) and to which that business entity*
29 *is or was a party.*

30 *(b) A member of the Teachers' Retirement Board, an individual*
31 *in a position designated in subdivision (a) or (d) of Section 22212.5*
32 *of the Education Code, or an information technology manager*
33 *with a career executive assignment designation with the State*
34 *Teachers' Retirement System, for a period of two years after*
35 *leaving that office or position, shall not assist a business entity to*
36 *perform, implement, or execute a contract if, during the period of*
37 *two years prior to leaving that office or position, the individual*
38 *participated, as an official or employee of the State Teachers'*
39 *Retirement System, in the award, negotiation, or administration*
40 *of a contract, or an amendment to a contract, that had a value of*

1 greater than ten million dollars (\$10,000,000) and to which that
2 business entity was or is a party.

3 (c) For purposes of this section:

4 (1) "Administration of a contract" means the management,
5 direction, or oversight of a contract, including evaluation of the
6 contractor's performance.

7 (2) "Business entity" has the same meaning as set forth in
8 Section 82005, and includes a parent or subsidiary of a business
9 entity.

10 (3) A contract to which a business entity is or was a party has
11 a value of greater than ten million dollars (\$10,000,000) if the
12 business entity received or will receive more than ten million
13 dollars (\$10,000,000) in revenue during the term of the contract
14 as a result of the contract.

15 (4) Notwithstanding paragraph (3), with respect to a business
16 entity that is an external manager and that receives a performance
17 fee, a contract to which the business entity is or was a party is
18 presumed to have a value of greater than ten million dollars
19 (\$10,000,000) if the external manager managed or manages fifty
20 million dollars (\$50,000,000) or more in an investment fund or
21 managed or manages, pursuant to contract, a portfolio of securities
22 or other assets valued at two hundred fifty million dollars
23 (\$250,000,000) or more.

24 SEC. 3. Section 87410 is added to the Government Code, to
25 read:

26 87410. (a) A member of the Board of Administration of the
27 Public Employees' Retirement System or an individual in a position
28 designated in subdivision (a) or (e) of Section 20098, for a period
29 of 10 years after leaving that office or position, shall not accept
30 compensation for providing services as a placement agent in
31 connection with investments or other business of the Public
32 Employees' Retirement System.

33 (b) A member of the Teachers' Retirement Board or an
34 individual in a position designated in subdivision (a) or (d) of
35 Section 22212.5 of the Education Code, for a period of 10 years
36 after leaving that office or position, shall not accept compensation
37 for providing services as a placement agent in connection with
38 investments or other business of the State Teachers' Retirement
39 System.

1 *SEC. 4. No reimbursement is required by this act pursuant to*
 2 *Section 6 of Article XIII B of the California Constitution because*
 3 *the only costs that may be incurred by a local agency or school*
 4 *district will be incurred because this act creates a new crime or*
 5 *infraction, eliminates a crime or infraction, or changes the penalty*
 6 *for a crime or infraction, within the meaning of Section 17556 of*
 7 *the Government Code, or changes the definition of a crime within*
 8 *the meaning of Section 6 of Article XIII B of the California*
 9 *Constitution.*

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

13 ~~SECTION 1. The Legislature finds and declares all of the~~
 14 ~~following:~~

15 ~~(a) The flow of skills between the public and private sector~~
 16 ~~promotes efficiency and collaboration between both sectors and~~
 17 ~~is essential to the success of many government programs.~~

18 ~~(b) The trading of information acquired as a government~~
 19 ~~employee and unavailable to members of the general public, for~~
 20 ~~the purpose of personal enrichment, undermines taxpayer~~
 21 ~~investments and public confidence in those investments.~~

22 ~~SEC. 2. Section 7508.6 is added to the Government Code, to~~
 23 ~~read:~~

24 ~~7508.6. (a) (1) An individual described in paragraph (2) shall~~
 25 ~~not, for two years after separation from a system, accept~~
 26 ~~employment with any employer with which the individual~~
 27 ~~participated personally and substantially with system contracts or~~
 28 ~~investments valued greater than ten million dollars (\$10,000,000)~~
 29 ~~any time in the previous five years while the individual was~~
 30 ~~employed by, or serving on the board of, the system.~~

31 ~~(2) Paragraph (1) shall apply to any individual who was a~~
 32 ~~member of the retirement board of a system, or an administrator,~~
 33 ~~executive officer, investment officer, or general counsel of a~~
 34 ~~system.~~

35 ~~(b) The prohibition in subdivision (a) includes, but is not limited~~
 36 ~~to, any individual who participate personally and substantially in~~
 37 ~~system investments or contracts in excess of ten million dollars~~
 38 ~~(\$10,000,000) when any of the following apply:~~

39 ~~(1) The decision to award a modification of a contract or~~
 40 ~~subcontract was in excess of ten million dollars (\$10,000,000).~~

- 1 ~~(2) The decision to award a task order or delivery order was in~~
2 ~~excess of ten million dollars (\$10,000,000).~~
- 3 ~~(3) The decision to establish overhead or other rates was valued~~
4 ~~in excess of ten million dollars (\$10,000,000).~~
- 5 ~~(4) The decision to approve issuing a payment or payments was~~
6 ~~in excess of ten million dollars (\$10,000,000).~~
- 7 ~~(5) The decision to pay or settle a claim was in excess of ten~~
8 ~~million dollars (\$10,000,000).~~
- 9 ~~(e) The prohibition in subdivision (a) shall not prohibit a former~~
10 ~~employee of a system from working for any entity whose principal~~
11 ~~market is unrelated to the individual's prior service.~~
- 12 ~~(d) Notwithstanding subdivision (a), an individual shall not, for~~
13 ~~two years after separation from a system, accept employment with~~
14 ~~any placement agent, as defined by subdivision (d) of Section~~
15 ~~7513.8, who has successfully placed an investment with either~~
16 ~~system during the prior 10 years.~~
- 17 ~~(e) For the purposes of this section, "system" means the Public~~
18 ~~Employees' Retirement System or the State Teachers' Retirement~~
19 ~~System.~~