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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)
(Coauthors: Senators Alquist, Correa, Hancock, Strickland, and Wolk)

February 8, 2010

An act to amend Sections 7513.8, 82002, and 82039 of, and to add Sections 7513.86, 7513.87, 82025.3, 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, 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, as defined, hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, as defined, to act as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to 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 ⅓ or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held 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 in connection with the offer or sale of the securities, assets, or services of an external manager to a state public retirement system in California and would not include 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 ⅔ vote of each house and compliance with specified procedural requirements.

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

Vote: ⅔. 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 either of the following:

(1) A person who is seeking to be, or is, retained by a board to manage a portfolio of securities or other assets for compensation.

(2) A person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a board.

(c) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, or association, either domestic or foreign.

(d) (1) "Placement agent" means any person hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a board or an investment vehicle, either directly or indirectly.

(2) Notwithstanding paragraph (1), an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager is not a placement agent.

(3) For purposes of this subdivision, "investment vehicle" means a corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, constituting or managed by an external manager in which a board is the majority investor and that is organized in order to invest with, or retain the investment management services of, other external managers.

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

7513.86. Except as provided in subdivisions (b) and (c) of Section 82047.3, a person shall not act 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 in accordance with Chapter 6 (commencing with Section 86100) of Title 9 and is in full compliance with the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) as that act applies to lobbyists.

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

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

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

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

82002. (a) "Administrative action" means either of the following:

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

(2) 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.

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

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

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

82025.3. "External manager" means either of the following:

(1) A person who is seeking to be, or is, retained by a state public retirement system in California to manage a portfolio of securities or other assets for compensation.

(2) A person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a state public retirement system in California.

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

82039. (a) "Lobbyist" means either of the following:

(1) Any individual who receives two thousand dollars ($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.

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

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

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

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

82047.3. (a) "Placement agent" means an individual hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a state public retirement system in California or an investment vehicle, either directly or indirectly.

(b) Notwithstanding subdivision (a), an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager is not a placement agent.

(c) Notwithstanding subdivision (a), an employee, officer, or director of an external manager, or of an affiliate of an external manager, is not a placement agent if all of the following apply:

(1) The external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or, if exempt from or not subject to registration with the Securities and Exchange Commission, ~~the~~ *any* appropriate state securities regulator.

(2) The external manager has been selected through a competitive bidding process subject to subdivision (a) of Section 22364 of the Education Code or subdivision (a) of Section 20153 of this code, as applicable, and is providing services pursuant to a contract executed as a result of that competitive bidding process.

(3) The external manager has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a state public retirement system in California.

(d) For purposes of this section, "investment vehicle" means a corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, constituting or managed by an external manager in which a state public retirement system in California is the majority investor and that is organized in order to invest with, or retain the investment management services of, other external managers.

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

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

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

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

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

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

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

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

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