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# Crackdown on Lobbying Urged

## Activities by Former State Legislators and Staff Would Be Curtailed

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SACRAMENTO — Legislation to crack down on the lobbying activities of former state officials — including legislators and legislative staff — will be introduced next week by Sen. Milton Marks, D-San Francisco.

Originally aimed only at state officials and agency employees who leave government to become lobbyists, the measure will be expanded to include legislators and their staff — an addition that has stirred controversy in the capital, where many former legislators have embarked on highly successful, lucrative lobbying careers after leaving public service.

"I think expanding the bill to include legislators and legislative staff is equitable and justified," Marks said. "If we are willing to restrict the post-government employment of administrative officials, we should be willing to place the same restrictions on ourselves."

Much like its federal model — the Ethics in Government Act, which has been used to indict key former Reagan administration officials Michael Deaver (who was convicted of perjury) and Lyn Nofziger for their lobbying activities — the proposed state legislation would prohibit former state officials from returning to lobby former colleagues and subordinates about administrative or quasi-judicial proceedings involving the agency for a full year after they leave state service.

"This bill is based on the federal Ethics in Government Act, which, for nearly a decade, has provided reasonable, constitutional and effective barriers to those who attempt to exploit public service for personal gain," Marks said. "A 12-month cooling-off period will lessen both the potential for and the appearance of improper influence in the way state business is conducted."

The measure would toughen provisions in the California Political Reform Act, which bar a former state administrative official from contacting a state agency

SEE LOBBYING, PAGE 9

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# Lobbying Controls for Legislators Urged

**CONTINUED** FROM PAGE 1

regarding "a specific government proceeding" in which the former employee participated — if the purpose of the contact is to influence the agency's action.

"Unfortunately, the narrow applicability of the existing law has done little to thwart those who wish to trade on their state contacts," Marks said. "The weakness of the law raises serious concerns about state officials who might 'go easy' when dealing with prospective employers or former superiors in state government."

The proposed legislation would prohibit a former state official, including legislators and legislative staff, from having "any contact, formal or informal" with a state agency "regarding any proceeding or decision in which the official had participated, or in which the official's agency had participated," during the 12 months prior to the official's departure.

Sanctions would remain the same as contained in current law. An administrative or civil action brought by the Fair Political Practices Commission could result in up to a $2,000 fine per violation, while a misdemeanor criminal charge could result in up to a $10,000 fine.

Marks said current law, in effect, permits a state official who was responsible for negotiating an agency's contracts with private vendors to resign his state job one day and the next day be lobbying his former colleagues and subordinates on behalf of those same vendors, so long as the employee was not "directly and personally" involved with a "judicial or quasi-judicial" proceeding involving the vendor.

Federal law does not include members of Congress, their staffs or members of the judicial branch. The proposed state legislation originally excluded legislators and legislative staff, but Marks recently decided to include them in the proposal.

Timothy Hodson, chief consultant to the Senate Elections Committee, which Marks chairs, said legislation is pending in Congress to expand the federal law to include congressional members and staff. At the state level, he said only Florida currently includes legislators and staff under such a law.

"There are those who argue that there is a substantial difference," Hodson said, "between a legislator and an agency head who goes back to former subordinates, where there may be the appearance or the reality [of improper conduct]. The argument is that there is a difference between that and a legislator who by the nature of the legislative process has contact with virtually all issues."

And, the argument goes, former legislators who become lobbyists most likely would be contacting former colleagues, not former subordinates.

Language currently being drafted would prohibit former legislators from "personally appearing before the Legislature" on issues for which they are receiving compensation to act "as an agent or an attorney" for purposes of influencing legislation, for one year after they leave office.

The former legislator could go to state administrative agencies for that purpose, Hodson noted, but not to his or her former legislative domain. By the same token, a former administrative official could go to the Legislature but not to his or her former agency, to influence decision-making.

The reality, however, is that former legislators are hired as lobbyists because of their contacts in the Legislature — not their clout with administrative agencies. And, by the same token, former agency heads are hired for their influence with those agencies.

Although not cited by name, the proposed bill clearly is aimed at a practice that made major headlines nearly two years ago, after former state Health and Welfare Agency Secretary David Swoap — now a lobbyist with former state Finance Director Michael Franchetti in San Francisco — successfully lobbied the state Health Department on behalf of a pharmaceutical manufacturer whose expensive anti-influenza antibiotic had been excluded from the state's Medi-Cal Formulary, which is the list of drugs doctors can prescribe for Medi-Cal patients without prior approval.

Exclusion of the drug, Ceclor, was recommended by the California Medical Association because of cost and because other, less expensive alternatives were effective. After Swoap's successful contact with his former subordinate, Dr. Kenneth Kizer — the state health director, who reportedly was recommended for the post by Swoap before Swoap left state service in November 1985 — the drug was included on the list.

According to news reports on the subject, the decision by the state was "worth millions of dollars" to Eli Lilly Co., Swoap's client and the manufacturer of Ceclor.

Under Marks' proposed law, Swoap would have been prohibited from making the contact with Kizer, since it occurred within the 12-month proposed prohibition on contact.

Swoap did not return phone inquiries about the projected legislation.

Current agency heads, who serve at the pleasure of the governor, are reluctant to discuss the proposed bill, which is not available in print until specific language is written by the author and the legislative counsel for probable introduction early next week.

Until the administration of Gov. George Deukmejian takes a position on the bill, it is unlikely that any of his agency heads will discuss it. The governor's office has a general policy of not commenting until after full analysis of a bill.

Former legislators — many of them lawyers — who left public service to join law-lobbying firms, say the proposed legislation is unfair to legislators and fails to recognize the differences between lobbying by former agency heads and lobbying by former legislators.

Dennis Carpenter, a former Orange County legislator who is now a Sacramento lobbyist, expressed concern about the intent of the legislation. "I think you have to ask what you're trying to solve with this legislation," he said.

"[Legislators] haven't been working for anybody, yet are we saying they have an unfair advantage? If we're talking about someone leaving a department and then coming back — the fear being that maybe they set these things up before they left — now, that's something else again."

John Knox, a prominent former state assemblyman who is now a partner in one of the state's most profitable lobbying-law firms, Nossaman, Gunther, Knox & Elliott, echoed the negative sentiments of his lobbying colleagues about the Marks bill.

"I can look at it with cold objectivity because it doesn't apply to me," said Knox, who left the Legislature in 1980 after 21 years as an Assembly member from Richmond. "[The proposed bill] appears to be just cosmetic. If someone is going to do something improper, they're going to do it anyway."

"The implication is that somehow officials who remain are going to be influenced by those who leave, and I just don't think that's the case," Knox added. "As a former legislator, I did some lobbying right after I left — not much, because I was just establishing my business. I could get into see some people, but I still had to convince them like anybody else. To say I got unusual consideration is stretching the truth.

"I think the legislation makes a great press release," he noted, "but I don't think it does much in the public interest."

Knox and other former legislators who work for the Pentagon and the California

rent law is adequate. Although Bagley is not a registered lobbyist, he does refer lobbying matters to other members of the firm who are registered.

"I can fully understand that a person should not be involved in proceedings [after] he has left a board or agency or commission and in effect 'changed sides' and is now advocating for the other side," Bagley observed. "But I have always considered the Legislature not to be a *job* but a part-time public service — you went home to your district and you had your occupation that bought the groceries. People now unfortunately earn their groceries in the Legislature."

Bagley and others said legislators deal with such a wide range of issues that prohibiting them from lobbying the Legislature when they leave to enter the private sector, in effect denies them a living.

"I was in Washington, D.C., for four years [as chairman of the Commodity Futures Trading Commission], and the experience in Washington is so tied up it's counterproductive," Bagley said. "When the Ethics in Government Act was passed [in 1978], there was a brain drain in my office.

"The people in my general counsel's office left in a hell of a hurry, before the law went into effect. I lost a half-dozen of my best people — all attorneys — who had come out of private practice."

Bagley said such a limitation — if too narrowly drawn — "is a negative motivation for someone to go into government," limiting former government officials, including lawyers, from functioning effectively after they rejoin the private sector in their area of expertise.

He said it would discourage young lawyers from entering government as well as older, more experienced attorneys who might not want to risk jeopardizing future private-sector work because of governmental restrictions.

"If there is such a problem [of improper influence-peddling] — and I don't see it as anything hair-raising, then [the law] should be applied to agency heads and department directors," Bagley said.

Former State Sen. John Foran of San Francisco, now a lawyer-lobbyist in Sacramento, said the proposed law is too broad. "I can see [limitations] on a general leaving the Pentagon to work for the defense industry," Foran observed, "but there is a difference between people who