

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*Federal Restrictions on State or Local Government Officer or
Employee Political Activities*

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Abstract. Political activities of federal employees are regulated by the Hatch Act. In 1940, the law was amended to cover certain state or local government officers or employees. All but three of the prohibitions on political activity by these individuals were removed in 1974. Enforcement provisions were added in 1978. Legislation is pending in the House of Representatives in the 105th Congress to repeal the provision prohibiting state or local government officers or employees from seeking elective office.

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CRS Report for Congress

Federal Restrictions on State or Local Government Officer or Employee Political Activities

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Summary

Political activities of federal employees are regulated by the Hatch Act.¹ In 1940, the law was amended to cover certain state (including territories or possessions) or local government officers or employees. All but three of the prohibitions on political activity by these individuals were removed in 1974. Enforcement provisions were added in 1978.² Legislation is pending in the House of Representatives in the 105th Congress to repeal the provision prohibiting state or local government officers or employees from seeking elective office.

Employees Covered

The Hatch Act covers state or local government officers or employees who are "employed by a State or local agency [and] whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency."³ An individual who exercises no functions in connection with that activity is not covered. According to the Office of Special Counsel (OSC),⁴ when an employee holds two or more jobs, principal employment is usually

¹ 5 U.S.C. 7321-7326. The law was originally enacted in 1939, and subsequently amended, most recently in 1993.

² 54 Stat. 767-772; 5 U.S.C. 1501-1508. The 1974 amendments appear at 88 Stat. 1290. The 1978 amendments appear at 92 Stat. 1225.

³ 5 U.S.C. 1501(4). See also, U.S. Civil Service Commission, *Political Activity Reporter*, (Washington: GPO, 1982), pp. 1-9. State or local agency means the executive branch of a state, municipality, or other political subdivision of a state, or an agency or department thereof. Federal agency means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System.

⁴ The Office of Special Counsel (OSC) investigates and prosecutes violations of the Hatch Act
(continued...)

deemed to be the job that accounts for more work time and earned income than any other job. Employees subject to the Hatch Act continue to be covered while on annual leave, sick leave, leave without pay, administrative leave, or furlough.

The Hatch Act does not cover an individual employed by an educational or research institution, establishment, agency, or system that is supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.⁵ The OSC has determined that the law applies to employees of private, nonprofit organizations which plan, develop, and coordinate federal Head Start or Economic Opportunity programs. Employees of certain private, nonprofit single purpose organizations that receive federal assistance are covered only by the prohibitions against soliciting contributions or using official authority to influence or interfere with the outcome of elections or nominations. Among programs that frequently receive financial assistance from the federal government are public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry training, public works, conservation, agricultural, civil defense, transportation, anti-poverty, and law enforcement.

District of Columbia (D.C.) government officers or employees, other than the mayor or a member of the Council of the District of Columbia or the Recorder of Deeds, are covered by the Hatch Act provisions for federal employees.⁶ D.C. government employees numbered 41,500 as of December 31, 1995. According to the 1990 Census, there were 61,970 federal employees residing in the District. Under the Hatch Act, individuals in certain designated localities may take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside. Although the Office of Personnel Management includes D.C. in the list of designated localities, the United States District Court for the District of Columbia determined in a 1980 unpublished memorandum opinion that the designation is not applicable to D.C. because less than 50% of its voters are employed by the United States government.⁷ Consequently, the OSC determined that federal and D.C. government employees who reside in the District are fully covered by the Hatch Act and may not participate actively in local partisan campaigns.

⁴ (...continued)

and renders advisory opinions on the law. The Civil Service Commission, forerunner of OPM, had primary responsibility to enforce the Hatch Act prior to 1979. With enactment of the Civil Service Reform Act of 1978, the OSC was created as an independent office of the Merit Systems Protection Board. In 1989, the OSC was established as an independent agency under the Whistleblower Protection Act of 1989, P.L. 101-12, 103 Stat 16 at 19.

⁵ The Hatch Act was amended in 1942 to provide such. 56 Stat. 986, 5 U.S.C. 1501(4)(B).

⁶ 107 Stat. 1001-1011; 5 U.S.C. 3303 and 7321-7326. In the 104th Congress, D.C. Delegate Eleanor Holmes Norton introduced H.R. 3918, which would have treated D.C. government employees the same as state and local government employees under the Hatch Act. The bill was referred to the Committee on Government Reform and Oversight.

⁷ Ward Three Democratic Committee v. United States, D.C. D.C. No. 78-853, August 29, 1980

Statutory Provisions

State or local officers or employees covered by the Hatch Act may not:

- use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- be candidates for elective office.⁸

Such officers or employees retain the right to vote as they choose and to express opinions on political subjects and candidates. Nor does the prohibition on candidacy for elected office apply to (1) governors or lieutenant governors, or individuals authorized by law to act as governors; (2) mayors; (3) duly elected heads of state or municipal executive departments who are not classified under merit or civil-service systems; or (4) individuals holding elected office. State or local officers or employees are not prohibited from being candidates in any nonpartisan election. OPM regulations define this as one in which none of the candidates nominated or elected represents parties any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected.⁹

Any federal agency making a loan or grant of U.S. funds to a state or local officer or employee for an activity must report to the Special Counsel if it reasonably believes that the individual has violated the prohibitions against influencing elections or taking part in political campaigns. If warranted, the Special Counsel then investigates and presents its findings and any resulting charges to the Merit Systems Protection Board (MSPB). MSPB fixes the time and place for a hearing and notifies the officer or employee being charged and the employing agency of the alleged violation. The hearing may not be held earlier than 10 days after the notice is mailed.

The state or local officer or employee and/or the agency may appear with counsel at the hearing. After the hearing, MSPB determines whether a violation has occurred; if so, the Board determines whether the violation warrants removal from the office or job and notifies the individual and the agency by mail. MSPB imposes a penalty when it finds that (1) a state or local officer or employee has not been removed from office or employment within 30 days of receiving its notice that the individual has violated the law and must be removed; or (2) a removed state or local officer or employee has been appointed within 18 months to an office or employment in the same state in a state or local agency which does not receive loans or grants from a federal agency. In such cases, MSPB orders the federal agency to withhold from its loans or grants to the state or local agency an amount equal to two years' pay at the rate the individual was receiving when

⁸ 5 U.S.C. 1502.

⁹ 5 U.S.C. 1503; 5 CFR 151.101.

the violation occurred. If the appointment has been made within 18 months to a state or local agency that receives federal loans or grants, MSPB directs that the withholding be made from the agency. The order becomes effective 30 days after it has been mailed to the agency. MSPB may not require an amount to be withheld from a loan or grant pledged by a state or local agency as security for its bonds or notes if such withholding jeopardizes payment of the principal or interest.

MSPB may subpoena witnesses to attend and testify and produce documentary evidence relating to any matter concerning political activity of covered state and local employees. When a subpoena is disobeyed, a U.S. court may require the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena, the United States District Court within whose jurisdiction the inquiry is proceeding, may order the person to appear before MSPB, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question. Any failure to obey the court order may be punished as contempt. MSPB may order testimony to be taken by deposition at any stage of its proceeding or investigation. A person subpoenaed by MSPB may not be excused from attending, testifying, or producing documentary evidence because to do so could incriminate or subject him to a penalty or forfeiture. A person who falsely testifies may be prosecuted for perjury.

A party aggrieved by an MSPB action may, within 30 days, petition for a review in the United States District Court for the district in which he or she resides. The start of proceedings does not stay the order or determination unless the court so orders, and the officer or employee is suspended from his office or employment while proceedings are pending. The court reviews the entire record, including questions of fact and law. It may direct that additional evidence be taken. MSPB may modify its findings or determination or order because of additional evidence. The modification is filed with the court if conclusive. The court affirms the determination or order, or the modified action if it is in accord with law. If it is not, the court remands the proceeding to MSPB with directions to comply with the law. The court's actions are final, subject to review by the appropriate United States Court of Appeals, as are those of the court of appeals subject to review by the United States Supreme Court on certiorari or certification.¹⁰

Implementation of the Law

Office of Personnel Management (OPM) regulations implement the law.¹¹ All state or local officers or employees are free to engage in political activity to the widest extent consistent with the law and regulations. These include candidacy for the following positions: public office in a nonpartisan election; officer of a political party; delegate to a political party convention, member of a national, state, or local committee of a political party, or any similar position. The regulations restate activities prohibited by law.

¹⁰ 5 U.S.C. 1504-1508.

¹¹ 5 CFR part 151.

The Office of Special Counsel provides guidance on prohibitions against influencing elections and taking part in political campaigns.¹² These include threatening to deny promotion to any employee who does not vote for certain candidates; requiring employees to contribute a percentage of their pay to a political fund; influencing subordinate employees to buy tickets to political fund raising dinners and similar events; and advising employees to take part in partisan political activity all constitute misuse of official authority and coercion. Employees holding elected office when appointed to state or local positions covered by the Hatch Act may continue to serve in the elected positions, however, they cannot be candidates for reelection in partisan elections. Employees may accept appointments to fill vacancies in elected public offices while concurrently serving in state or local positions covered by the Hatch Act, but they should determine from their agencies whether the appointments constitute a conflict of interest.

Political management activities permitted by the OSC include (1) being a member of and holding office in political parties, organizations or clubs; (2) attending meetings; (3) voting on candidates and issues; (4) taking an active part in the management of clubs, organizations or parties; (5) attending and participating in political conventions and being a candidate for or serving as a convention delegate, alternate, or proxy; (6) volunteer work for partisan candidates, campaign committees, parties or party nominating conventions; (7) campaigning for candidates in partisan elections by making speeches, writing letters and speeches for candidates, or soliciting voters to support or oppose candidates; (8) attending political meetings of political organizations and serving on committees that organize or direct partisan campaign activities; (9) making financial contributions to parties or organizations; (10) soliciting and collecting voluntary political contributions; and (11) serving as election officials, clerks, checkers, watchers or as challengers for parties and candidates in partisan elections.

105th Congress Legislation

H.R. 308, State and Local Employees Bill of Political Rights, which would repeal the prohibition on state or local government officers or employees seeking elected office, was introduced by Representative Gerald B. H. Solomon on January 9, 1997. It was referred to the House Committee on Government Reform and Oversight, Subcommittee on Civil Service. He introduced similar measures, H.R. 3889 (referred to Committee on House Administration, Subcommittee on Elections) and H.R. 151 (referred to House Committee on Government Reform and Oversight, Subcommittee on Human Resources and Intergovernmental Relations), in the 103rd and 104th Congresses, respectively. During debate on the 1993 amendments to the Hatch Act covering federal employees, Representative Solomon stated that his concern "is that the State and local government employees whose salaries are paid through Federal funds will still not be entitled to the same constitutional rights as other Americans. ... It is unconscionable that we have denied

¹² U.S. Office of Special Counsel, *Political Activity and the State and Local Employee*, (Washington: 1996). 12p. The OSC has established telephone numbers (1-800-85-HATCH or 202-653-7143) for employees to receive advice concerning the Hatch Act. Letters may be sent to the OSC at 1730 M Street, N.W., Suite 300, Washington, D.C. 20036.

a group of citizens the right to participate with a full voice in the political affairs of the Nation."¹³

State Laws

Many states have laws, known as "little Hatch Acts" because of their similarity to the federal law, which restrict political activity by state employees. In 1987, the then House Committee on Post Office and Civil Service surveyed the Attorneys General of the 13 states which had liberalized their political activity laws since the 1974 amendments to the Hatch Act. Of 11 responses, none reported adverse reactions to loosening the restrictions or expressed concern that coercion or impropriety would result. Only Alabama reported any allegations of coercion, four states reported an increase in political participation by state employees, and none reported any increase in prosecutions.¹⁴

Conclusion

Among the issues that discussions to amend the Hatch Act covering state or local government officers and employees might be expected to focus on are these: whether the availability of federal funds mandates political activity restrictions; whether coercion and patronage would result from a liberalized political activity law; and whether the "little" Hatch Acts are sufficiently strong to prevent the misuse of government authority.

¹³ *Congressional Record*, daily edition, vol. 139, September 21, 1993, p. H6814.

¹⁴ U.S. Congress, House Committee on Post Office and Civil Service, *Federal Employees Political Activities Act of 1993*, report to accompany H.R. 20, 103rd Cong., 1st sess., H. Rept. 103-16, (Washington: GPO, 1993), pp 12-13.