



Bill Analysis

Author: Allen et al.

Sponsor:

Bill Number: SB 459

Related Bills: See Legislative
History

Introduced: February 16, 2021
Amended: March 10, 2021,
April 12, 2021, April 28, 2021,
and June 23, 2021

SUBJECT

Political Reform Act of 1974: Lobbying Periodic Reporting

SUMMARY

This bill requires additional disclosure on required reports and increases the frequency of reports to be filed by lobbying entities, as specified. This bill also requires additional disclosures on issue lobbying advertisements, as specified.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 10, 2021, amendments repealed the original language and added provisions for the additional disclosure of lobbyist reporting.

The April 12, 2021, amendments made a minor technical adjustment, revised the filing timing requirement, and added additional methods for filing.

The April 28, 2021, amendments made minor technical and wording changes.

The June 23, 2021, amendments made a modification to the activity requiring disclosure, removed the exemption to disclose information for bills that did not pass prior to reporting, added "neutral" to the list of positions required to be disclosed, specifically exempted placement agents from various reporting requirements, added that this bill is not intended to expand the meaning of "lobbyist" or "lobbyist employer", added an additional coauthor, and made various minor wording changes.

This is the department's first analysis of the bill.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

REASON FOR THE BILL

The reason for this bill is to provide more timely and useful information about lobbying expenditures by requiring monthly reporting when reportable payments exceed a specified amount, and to provide more transparency by requiring disclosure of the sponsor financing lobbying advertisements.

ANALYSIS

This bill would require lobbying firms required to file reports to include for each client the name or number of each bill or administrative action, with regard to which a partner, owner, officer, or employee of the lobbying firm engaged in direct communication, including through issue lobbying advertisements, with an elective state official, agency official, or legislative official on behalf of that client for the purpose of influencing legislative or administrative action during the reporting period, either by reference to its legislative or administrative identification number if one exists or by brief description if no such number exists. This requirement does not apply to a placement agent as defined.

This bill would require the report to indicate one of the following descriptions that most closely describes the client position directly communicated for each bill or issue lobbying advertisement related to a bill: "support," "oppose," "support if amended," "oppose unless amended," "neutral," "neutral seeking amendment," "neutral expressing concerns." The report shall list in chronological order any changes in position during that reporting period but shall not be required to disclose the date of any change in position. This requirement does not apply to a placement agent as defined.

This bill would not require disclosure for bills or administrative actions which the lobbying firm is only watching or monitoring or bills or administrative actions which the lobbying firm has not attempted to influence during the reporting period. This requirement does not apply to a placement agent as defined.

This bill would allow any person as specified, who directly or indirectly makes payments to influence legislative or administrative action of \$5,000 or more in value in any calendar quarter to make this bill's additional disclosures by reference to information reported in that person's lobbying firm's reports as filed.

This bill would require reports to be filed monthly when the sum of the total amount of all payments subject to reporting exceeds \$15,000. This report would be required to be filed during the first 15 days of the month following any qualifying calendar month.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

This bill would require a report to be filed within 72 hours of retaining a lobbying firm to influence legislative or administrative action during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature. This report would be required to be made public within 24 hours of receipt, either through the internet or distribution or posting the documents in portable document format or summaries of the documents online.

This bill would require monthly reports for the following 12 months if payments exceed \$45,000 in a calendar quarter.

This bill would not require quarterly reports to be filed when monthly reports are being filed for the same period.

This bill would require that when total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire legislative session to date.

This bill would allow original documents to be signed and filed with electronic signatures.

This bill would define "Issue lobbying advertisement" as any communication that is authorized and paid for, directly or indirectly, and that refers to one or more clearly identified pending legislative or administrative actions and solicits or urges persons other than the sender to communicate directly with an elective state official, agency official, or legislative official for the primary purpose of attempting to influence state legislative or administrative action and/or refers to a state legislative or administrative action and urges its defeat, amendment, postponement, enactment, or promulgation.

This bill would provide that the types of communications that may qualify as an issue lobbying advertisement include those established in specific provisions of existing law, a prerecorded telephone call made to more than 200 persons, a substantially similar email, text message, or other electronic communication that is sent to over 200 recipients, or any other substantially similar communication determined by regulations adopted by the Fair Political Practices Commission (FPPC).

This bill would provide that a pending legislative or administrative action is clearly identified if the communication states a legislative or administrative identification number, official title, or popular name associated with the action. It provides that the action is also clearly identified if the communication refers to the subject matter of the action and either states that the measure is before an elective state official, agency official, or legislative official for a vote or decision or, taken as a whole and in context, unambiguously refers to the action.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

This bill would require an issue lobbying advertisement to clearly and conspicuously indicate in the communication the person that authorized and paid for the communication as the source or payor of the communication, as specified. This bill also would provide that if the person who authorized and paid for the issue lobbying advertisement is a lobbying firm, the lobbyist employer on whose behalf the issue lobbying advertisement was authorized and paid for shall be disclosed in place of the lobbying firm.

This bill would require that an issue lobbying advertisement must clearly and conspicuously identify the person as the sender, broadcaster, or creator of the communication, as specified or include the words "Paid for by" or a similar phrase followed by the name of the person.

This bill would require a copy of any issue lobbying advertisement which clearly identifies an elective state official, agency official, or legislative official to be provided to that elective state official, agency official, or legislative official within 72 hours of being communicated.

This bill would require a lobbyist or individual, as specified, which incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements in a calendar quarter to file a report with the Secretary of State (SOS) within 72 hours by online or electronic transmission only using the online filing system, as specified. The cost of an issue lobbying advertisement would be required to include actual costs attributable to the communications, but not the payment of salary for staff time.

This bill would require reports for each issue lobbying advertisements to include:

- The dates or period of time that each issue lobbying advertisement was communicated.
- The legislative or administrative identification numbers associated with the legislative or administrative action that was the subject of the lobbying issue advertisement. If an action is not associated with an identification number, a short description of the subject matter of the action.
- The position on the legislative or administrative action urged on the lobbying issue advertisement, which may include "support," "oppose," "support if amended," "oppose unless amended," "neutral," "neutral seeking amendment," or a similar short description.
- The medium of the issue lobbying advertisements which referenced the action, which may include, for example, direct mail, text messages, television advertisements, radio advertisements, social media advertisements, search engine advertisements, or other online advertisements.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

- The cumulative cost of the issue lobbying advertisements they appear in. If an issue lobbying advertisement referenced more than one legislative or administrative action, then the cost of the advertisement for purposes of this paragraph shall be apportioned between those actions.
- Any other relevant information determined by regulations adopted by the FPPC.

This bill would require that issue lobbying advertisement costs to be reported on subsequent periodic lobbying reports without regard to reports filed pursuant to this subdivision.

This bill would allow the FPPC, by regulation, to increase the dollar amounts specified for issue lobbying advertisements.

This bill's section that relates to "Issue lobbying advertisement" would not be construed to expand the meaning of "lobbyist" or "lobbyist employer", as defined. In addition, this section would not apply to a placement agent, as defined.

Effective/Operative Date

This bill would become effective January 1, 2022, and specifically operative January 1, 2023.

Federal/State Law

Federal Law

The Federal Election Commission (FEC) is an independent regulatory agency of the United States whose purpose is to enforce campaign finance law in United States federal elections. Created in 1974 through amendments to the Federal Election Campaign Act, the commission describes its duties as "to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections."

State Law

The FPPC of California is a five-member independent nonpartisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act of 1974. The Commission's objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process, to promote transparency in government, and to foster public trust in the political system. These objectives are met through the filing of various reports and statements. The Franchise Tax Board (FTB) is responsible for the independent auditing of the required reports and statements.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

Implementation Considerations

The bill proposes additional disclosures and reporting requirements but does not include accompanying recordkeeping requirements in order to verify such disclosures. The author may wish to amend the bill to include such requirements so that reports can be adequately verified.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 1217 (Mullin, 2019/2020), among other provisions, would have required individuals who publish an "issue lobbying communication" within 60 days of the end of the legislative session to disclose the funders of the advertisement, as specified. AB 1217 did not pass out of the Senate by the constitutional deadline.

AB 1574 (Mullin of 2019/2020) would have required lobbying disclosure reports be filed monthly instead of quarterly. AB 1574 did not pass out of the Assembly by the constitutional deadline.

SB 1239 (Hertzberg, Chapter 662, Statutes of 2018) among other changes associated with filing campaign and lobbying reports to the CARS, eliminated the requirement to file paper copies of lobbying reports required to be filed online or electronically upon the certification of CARS by the SOS.

PROGRAM BACKGROUND

The Fair Political Practices Commission was created through the Political Reform Act of 1974 and is a five-member independent, non-partisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act. The Act regulates campaign financing, conflicts of interest, lobbying, and governmental ethics. The Commission's objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process, to promote transparency in government, and to foster public trust in the political system. FTB conducts most of the audit as the independent auditing arm of the FPFC.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, also known as the PRA, and created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA requires periodic reports to be filed that disclose payments made in connection with efforts to influence legislative or administrative action. These periodic lobbying disclosure reports are also required to include information about the legislative and administrative actions that were lobbied during the period covered by the report.

FISCAL IMPACT

The FTB is not sufficiently resourced to perform the current lobbyist audit workload and are working with stakeholders to review staffing levels and possible solutions to a recognized staffing shortage. Without these resources for existing workloads (costs estimated at just under \$1 million), it is not feasible to assume audits would be performed on the additional disclosures envisioned under this bill. The absence of required recordkeeping to accompany the additional disclosures proposed in the bill also would hinder the FTB's ability to audit these disclosures. If sufficient resources were obtained to audit existing workloads, this bill would require additional staff, estimated at approximately \$300,000.

In the event additional regulations mentioned in this bill, once issued by the FPPC, increase or expand lobbyist reporting, recordkeeping, or audit requirements, costs to manage the workload could increase.

ECONOMIC IMPACT

Revenue Estimate

This bill as introduced February 16, 2021, and amended March 10, April 12, April 28, and June 23, 2021 would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

SUPPORT/OPPOSITION

The [Assembly Committee on Elections](#) analysis dated June 28, 2021, lists the following support and opposition.

Support:

California Common Cause (sponsor)
California Clean Money Campaign
Courage California (prior version)
The League of Woman Voters
Mi Familia Vota (prior version)
MapLight (prior version)

Opposition:

California Federation of Teachers (unless amended) (prior version)
California Medical Association (unless amended)
California Political Attorneys Association
California Political Treasurers Association (prior version)
Institute of Governmental Advocates (prior version)
Netfile (prior version)
SEIU California State Council (unless amended) (prior version)

ARGUMENTS

Proponents:

The Assembly Committee on Elections analysis dated June 28, 2021, includes the following argument in support of SB 459:

In support, the League of Women Voters of California writes:

SB 459 would increase the frequency of reporting for major lobbyists, requiring monthly reporting for lobbying firms and interest groups that report more than \$15,000 in lobbying activity in a month. In addition, lobbying groups that report more than \$45,000 in lobbying activity in a quarter would be required to report monthly for the next 12 months. During the 60-day period before the deadline for passage of bills, a report would need to be filed within 24 hours of retaining a lobbying firm hired to influence legislative action. The careful parsing of fiscal triggers ensures visibility into the influence of the wealthiest, most powerful interests while safeguarding small non-profits from costly reporting requirements.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

SB 459 would also expand transparency by requiring: lobbyists to disclose the public positions they are taking on bills; 72-hour reporting of issue ad buys over a specified amount; and interest groups to put their names on their ads, thereby eliminating anonymous pressure campaigns.”

Opponents:

The Assembly Committee on Elections analysis dated June 28, 2021, includes the following argument in opposition of SB 459:

SEIU California State Council, which has an “oppose unless amended” position on this bill, writes:

[T]he Council strongly opposes the monthly filing requirement imposed on organizations that spend more than \$15,000 per calendar month or \$45,000 during a calendar quarter, and shortens the deadline for filing lobby reports from the 30th day after the end of a calendar quarter to the 15th day after the end of any month in which a monthly report is triggered. Given the breadth of financial and other information necessary to fully comply with the lobby reporting requirements, it would be impossible for the Council to fully and accurately disclose its lobbying payments by the 15th of the month every month...

The bill also requires that lobby reports include lobbying organizations' positions on matters they are actively lobbying. While the Council is not opposed to publicly disclosing its positions on actions it lobbies, wrongful disclosure that is not intentional or repetitive should not be punishable with civil or administrative penalties. Instead, only intentional or repeated errors should be subject to penalties. To the extent that the Legislature wants additional disclosure of this information, the Council suggests considering modifications to the lobbying disclosure forms that would make information more digestible to the public, thereby making this additional information useful.

The Council also opposes the provisions of SB 459 that regulate “issue lobbying advertisements” as currently drafted, although we are not opposed in concept to requiring a “paid for by” disclaimer to be included on lobbying advertisements or more robust disclosure requirements on issue advertisements in the 30 days prior to the end of legislative session. However, the Council opposes the imposition of issue ad disclaimer and disclosure requirements on member communications. The Council further requests that the disclaimer requirements for issue ads be exactly the same as the requirements for political advertisements to ensure consistency, except that there should be an exception for communications where the source of the communication is already clear.

Introduced: February 16, 2021, Amended: March 10, 2021, April 12, 2021, April 28, 2021, and June 23, 2021

For example, printed communications on an organization's letterhead, website communications, social media communications posted on an organization's home page, and communications in an organizational newsletter should not be required to contain a disclaimer. Furthermore, the Council requests that the bill specify that top contributor disclosure provided by Gov. Code section 84503 is not required.

LEGISLATIVE CONTACT

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