



Bill Analysis

Author: Allen, et al.

Sponsor:

Bill Number: SB 459

Related Bills: See Legislative
History

Amended: July 6, 2021

SUBJECT

Political Reform Act of 1974: Lobbying Periodic Reporting

SUMMARY

This bill requires additional disclosure on required reports and additional 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 July 6, 2021, amendments made modifications to the timing and information provided on reports and supplemental reports, added a definition for “advertisements,” and modified the operative date.

REASON FOR THE BILL

The reason for this bill is to provide more timely and useful information about lobbying expenditures 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 that are required to file periodic reports to include for each client, each bill or administrative action, with regard to which a partner, owner, officer, or employee of the lobbying firm engaged in direct communication, 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.

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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. A reasonable and good faith effort to comply with this report shall be sufficient to demonstrate full compliance.

This bill would require that, for each client, the report indicate each bill or administrative action, with regard to which a partner, owner, officer, or employee of the lobbying firm engaged in issue lobbying advertising. This bill would define "Issue lobbying advertisement" as any advertisement 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 not require the report to include bills or administrative actions that the lobbying firm is only watching or monitoring or bills or administrative actions that the lobbying firm has not attempted to influence during the reporting period.

The above report requirements would not apply to a placement agent as defined.

This bill would require certain persons, as defined, to file a report within 24 hours of retaining a lobbying firm to influence legislative action during the period beginning 60 days before the date the Legislature is scheduled to adjourn in a calendar year for the interim recess or final recess. The report would be required to include the amount to be paid to the lobbying firm pursuant to a contract for lobbying.

This bill would also require a supplemental report to be filed within 24 hours of engaging in direct communication with an elective state official, agency official, or legislative official on behalf of a client for the purpose of influencing legislative action.

The supplemental report shall:

- Indicate the name or number of each bill, and indicate one of the following that most closely describes the client position publicly communicated: "support," "oppose," "support if amended," "oppose unless amended," "neutral," "neutral seeking amendment," "neutral expressing concerns."

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- Be made public within 24 hours of receipt, either through the internet or distribution or posting of the documents in portable document format (PDF) or summaries of the documents online.

This bill would allow supplemental reports be filed by electronic mail or other electronic means and original signatures would not be required.

This bill would also allow, for the reports described, original documents to be signed and filed with electronic signatures.

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.

This bill would require an issue lobbying advertisement to clearly and conspicuously indicate in the advertisement the person that authorized and paid for the communication as the source or payor of the advertisement. 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 an issue lobbying advertisement to 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 employer or individual who directly or indirectly makes payments to influence legislative or administrative action, 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.

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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.
- 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 Fair Political Practices Commission (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 provision.

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.

This bill defines "advertisement" as any general or public communication and does not include and shall not be construed as applying to communications that are exempted. Types of issue lobbying advertisements include radio, television, and video advertisements; print advertisements; bill boards; electronic media advertisements; text messages that are sent with the assistance of mass distribution technology, including a text messaging platform; online platforms; 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 commission.

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Effective/Operative Date

This bill would become effective January 1, 2022, and the provisions discussed above would be specifically operative one year after the date the SOS certifies an online filing and disclosure system or January 1, 2023, whichever is later.

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.

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.

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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 FPPC 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 FPPC. Political Reform Act of 1974. In 1974, California voters passed Proposition 9, also known as the Public Records Act (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, it is not feasible to assume audits would be performed on the additional disclosures envisioned under this bill. The absence of required recordkeeping also would hinder FTB's ability to audit these disclosures. If sufficient resources were obtained to audit existing workloads, this bill would require two additional annual staff, estimated at approximately \$459,000.

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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 amended July 6, 2021, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

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)

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ARGUMENTS

The Assembly Committee on Appropriations analysis dated August 23, 2021, includes the following statements in support and opposition of SB 459:

This bill is supported by several groups who advocate for transparent elections. In support of the disclosure requirements of the bill, the League of Women Voters of California writes, "The careful parsing of fiscal triggers ensures visibility into the influence of the wealthiest, most powerful interests while safeguarding small nonprofits from costly reporting requirements."

This bill is opposed unless amended by several public employees unions who participate in various direct issue-oriented communications. Noting willingness to attempting to resolve issues, SEIU California contends, "The bill should not be rushed through the legislative process in one year, particularly a year where organizations such as the State Council are focused on issues related to the COVID-19 pandemic."

LEGISLATIVE CONTACT

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