



## **Bill Analysis**

Author: Allen, et al.

Bill Number: SB 459

### **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.

### **REASON FOR THE BILL**

The reason for this bill is to provide more 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**

#### **Lobbying Firm Reporting**

This bill would require lobbying firms that are required to file periodic reports to include for each lobbyist employer represented by the lobbying firm, each legislative 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 lobbyist employer represented by the lobbying firm for the purpose of influencing legislative or administrative action during the reporting period, either by reference to its legislative or administrative identification number or, if none exists, by the official title, popular name, or description of the action. Also, the filer may refer to and incorporate by reference the information contained in a report filed by the person's lobbying firm, as specified.

This bill would also remove the requirement to include a description of the specific lobbying interest of the filer included in the report.

This bill would not require the report to include legislative or administrative actions that the lobbying firm is only watching, monitoring, or which 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 change the reporting requirement of payments to employees for time spent to influence a legislative or administrative action from 10% or more of the employee's monthly compensation to payments that are more than 10%.

This bill would require reporting of any payment to influence legislative or administrative action totaling \$2,500 or more to a payee during a reporting period that was made in connection with an issue lobbying advertisement must include the identification number or, if none exists, the official title, popular name, or description of any legislative or administrative action clearly referred to in the issue lobbying advertisement as well as one of the following descriptions of the position of the filer who paid for the advertisement: "support," "oppose," "support if amended," "oppose unless amended," "neutral," "neutral seeking amendment," "neutral expressing concerns," "no position," or similar description.

This bill would require certain persons, as defined, to file a report within 48 hours of paying or incurring an enforceable promise to pay \$5,000 or more to a lobbying firm to influence legislative action during the period beginning 60 days before the date the Legislature is scheduled to adjourn for the interim recess or final recess. The report shall be made publicly available directly by the filer through the online filing system, as described, or, if the online filing system will not accommodate direct filing, the report shall be made publicly available by the Secretary of State through electronic means within 24 hours of the time the Secretary of State receives the filing.

The report shall include the following:

- The name, business address, and telephone number of the lobbying firm or firms the filer has paid, or incurred an enforceable promise to pay, \$5,000 or more for the purposes of influencing legislative action for any lobbying firm that was not employed by the filer on the day immediately preceding the 60th day before the date the Legislature is scheduled to adjourn for interim recess or final recess.
- The identification number or, if none exists, the official title, popular name, or description of all legislative actions for which the filer has authorized the lobbying firm to engage in direct communications with legislative officials for the purpose of influencing legislative action, and the dollar amount of payments or enforceable promises to make payments made or incurred by the filer to the lobbying firm, as specified, during the 60-day period.

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, any form, registration, or report requiring paper filing pursuant to this chapter may be verified by the filer with an electronic signature.

This bill would provide that a 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 or 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.

### **Issue Lobbying Advertisements**

This bill would require an issue lobbying advertisement to clearly and conspicuously identify the person that authorized and paid for the advertisement by either of the following:

- Include the words "Paid for by" or "Ad paid for by" followed by the legal name of the person who authorized and paid for the advertisement in a manner that is easily readable by the average viewer. For video advertisements disseminated on television or via the internet, the words "Paid for by" or "Ad paid for by" shall be followed by the legal name of the person who authorized and paid for the advertisement and shall be displayed for at least 5 seconds of an advertisement that is 30 seconds or less or at least 10 seconds of an advertisement that is more than 30 seconds.
- Satisfy the specified requirements for the applicable medium of distributing the advertisement.

This bill would define "Issue lobbying advertisement" as any advertisement made for purposes of influencing a clearly identified legislative or administrative action, including an advertisement soliciting or urging a person to communicate directly with an elective state official, agency official, or legislative official for the primary purpose of attempting to influence a clearly identified state legislative or administrative action. An issue lobbying advertisement does not include a communication or advertisement, as specified, expressly advocating the election or defeat of a candidate or ballot measure, an advertisement that qualifies as a contribution or independent expenditure, or any communication made by a political party or candidate-controlled committee.

This bill would define "advertisement" to mean any general or public communication and does not include communications exempted from the definition of advertisement as specified.

This bill would require an individual who pays or makes an enforceable promise to pay \$5,000 or more during a calendar quarter for issue lobbying advertisements 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 each time a person pays or makes an enforceable promise to pay five thousand dollars (\$5,000) or more during the calendar quarter.

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

- The total payments made and the enforceable promises to pay incurred in connection with each issue lobbying advertisement required to be disclosed. The cost of an issue lobbying advertisement shall include actual costs attributable to the advertisement but shall not include the payment of compensation for staff time or travel expenses paid by an organization to members or staff.
- The date that each issue lobbying advertisement was or will be first publicly disseminated.
- The legislative or administrative identification numbers associated with the legislative or administrative action that was the subject of the issue lobbying advertisement. If an action is not associated with an identification number, the official title, popular name, or 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," "neutral expressing concerns," "no position," or a similar description.
- The method of distributing the issue lobbying including, direct mail, text messages, television advertisements, radio advertisements, social media advertisements, search engine advertisements, or other types of online advertisements.
- The name of any Member of the Legislature or candidate for Member of the Legislature that is clearly identified in the issue lobbying advertisement.

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

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, 2023, 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 Fair Political Practices Commission (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*

None Noted.

*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, 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 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.

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 August 15, 2022, would not impact state income or franchise tax revenue.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS**

None noted.

**SUPPORT/OPPOSITION**

As per the August 31, 2022, Senate Floor Analysis of SB 459, the following organizations support and oppose this bill.

*Support*

- California Common Cause (source)
- California Clean Money Campaign
- Courage California
- Fair Political Practices Commission
- League of Women Voters of California
- MapLight
- Mi Familia Vota
- Northern California Recycling Association

*Opposition*

- California Political Attorneys Association
- Institute of Governmental Advocates

**VOTES**

Location	Date	Yes Votes	No Votes
Concurrence	August 31, 2022	33	4
Assembly Floor	August 31, 2022	62	8
Senate Floor	June 1, 2022	34	3

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