
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No: SB 459 **Hearing Date:** 4/26/21
Author: Allen
Version: 4/12/21
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: lobbying

DIGEST

This bill requires lobbying entities to disclose additional information on lobbying reports, as specified, and increases the frequency of reporting if certain conditions are met. This bill also requires additional disclosures on issue lobbying advertisements, as specified.

ANALYSIS

Existing law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).
- 2) Requires lobbying firms, lobbyist employers, lobbying coalitions, and individual lobbyists to register and file periodic reports with the Secretary of State (SOS), as specified. Requires the SOS to maintain on the internet an updated list of lobbyists, lobbying firms, and lobbyist employers.
- 3) Requires a lobbyist to complete and verify periodic reports containing all activity expenses by the lobbyist during the reporting period. Requires this report be provided to their lobbyist employer or lobbying firm within two weeks following the end of each calendar quarter, as specified.
- 4) Requires lobbying firms to file periodic reports containing specified information about the lobbying firm and the services provided, as specified. This includes, but is not limited to, a description of the specific lobbying interests of the person and the total amount of payments, as specified, during the reporting period. Requires these reports to be filed quarterly, as specified.

This bill:

- 1) Requires specific lobbying entities to provide in their periodic reports the name or number of each bill or administrative action that either engaged in direct communication or was directed by that entity to engage in direct communication with an elective state official, agency official, or legislative official on the entity's behalf for the purpose of influencing legislative or administrative action during the reporting

period, as specified. Requires the report to indicate, in chronological order, a specific position that most closely describes the client position publicly communicated, as specified.

- 2) Requires monthly reporting of lobbying disclosure reports if the sum of the total amount of all payments subject to reporting exceeds \$15,000, as specified. Requires this monthly report be filed during the first 15 days of the month following any qualifying calendar month.
- 3) Requires, during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature, the filing of a report within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying.
- 4) Provides that if the sum of the total amount of payments exceeds \$45,000 in a calendar quarter, then monthly reports shall be filed for the next 12 months, as specified.
- 5) Defines “issue lobbying advertisement” to mean any communication that is authorized and paid for, directly or indirectly, by a specified lobbying entity, that refers to one or more clearly identified pending legislative or administrative actions and does any of the following:
 - a) Solicits or urges persons other than the lobbying entity 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, as specified.
 - b) Refers to a state legislative or administrative action and urges its defeat, amendment, postponement, enactment, or promulgation.
- 6) Provides 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 FPPC.
- 7) Provides 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. 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.
- 8) Requires 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. Provides 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.

- 9) Provides that an issue lobbying advertisement complies if the communication does either of the following:
 - a) Clearly and conspicuously identifies the person as the sender, broadcaster, or creator of the communication, as specified.
 - b) Includes the words "Paid for by" or a smaller phrase followed by the name of the person.
- 10) Requires a copy of any issue lobbying advertisement which clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated, as specified.
- 11) Requires a person that incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements in a calendar quarter to file a report with the SOS within 72 hours, as specified. Requires a report regarding issue lobbying advertisements to include the following information:
 - a) The dates or period of time that each issue lobbying advertisement was communicated.
 - b) The legislative or administrative identification numbers associated with the legislative or administrative action that was the subject of the lobbying issue advertisement, as specified.
 - c) For each legislative or administrative action for which there were issue lobbying advertisements, the position on the legislative or administrative action urged on the lobbying issue advertisement.
 - d) For each legislative or administrative action for which there were issue lobbying advertisements, the medium of the issue lobbying advertisements which referenced the action.
 - e) For each legislative or administrative action for which there were issue lobbying advertisements, the cumulative cost of the issue lobbying advertisements they appear in, as specified.
 - f) Any other relevant information determined by regulations adopted by the FPPC.
- 12) Provides that the provisions of this bill shall not become operative until January 1, 2023.
- 13) Makes technical, nonsubstantive changes.

BACKGROUND

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 stipulates that amendments to the PRA are not required to be submitted to voters if the amendments further the purposes of the PRA, approved by a two-thirds vote of both houses of the Legislature, and chaptered.

Additionally, the PRA requires periodic reports to be filed that discloses 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.

Cal-Access and the Cal-Access Replacement System. In 1997, the Legislature passed and Governor Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. As a result, the SOS established the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly known as Cal-Access. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online.

In 2016, the Legislature passed and Governor Brown signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016. SB 1349 required the SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. According to the SOS website, this new system, also known as the Cal-Access Replacement System (CARS), will be available for filers and public use on June 30, 2021.

Issue Lobbying Advertisements. Existing law currently requires disclosures of certain payments made for issue advocacy advertisements. Specifically, existing law requires payments in connection with these advertisements be disclosed on lobbying disclosure reports, under certain circumstances. Lobbyist employers and persons who do not employ an in-house lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, must file periodic lobbying disclosure reports. Among the types of expenditures that count toward the \$5,000 filing threshold are payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials, including payments made for advertisements that urge voters to communicate with elected officials on pending legislation.

However, the information that is required to be disclosed by \$5,000 filers and lobbyist employers with respect to payments made for issue advocacy communications can be limited. Lobbyist employers and \$5,000 filers must disclose the total of all payments to

influence legislative or administrative action, and must provide information about the recipients of payments of \$2,500 or more made to influence legislative or administrative action. They are not required to link specific payments with the legislative or administrative action that those payments were designed to influence, specify the position expressed in the advertisement, or provide a copy of the advertisement to the targeted official.

COMMENTS

- 1) According to the author: In California, lobbying firms and interest groups that hire them must file quarterly reports on their lobbying activity. These reports are due one month after the close of each quarter. The third quarter (Q3) lobbying report covers the most significant legislative quarter of the year: July through September. This period includes the Legislature's final committee and floor votes and, in even-years, the Governor's entire bill-signing period. Unsurprisingly, in terms of lobbying expenditures, this is the most expensive quarter of the year, with over \$100 million being spent in both Q3 of 2020 and 2019.

However, because of quarterly lobbying reporting, these three months of increased lobbying are not disclosed until *after* the Legislature has decided which bills to pass or defeat and *after* the Governor has decided which bills to sign or veto. Thus, Q3 reporting provides no useful transparency and accountability about the most intense lobbying affecting whether bills live or die.

More must be done to ensure that accurate, timely and useful information about the millions of dollars spent every year to influence the fate of legislation is available to lawmakers, the press and the public.

- 2) Argument in Support. In a letter supporting SB 459, the League of Women Voters of California stated, in part, the following:

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.

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

The League of Women Voters of California strongly supports SB 459 because Californians deserve to know who is spending millions of dollars to influence legislation being made in their names.

- 3) Apply it to Everybody? Lobbying reports are required to be filed quarterly. Under the provisions of the bill, a lobbying entity could be required to file these reports monthly if a certain monetary spending threshold within a specified period of time is met and/or exceeded. Once this threshold is met, the report must be filed monthly for the next 12 months. This would create an additional requirement for lobbying entities because they would have to keep track of their spending within a month or quarter and may have to track the start and end of a 12-month period. The author should consider whether these additional reporting requirements should be required monthly for all lobbying entities currently required to file these periodic reports regardless of the amount spent within a period of time.
- 4) Positions Publicly Communicated. This bill specifies a lobbying disclosure report is required to provide the name or number of each bill or administrative action as well as the position publicly communicated. The position reported must indicate one of the following that most closely describes the client position publicly communicated: “support,” “support if amended,” “neutral seeking amendment,” “neutral expressing concerns,” “oppose unless amended,” and “oppose.”

While there is not a universal standard for positions taken on actions and legislation, there is a general understanding that a position can be “support,” “neutral,” or “opposed.” Depending on the entity, “support if amended” and “oppose unless amended” is also a common stance taken on actions or bills. However, even though a “support if amended” position is used frequently in legislative conversation, for some entities that officially lists positions on an action or on a bill, “support if amended” is considered the same as “neutral” and is not different than “watch,” “with concerns,” “neutral expressing concerns,” “request amendments,” or “neutral seeking amendments.” A similar comparison could also be used for “oppose” and “oppose unless amended” because “oppose” and “oppose unless amended” both signal opposition to an action or bill. The difference is that “oppose unless amended” provides a recommended path to remove an entity’s opposition position versus outright opposition.

As the bill moves through the legislative process, the author should consider having a “neutral” option instead of “neutral seeking amendment or “neutral expressing concerns.” The author should also consider whether “support if amended” and “oppose unless amended” provides an accurate and insightful portrayal of an entity’s position. If the bill is amended and changes are made to these positions, then it should also apply to the reporting requirements for issue lobbying advertisements.

- 5) Copies of an Issue Lobbying Advertisement. For issuing lobbying advertisements, the bill requires a copy of any issue lobbying advertisement that clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated. This includes, but is not limited to, an issuing lobbying advertisement that is a piece of mail, an email, a text message, or any other electronic communication.

As the bill moves through the legislative process, the author should consider whether an email, text message, or other typically internal method of communication should be delivered to the targeted individual and whether this provision interferes

with the ability of a person to freely communicate and urge a position to a wider audience. The required reports regarding issue lobbying advertisements, as prescribed by this bill, will likely provide an appropriate level of disclosure regarding how much is being spent on an advertisement and the type of advertisement.

- 6) It's the Final Countdown. This bill requires a lobbying report to be filed within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature. The goal is to encompass and provide additional insight during the final days of the legislative year.

However, the Legislature establishes deadlines through joint rules in a concurrent resolution and the Senate uses custom and practice if joint rules are not in place. For the deadline to pass legislation in the second year of a legislative session, the California Constitution provides that “no bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.”

Committee staff recommends removing “established by joint resolution of the Legislature” from the bill so it reads, “...beginning 60 days before the deadline for the passage of bills” (Page 6, Lines 21-22).

- 7) Minor Amendments. On Page 8, Lines 27-28, there is a provision specifying that an issue lobbying advertisement is in compliance with the requirements prescribed by the bill if the words “Paid for by” or a smaller phrase followed by the name of the person is used in the communication. Committee staff recommends the bill be amended to replace “smaller” with “similar.”

Additionally, this bill has an operative date of January 1, 2023. However, the operative date is mentioned in two places. First, it is mentioned in Section 5 (Page 9, Line 37) of the bill. It is also mentioned in Section 7 (Page 10, Lines 10-11) of the bill. Committee staff recommends the author delete the operative date in Section 5 of the bill since Section 7 of bill includes Section 5 and states, “Sections 1 to 5 of this act shall not become operative until January 1, 2023.”

RELATED/PRIOR LEGISLATION

AB 1217 (Mullin) of 2019, 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 1574 (Mullin) of 2019 would have required lobbying disclosure reports be filed monthly instead of quarterly.

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.

AB 71 (Huber) of 2011 would have, among other changes, clarified that when a filer describes their lobbying interests on a periodic lobbying report, the lobbying entity include the bill number, if any, of legislation lobbied for or against during the reporting period. AB 1274 (Huber) of 2009 was similar to AB 71.

SB 49 (Karnette), Chapter 866, Statutes of 1997, required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required under the PRA could be filed online and viewed by the public, as specified. This system is known as Cal-Access.

POSITIONS

Sponsor: California Common Cause

Support: California Clean Money Campaign
Courage Campaign
League of Women Voters of California
Mi Familia Vota

Oppose: None received

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