
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 459 (Allen) - Political Reform Act of 1974: lobbying

Version: April 28, 2021

Urgency: No

Hearing Date: May 10, 2021

Policy Vote: E. & C.A. 4 - 0

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: SB 459 would (1) require lobbying entities to disclose additional information on lobbying reports, as specified, (2) increase the frequency of reporting if certain conditions are met, and (3) require additional disclosures on issue lobbying advertisements, as specified.

Fiscal Impact: The Fair Political Practices Committee (FPPC) indicates that it would incur costs of \$387,000 in 2021-22, and \$336,000 annually thereafter, to implement the provisions of the bill (General Fund). Potential costs to the Secretary of State (SOS) have yet to be identified.

Background: In 1974, California voters passed the Political Reform Act (Proposition 9), which created FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA stipulates that amendments to it are not required to be submitted to voters if the amendments further the purposes of the PRA, are approved by a two-thirds vote of both houses of the Legislature, and chaptered. Additionally, 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.

In 1997, SB 49 (Karnette) established the Online Disclosure Act of 1997, which required SOS, in consultation with FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. Consequently, 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), which required SOS, in consultation with 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. This new system, also known as the Cal-Access Replacement System (CARS), will be available for filers and public use on June 30, 2021.

Current law 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.

Proposed Law: This bill, beginning January 1, 2023 would, among other things, do the following:

- Require 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. Require the report to indicate, in chronological order, a specific position that most closely describes the client position publicly communicated, as specified.
- Require 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.
- Require, 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.
- Provide that the types of communications that may qualify as an issue lobbying advertisement, as defined, 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.

- 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. 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.
- 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. 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.
- Require 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.
- Require 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 SOS within 72 hours, as specified. Require a report regarding issue lobbying advertisements to include specified information.

Related Legislation:

- AB 1217 (Mullin, 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. The bill died in the Senate Committee on Elections and Constitutional Amendments.
- 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.
- SB 49 (Karnette, Chapter 866, Statutes of 1997) required 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.

Staff Comments: FPPC indicates that it would require three new positions to accommodate the additional workload generated by the bill, resulting from (1) the increase in referrals due to the increased filing and reporting requirements, and (2) the new issue lobbying advertisements requirements.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

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