

Date of Hearing: August 26, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 459 (Allen) – As Amended July 6, 2021

Policy Committee: Elections

Vote: 6 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

**SUMMARY:**

This bill requires lobbying firms to provide additional information in their mandatory lobbying reports and increases reporting frequency under certain conditions. Additionally this bill requires further disclosures on issue lobbying advertisements. Specifically, this bill:

- 1) Requires the disclosure reports a lobbying firm is required to report under existing law, and as required by this bill for issue lobbying advertisements, to include the following:
  - a) Indicate each bill or administrative action, with regard to which specified members or officers of a lobbying firm engaged in direct communication, including through issue lobbying advertisements, with an elective state official, agency official or legislative official on behalf of each client to influence 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.
  - b) 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; or neutral expressing concerns. List, in chronological order, any changes in position during the reporting period, not including the date of the change. (A reasonable and good faith effort to comply is sufficient to demonstrate full compliance with this provision.)
  - c) Indicate for each bill or administrative action, which partner, owner, officer or employee of the lobbying firm engaged in issue lobbying on behalf of each client, as defined.
- 2) Prohibits lobbying disclosure reports from including bills or administrative actions that the lobbying firm is only watching or monitoring and has not attempted to influence during the reporting period.
- 3) Permits a lobbyist employer or \$5,000 filer, through a form adopted by the Fair Political Practices Commission (FPPC), to refer to and incorporate by reference the information contained in a report filed by the person's lobbying firm to meet this requirement.
- 4) Requires additional disclosures during the 60-day period before the Legislature is scheduled to adjourn in a calendar year.

- 5) Requires a lobbyist employer or person that incurs cumulative costs of \$5,000 or more for issue lobbying advertisements in a calendar quarter to file a report with the Secretary of State (SOS) within 72 hours, as specified.
- 6) Defines “issue lobbying advertisement” to mean any advertisement, as defined, that is authorized and paid for, directly or indirectly, by a lobbyist employer or \$5,000 filer, and 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 lobbyist employer or \$5,000 filer 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.
  - b) Refers to a state legislative or administrative action and urges its defeat, amendment, postponement, enactment, or promulgation.
- 7) Provides lobbying disclosure reporting requirements added by this bill do not apply to a placement agent, as defined pursuant to existing law.
- 8) Delays implementation of the bill until one year after the date the SOS certifies the Cal Access Replacement System (CARS) or January 1, 2023, whichever is later.

#### **FISCAL EFFECT:**

- 1) SOS costs of about \$387,000 in the first year and \$121,000 annual ongoing thereafter (General Fund) to support one ongoing staff position and initial project costs. Projects costs may be larger due to the complexity of the new forms established by the FPPC.
- 2) FPPC costs of about 387,000 in the first year and \$336,000 annual ongoing thereafter to implement the provisions of the bill with an additional \$120,000 to \$200,000 in anticipated legal costs.

#### **COMMENTS:**

- 1) **Purpose.** According to the author, “SB 459 will 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) **Background.** The Political Reform Act (PRA) requires periodic reports to be filed disclosing payments made in connection with efforts to influence legislative or administrative action. In addition to disclosing the amounts of payments made for lobbying efforts, 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. The PRA requires lobbying disclosure forms to be filed on a quarterly basis.

In 1997, SB 49 (Karnette), Chapter 866, established the Online Disclosure Act of 1997. SB 47 required the SOS, in consultation with FPPC, to develop and implement an online filing system for reports and statements which would be viewable by the public. 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, SB 1349 (Hertzberg), Chapter 662, required the SOS, in consultation with FPPC, to develop and certify a new online filing and disclosure system to provide campaign finance and lobbying information in a user-friendly, easily understandable format. This new system, also known as the Cal-Access Replacement System (CARS), was scheduled to be available for use on June 30, 2021, but was postponed by the SOS to ensure the project can fully meet its statutory obligations.

Lobbyist employers and others who neither employ an in-house lobbyist nor 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 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.

- 3) **Disclose Act and Social Media Disclose Act.** AB 249 (Mullin), Chapter 546, Statutes of 2017, significantly changed the content and format of disclosure statements required on specified campaign advertisements in a manner that generally required such disclosures to be more prominent.

AB 249 also established new requirements for determining when contributions are considered to be earmarked and imposed new disclosure requirements for earmarked contributions to ensure that committees are able to determine which contributors must be listed on campaign advertisements. AB 249 is commonly known as the "Disclose Act." The passage of AB 249 marked the culmination of seven years of debate and negotiation over similar legislation. AB 249 took effect on January 1, 2018.

AB 2188 (Mullin), Chapter 754, Statutes of 2018, requires online platforms that sell political ads to make specified information about those ads available to the public. AB 2188 also made various changes to the required format for disclosures on electronic media ads required by law. AB 2188 is known as the "Social Media Disclose Act." AB 2188 became operative January 1, 2020.

- 4) **Support and Opposition.** 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."

- 5) **Political Reform Act of 1974.** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. Proposition 9 is commonly known as the Political Reform Act (PRA). Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

**Analysis Prepared by:** Jennifer Galehouse / APPR. / (916) 319-2081