



Open Government Commission

CONSENT CALENDAR  
September 14, 2021

To: Honorable Mayor and Members of the City Council  
From: Open Government Commission  
Submitted by: Brad Smith, Chairperson, Open Government Commission  
Samuel Harvey, Secretary, Open Government Commission  
Subject: Letter of Support for SB-459 Political Reform Act of 1974: lobbying

### RECOMMENDATION

Send a letter of support to Senator Nancy Skinner in support of SB-459 Political Reform Act of 1974: lobbying (Attached).

### SUMMARY

Current lobbying reports don't provide information about who is funding lobbying efforts until after the bills have passed or died. SB-459 would require the following reforms:

1. Monthly, rather than quarterly, disclosures for the largest lobbyist.
2. 72-hour reporting of significant spending on issue ads and the naming of the special interests that bought the ads.
3. Requiring lobbying reports to disclose their position (e.g., "Support" or "Oppose")

Passage of SB-459 will increase lobbying transparency with the public being more capable of "following the money."

M/S/C (Smith/O'Donnell) to submit recommendation to City Council  
Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Difficult for the public to know who is attempting to influence our elected officials.

BACKGROUND

Currently, it is impossible to know who is spending money lobbying our lawmakers until after their votes have been cast and the session ends. This legislation will increase the transparency of money spent to influence legislation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental effects related to this recommendation.

RATIONALE FOR RECOMMENDATION

To increase transparency about who is funding lobbying efforts.

ALTERNATIVE ACTIONS CONSIDERED

Not sending a letter to Senator Nancy Skinner.

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission  
Samuel Harvey, Secretary, Open Government Commission

Attachments:

1. SB-459 Senate Committee Analyses
2. SB-459 Political Reform Act of 1974: lobbying, text

AMENDED IN SENATE APRIL 28, 2021

AMENDED IN SENATE APRIL 12, 2021

AMENDED IN SENATE MARCH 10, 2021

**SENATE BILL**

**No. 459**

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**Introduced by Senator Allen**  
*(Coauthors: Senators Glazer and Newman)*  
(Coauthor: Assembly Member Mullin)

February 16, 2021

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An act to amend Sections 86114, 86116, 86117, and 86118 of, and to add Section 86119 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 459, as amended, Allen. Political Reform Act of 1974: lobbying.

Existing law, the Political Reform Act of 1974, regulates the activities of lobbyists, lobbying firms, and lobbyist employers in connection with attempts to influence legislative and administrative action by legislative and other state officials, including by requiring that lobbyists, lobbying firms, and lobbyist employers register and file periodic reports with the Secretary of State.

This ~~bill~~ *bill*, beginning January 1, 2023, would require lobbyists, lobbying firms, and lobbyist employers to include information in the periodic reports that identifies each bill or administrative action subject to lobbying activity, and the respective position advocated for, during that period. This bill would require a lobbying firm or lobbyist employer to file a monthly report for any calendar month in which the total amount of payments subject to reporting exceeds \$15,000, and would require a lobbying firm or lobbyist employer to file monthly reports for 12

months following any calendar quarter in which the total amount of payments subject to reporting exceeds \$45,000. The bill would require certain persons to file specified reports following a calendar quarter in which that person incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements, as defined.

A violation of the act is punishable as a misdemeanor, and reports and statements filed under the act are required to be signed under the penalty of perjury. By expanding the scope of existing crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a 2/3 vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 86114 of the Government Code, as
- 2 amended by Section 38 of Chapter 662 of the Statutes of 2018, is
- 3 amended to read:
- 4 86114. (a) Lobbying firms shall file periodic reports containing
- 5 all of the following:
- 6 (1) The full name, address, email address, and telephone number
- 7 of the lobbying firm.
- 8 (2) (A) The full name, business address, and telephone number
- 9 of each person who contracted with the lobbying firm for lobbying
- 10 services, a description of the specific lobbying interests of the
- 11 person, and the total payments, including fees and the
- 12 reimbursement of expenses, received from the person for lobbying
- 13 services during the reporting period.
- 14 (B) (i) For each client, the report shall indicate the name or
- 15 number of each bill or administrative action, with regard to which
- 16 a partner, owner, officer, or employee of the lobbying firm either

1 engaged in direct communication, including through issue lobbying  
2 advertisements, or was directed by that client to engage in direct  
3 communication, with an elective state official, agency official, or  
4 legislative official on behalf of that client for the purpose of  
5 influencing legislative or administrative action during the reporting  
6 period, either by reference to its legislative or administrative  
7 identification number if one exists or by brief description if no  
8 such number exists.

9 (ii) For each bill or issue lobbying advertisement related to a  
10 bill, the report shall indicate one of the following that most closely  
11 describes the client position publicly communicated: “support,”  
12 “oppose,” “support if amended,” “oppose unless amended,”  
13 “neutral seeking amendment,” “neutral expressing concerns.” The  
14 report shall list in chronological order any changes in position  
15 during that reporting period but shall not be required to disclose  
16 the date of any change in position.

17 (iii) The report shall not include bills or administrative actions  
18 which have failed passage prior to the reporting period, bills or  
19 administrative actions which the lobbying firm is only watching  
20 or monitoring, or bills or administrative actions which the lobbying  
21 firm has not attempted to influence during the reporting period.

22 (3) The total amount of payments received for lobbying services  
23 during the period.

24 (4) A periodic report completed and verified by each lobbyist  
25 in the lobbying firm pursuant to Section 86113.

26 (5) Each activity expense incurred by the lobbying firm  
27 including those reimbursed by a person who contracts with the  
28 lobbying firm for lobbying services. A total of all activity expenses  
29 of the lobbying firm and all of its lobbyists shall be included.

30 (6) If the lobbying firm subcontracts with another lobbying firm  
31 for lobbying services:

32 (A) The full name, address, email address, and telephone number  
33 of the subcontractor.

34 (B) The name of the person for whom the subcontractor was  
35 retained to lobby.

36 (C) The total amount of all payments made to the subcontractor.

37 (7) The date, amount, and the name of the recipient of any  
38 contribution of one hundred dollars (\$100) or more made by the  
39 filer to an elected state officer, a state candidate, a committee  
40 controlled by an elected state officer or state candidate, or a

1 committee primarily formed to support or oppose those officers  
2 or candidates. If this contribution is reported by the lobbying firm  
3 or by a committee sponsored by the lobbying firm in a campaign  
4 statement filed pursuant to Chapter 4 which is required to be filed  
5 with the Secretary of State, the filer may report only the name of  
6 the committee and the identification number of the committee.

7 (8) Any other information required by the commission consistent  
8 with the purposes and provisions of this chapter.

9 (b) In addition to the information required by subdivision (a),  
10 lobbying firms which qualify pursuant to paragraph (2) of  
11 subdivision (a) of Section 82038.5 shall also report the name and  
12 title of each partner, owner, officer, and employee of the lobbying  
13 firm who, on at least five separate occasions during the reporting  
14 period, engaged in direct communication with any elective state  
15 official, legislative official, or agency official, for the purpose of  
16 influencing legislative or administrative action on behalf of a  
17 person who contracts with the lobbying firm for lobbying services.  
18 This does not include individuals whose actions were purely  
19 clerical.

20 SEC. 2. Section 86116 of the Government Code, as amended  
21 by Section 39 of Chapter 662 of the Statutes of 2018, is amended  
22 to read:

23 86116. Every person described in Section 86115 shall file  
24 periodic reports containing the following information:

25 (a) The name, business address, email address, and telephone  
26 number of the lobbyist employer or other person filing the report.

27 (b) The total amount of payments to each lobbying firm.

28 (c) The total amount of all payments to lobbyists employed by  
29 the filer.

30 (d) (1) A description of the specific lobbying interests of the  
31 filer.

32 (2) The information required by subparagraph (B) of paragraph  
33 (1) of subdivision (a) of Section 86114. A person described in  
34 Section 86115 may, through a form adopted by the commission,  
35 refer to and incorporate by reference the information contained in  
36 a report filed by the person's lobbying firm pursuant to Section  
37 86114 to meet the requirement of this paragraph.

38 (e) A periodic report completed and verified by each lobbyist  
39 employed by a lobbyist employer pursuant to Section 86113.

1 (f) Each activity expense of the filer. A total of all activity  
2 expenses of the filer shall be included.

3 (g) The date, amount, and the name of the recipient of any  
4 contribution of one hundred dollars (\$100) or more made by the  
5 filer to an elected state officer, a state candidate, or a committee  
6 controlled by an elected state officer or state candidate, or a  
7 committee primarily formed to support or oppose the officer or  
8 candidate. If this contribution is reported by the filer or by a  
9 committee sponsored by the filer in a campaign statement filed  
10 pursuant to Chapter 4 which is required to be filed with the  
11 Secretary of State, the filer may report only the name of the  
12 committee, and the identification number of the committee.

13 (h) (1) Except as set forth in paragraph (2), the total of all other  
14 payments to influence legislative or administrative action including  
15 overhead expenses and all payments to employees who spend 10  
16 percent or more of their compensated time in any one month in  
17 activities related to influencing legislative or administrative action.

18 (2) A filer that makes payments to influence a ratemaking or  
19 quasi-legislative proceeding before the Public Utilities  
20 Commission, as defined in subdivision (b) or (c), respectively, of  
21 Section 82002, may, in lieu of reporting those payments pursuant  
22 to paragraph (1), report only the portion of those payments made  
23 to or for the filer's attorneys for time spent appearing as counsel  
24 and preparing to appear as counsel, or to or for the filer's witnesses  
25 for time spent testifying and preparing to testify, in this type of  
26 Public Utilities Commission proceeding. This alternative reporting  
27 of these payments made during a calendar month is not required  
28 to include payments made to an attorney or witness who is an  
29 employee of the filer if less than 10 percent of the attorney's or  
30 witness's compensated time in that month was spent in appearing,  
31 testifying, or preparing to appear or testify before the Public  
32 Utilities Commission in a ratemaking or quasi-legislative  
33 proceeding. For the purposes of this paragraph, time spent  
34 preparing to appear or preparing to testify does not include time  
35 spent preparing written testimony.

36 (i) Any other information required by the commission consistent  
37 with the purposes and provisions of this chapter.

38 SEC. 3. Section 86117 of the Government Code is amended  
39 to read:

1 86117. (a) Reports required by Sections 86114 and 86116  
2 shall be filed during the month following each calendar quarter.  
3 The period covered shall be from the first day of January of each  
4 new biennial legislative session through the last day of the calendar  
5 quarter prior to the month during which the report is filed, except  
6 as specified in subdivision (b), and except that the period covered  
7 shall not include any information reported in previous reports filed  
8 by the same person. When total amounts are required to be  
9 reported, totals shall be stated both for the period covered by the  
10 statement and for the entire legislative session to date.

11 (b) The period covered by the first report a person is required  
12 to file pursuant to Sections 86114 and 86116 shall begin with the  
13 first day of the calendar quarter in which the filer first registered  
14 or qualified. On the first report a person is required to file, the total  
15 amount shall be stated for the entire calendar quarter covered by  
16 the first report.

17 (c) In addition to the requirements of subdivision (a), a person  
18 described in Section 86115 shall also do both of the following:

19 (1) File a monthly report pursuant to Section 86116 for any  
20 calendar month where the sum of the total amount of all payments  
21 subject to reporting pursuant to that section exceeds fifteen  
22 thousand dollars (\$15,000). The monthly report required by this  
23 subdivision shall be filed during the first 15 days of the month  
24 following any qualifying calendar month.

25 (2) During the period beginning 60 days before the deadline for  
26 the passage of ~~bills established by joint resolution of the~~  
27 ~~Legislature, bills~~, file a report within 72 hours of retaining a  
28 lobbying firm to influence legislative or administrative action  
29 during those 60 days, including the amount paid to the lobbying  
30 firm upon being retained or to be paid to the lobbying firm pursuant  
31 to a contract for lobbying. The report required by this subparagraph  
32 shall be made public within 24 hours of receipt, either through the  
33 internet or distribution or posting of portable document formats  
34 (PDFs) of the documents or summaries of the documents online.

35 (d) If the sum described in paragraph (1) of subdivision (c)  
36 exceeds forty-five thousand dollars (\$45,000) in a calendar quarter,  
37 the person described in Section 86115 shall file monthly reports  
38 pursuant to Section 86116 for the next 12 months.

39 (e) In addition to the requirements of subdivision (a), a lobbying  
40 firm shall also file a monthly report pursuant to Section 86114 for



1 any calendar month where the total amount of payments received  
2 for lobbying services exceeds fifteen thousand dollars (\$15,000).  
3 The monthly report required by this subdivision shall be filed  
4 during the first 15 days of the month following any qualifying  
5 calendar month.

6 (f) If the sum described in subdivision (e) exceeds forty-five  
7 thousand dollars (\$45,000) in a calendar quarter, the person  
8 described in Section 86115 shall file monthly reports for the next  
9 12 months.

10 (g) Regardless of the total amounts of payments made or  
11 received, any person described in Section 86115, or any lobbying  
12 firm, may elect to file monthly reports pursuant to subdivision (c)  
13 or (e). Notwithstanding subdivision (a), any person described in  
14 Section 86115, or any lobbying firm, that files monthly reports  
15 pursuant to subdivision (c) or (e) for each month of a calendar  
16 quarter shall not file a quarterly report covering that same period.

17 (h) When total amounts are required to be reported, totals shall  
18 be stated both for the period covered by the statement and for the  
19 entire legislative session to date.

20 SEC. 4. Section 86118 of the Government Code, as amended  
21 by Section 40 of Chapter 662 of the Statutes of 2018, is amended  
22 to read:

23 86118. (a) Reports required by Sections 86114 and 86116  
24 shall be filed online or electronically with the Secretary of State.

25 (b) Original documents may be signed and filed with electronic  
26 signatures.

27 SEC. 5. Section 86119 is added to the Government Code, to  
28 read:

29 86119. (a) (1) "Issue lobbying advertisement" as used in this  
30 chapter means any communication as described in Section 84501  
31 that is authorized and paid for, directly or indirectly, by a person  
32 described in Section 86115 and that refers to one or more clearly  
33 identified pending legislative or administrative actions and does  
34 any of the following:

35 (A) Solicits or urges persons other than the person described in  
36 Section 86115 to communicate directly with an elective state  
37 official, agency official, or legislative official for the primary  
38 purpose of attempting to influence state legislative or administrative  
39 action.

1 (B) Refers to a state legislative or administrative action and  
2 urges its defeat, amendment, postponement, enactment, or  
3 promulgation.

4 (2) The types of communications that may qualify as an issue  
5 lobbying advertisement include those described in Section 82041.5,  
6 subdivision (a) of Section 84501, subdivision (a) of Section  
7 84504.3, a prerecorded telephone call made to more than 200  
8 persons, a substantially similar email, text message, or other  
9 electronic communication that is sent to over 200 recipients, or  
10 any other substantially similar communication determined by  
11 regulations adopted by the commission.

12 (3) A pending legislative or administrative action is clearly  
13 identified if the communication states a legislative or administrative  
14 identification number, official title, or popular name associated  
15 with the action. In addition, the action is clearly identified if the  
16 communication refers to the subject matter of the action and either  
17 states that the measure is before an elective state official, agency  
18 official, or legislative official for a vote or decision or, taken as a  
19 whole and in context, unambiguously refers to the action.

20 (b) (1) An issue lobbying advertisement shall clearly and  
21 conspicuously indicate in the communication the person described  
22 in Section 86115 that authorized and paid for the communication  
23 as the source or payor of the communication. If the person who  
24 authorized and paid for the issue lobbying advertisement is a  
25 lobbying firm, the lobbyist employer on whose behalf the issue  
26 lobbying advertisement was authorized and paid for shall be  
27 disclosed in place of the lobbying firm.

28 (2) An issue lobbying advertisement complies with this  
29 subdivision if the communication does either of the following:

30 (A) Clearly and conspicuously identifies the person described  
31 in Section 86115 as the sender, broadcaster, or creator of the  
32 communication.

33 (B) Includes the words "Paid for by" or a ~~smaller~~ *similar* phrase  
34 followed by the name of the person.

35 (c) A copy of any issue lobbying advertisement which clearly  
36 identifies an elective state official, agency official, or legislative  
37 official shall be provided by mail, email, or hand delivery to that  
38 elective state official, agency official, or legislative official within  
39 72 hours of being communicated.

1 (d) (1) A person described in Section 86115 that incurs  
2 cumulative costs equal to or exceeding five thousand dollars  
3 (\$5,000) for issue lobbying advertisements in a calendar quarter  
4 shall file a report with the Secretary of State within 72 hours. The  
5 report shall be filed with the Secretary of State by online or  
6 electronic transmission only using the online filing system  
7 described in subdivision (b) of Section 84602.

8 (2) The cost of an issue lobbying advertisement shall include  
9 actual costs attributable to the communications, but shall not  
10 include the payment of salary for staff time.

11 (3) A report required by this subdivision shall include the  
12 following information:

13 (A) The dates or period of time that each issue lobbying  
14 advertisement was communicated.

15 (B) The legislative or administrative identification numbers  
16 associated with the legislative or administrative action that was  
17 the subject of the lobbying issue advertisement. If an action is not  
18 associated with an identification number, a short description of  
19 the subject matter of the action.

20 (C) For each legislative or administrative action for which there  
21 were issue lobbying advertisements, the position on the legislative  
22 or administrative action urged on the lobbying issue advertisement,  
23 which may include “support,” “oppose,” “support if amended,”  
24 “oppose unless amended,” “neutral seeking amendment,” or a  
25 similar short description.

26 (D) For each legislative or administrative action for which there  
27 were issue lobbying advertisements, the medium of the issue  
28 lobbying advertisements which referenced the action, which may  
29 include, for example, direct mail, text messages, television  
30 advertisements, radio advertisements, social media advertisements,  
31 search engine advertisements, or other online advertisements.

32 (E) For each legislative or administrative action for which there  
33 were issue lobbying advertisements, the cumulative cost of the  
34 issue lobbying advertisements they appear in. If an issue lobbying  
35 advertisement referenced more than one legislative or  
36 administrative action, then the cost of the advertisement for  
37 purposes of this paragraph shall be apportioned between those  
38 actions.

39 (F) Any other relevant information determined by regulations  
40 adopted by the commission.

1 (4) Issue lobbying advertisement costs shall be reported on  
2 subsequent periodic lobbying reports without regard to reports  
3 filed pursuant to this subdivision.

4 ~~(e) This section shall become operative on January 1, 2023.~~

5 ~~(f)~~

6 (e) The commission may, by regulation, increase the dollar  
7 amounts specified in this section.

8 SEC. 6. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.

17 SEC. 7. Sections 1 to 5 of this act shall not become operative  
18 until January 1, 2023.

19 SEC. 8. The Legislature finds and declares that this bill furthers  
20 the purposes of the Political Reform Act of 1974 within the  
21 meaning of subdivision (a) of Section 81012 of the Government  
22 Code.

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**SENATE COMMITTEE ON APPROPRIATIONS**

**Senator Anthony Portantino, Chair**  
**2021 - 2022 Regular Session**

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

**Version:** April 28, 2021

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

**Urgency:** No

**Mandate:** Yes

**Hearing Date:** May 10, 2021

**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.

-- END --



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

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**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

-- END --