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SB-459 Political Reform Act of 1974: lobbying. (2021-2022)

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Senate Bill No. 459

CHAPTER 873

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.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 459, 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, beginning one year after the Secretary of State certifies for public use an online filing and disclosure system for lobbying information, or beginning January 1, 2023, whichever is later, 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 during that period. For certain activities involving issue lobbying advertisements, the bill would require disclosure of the position on the bill or administrative action advocated by the advertisement. This bill would require additional specified disclosures for lobbying activity during the 60-day period before the Legislature is scheduled to adjourn for interim recess or final recess. 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. The bill would authorize entities filing related reports in paper with the Secretary of State to verify those filings by electronic signature.

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 $\frac{2}{3}$ 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 86114 of the Government Code, as amended by Section 38 of Chapter 662 of the Statutes of 2018, is amended to read:

86114. (a) Lobbying firms shall file periodic reports containing all of the following:

- (1) The full name, business address, email address, and telephone number of the lobbying firm.
- (2) (A) The full name, business address, and telephone number of each person who contracted with the lobbying firm for lobbying services, and the total payments, including fees and the reimbursement of expenses, received from the person for lobbying services during the reporting period.

(B) (i) For each lobbyist employer represented by the lobbying firm, the report shall indicate each legislative or administrative action, with regard to which a partner, owner, officer, or employee of the lobbying firm engaged in direct communication with an elective state official, agency official, or legislative official on behalf of the lobbyist employer by that lobbying firm for the purpose of influencing legislative or administrative action during the reporting period, either by reference to its legislative or administrative identification number or, if none exists, by the official title, popular name, or description of the action.

(ii) The report shall not include legislative or administrative actions which the lobbying firm is only watching, monitoring, or which the lobbying firm has not attempted to influence during the reporting period.

(iii) The requirements of this subparagraph do not apply to a placement agent, as defined in Section 82047.3.
- (3) The total amount of payments received for lobbying services during the period.
- (4) A periodic report completed and verified by each lobbyist in the lobbying firm pursuant to Section 86113.
- (5) Each activity expense incurred by the lobbying firm including those reimbursed by a person who contracts with the lobbying firm for lobbying services. A total of all activity expenses of the lobbying firm and all of its lobbyists shall be included.
- (6) If the lobbying firm subcontracts with another lobbying firm for lobbying services:
 - (A) The full name, address, email address, and telephone number of the subcontractor.
 - (B) The name of the person for whom the subcontractor was retained to lobby.
 - (C) The total amount of all payments made to the subcontractor.
- (7) The date, amount, and the name of the recipient of any contribution of one hundred dollars (\$100) or more made by the filer to an elected state officer, a state candidate, a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support or oppose those officers or candidates. If this contribution is reported by the lobbying firm or by a committee sponsored by the lobbying firm in a campaign statement filed pursuant to Chapter 4 which is required to be filed with the Secretary of State, the filer may report only the name of the committee and the identification number of the committee.
- (8) Any other information required by the commission consistent with the purposes and provisions of this chapter.

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

SEC. 2. Section 86116 of the Government Code, as amended by Section 187 of Chapter 50 of the Statutes of 2021, is amended to read:

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

- (a) The name, business address, email address, and telephone number of the lobbyist employer or other person filing the report.
- (b) The total amount of payments to each lobbying firm.
- (c) The total amount of all payments to lobbyists employed by the filer.

(d) The information required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 86114. A person described in Section 86115 may, in a manner authorized by the commission, refer to and incorporate by reference the information contained in a report filed by the person's lobbying firm pursuant to Section 86114 to meet the requirement of this subdivision.

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

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

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

(h) (1) Except as set forth in paragraph (2), the total of all other payments to influence legislative or administrative action including overhead expenses and all payments to employees who spend more than 10 percent of their compensated time in any one month in activities related to influencing legislative or administrative action. Any payment to influence legislative or administrative action totaling two thousand five hundred dollars (\$2,500) or more to a payee during a reporting period that was made in connection with an issue lobbying advertisement must include the identification number or, if none exists, the official title, popular name, or description of any legislative or administrative action clearly referred to in the issue lobbying advertisement as well as one of the following descriptions of the position of the filer who paid for the advertisement: "support," "oppose," "support if amended," "oppose unless amended," "neutral," "neutral seeking amendment," "neutral expressing concerns," "no position," or similar description.

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

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

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

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

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

(c) (1) During the period beginning 60 days before the date the Legislature is scheduled to adjourn for the interim recess or final recess, a person described in Section 86115 shall file a report within 48 hours of paying or incurring an enforceable promise to pay five thousand dollars (\$5,000) or more to a lobbying firm to influence legislative action if the person described in Section 86115 did not employ the lobbying firm on the day immediately preceding the 60-day period. A report filed pursuant to this subdivision shall be made publicly available directly by the filer through the online filing system described in subdivision (b) of Section 84602 or, if the online filing system will not accommodate direct filing, the report shall be made publicly available by the Secretary of State through electronic means within 24 hours of the time the Secretary of State receives the filing.

(2) The report filed pursuant to this subdivision shall include the following:

(A) The name, business address, and telephone number of the lobbying firm or firms the filer has paid, or incurred an enforceable promise to pay, five thousand dollars (\$5,000) or more for the purposes of influencing legislative action for any lobbying firm that was not employed by the filer on the day immediately preceding the 60th day before the date the Legislature is scheduled to adjourn for interim recess or final recess.

(B) The identification number or, if none exists, the official title, popular name, or description of all legislative actions for which the filer has authorized the lobbying firm to engage in direct communications with legislative officials for the purpose of influencing legislative action, and the dollar amount of payments or enforceable promises to make payments made or incurred by the filer to the lobbying firm as described in subparagraph (A) during the 60-day period.

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

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

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

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

86119. (a) (1) "Issue lobbying advertisement" means any advertisement as defined in paragraph (2) made for purposes of influencing a clearly identified legislative or administrative action, including an advertisement soliciting or urging a person to communicate directly with an elective state official, agency official, or legislative official for the primary purpose of attempting to influence a clearly identified state legislative or administrative action. An issue lobbying advertisement does not include a communication described in Section 85310, an advertisement expressly advocating the election or defeat of a candidate or ballot measure, an advertisement that qualifies as a contribution or independent expenditure, or any communication made by a political party or candidate-controlled committee.

(2) For purposes of this section, "advertisement" means any general or public communication and does not include communications exempted from the definition of advertisement in paragraph (2) of subdivision (a) of Section 84501.

(3) A legislative or administrative action is clearly identified if the communication states a legislative or administrative identification number, official title, or popular name associated with the action or if the communication refers to the subject matter of the action and states that the measure is before an elective state official, agency official, or legislative official for a vote or decision.

(b) (1) An issue lobbying advertisement shall clearly and conspicuously identify the person that authorized and paid for the advertisement by either of the following:

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

(B) Satisfying the requirements of Sections 84504 to 84504.7, inclusive, for the applicable medium of distributing the advertisement.

(2) The requirements of Section 84503 shall not apply to issue lobbying advertisements.

(c) (1) A person that pays or makes enforceable promises to pay five thousand dollars (\$5,000) or more during a calendar quarter for issue lobbying advertisements shall file a report with the Secretary of State within 72 hours. The report shall be filed with the Secretary of State by online or electronic transmission using the online filing system described in subdivision (b) of Section 84602 each time a person pays or makes an enforceable promise to pay five thousand dollars (\$5,000) or more during the calendar quarter.

(2) The report required by this subdivision shall include the following information:

(A) The total payments made and enforceable promises to pay incurred in connection with each issue lobbying advertisement required to be disclosed by this subdivision. The cost of an issue lobbying advertisement shall include actual costs attributable to the advertisement but shall not include the payment of compensation for staff time or travel expenses paid by an organization to members or staff.

(B) The date that each issue lobbying advertisement was or will be first publicly disseminated.

(C) The identification number of the legislative or administrative action that was the subject of the issue lobbying advertisement or, if there is no identification number, the official title, popular name, or description of the action.

(D) 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, which may include "support," "oppose," "support if amended," "oppose unless amended," "neutral," "neutral seeking amendment," "neutral expressing concerns," "no position," or a similar description.

(E) The method of distributing the issue lobbying advertisement, including direct mail, text messages, television advertisements, radio advertisements, social media advertisements, search engine advertisements, or other types of online advertisements.

(F) The name of any Member of the Legislature or candidate for Member of the Legislature that is clearly identified in the issue lobbying advertisement.

(3) Payments for issue lobbying advertisements shall be disclosed on reports filed pursuant to Section 86115 notwithstanding any disclosure pursuant to this subdivision.

(d) This section is not intended and shall not be construed to expand the meaning of "lobbyist" as defined in Section 82039 or "lobbyist employer" as defined in Section 82039.5.

(e) This section does not apply to a placement agent, as defined in Section 82047.3.

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

SEC. 7. Sections 1 to 5, inclusive, of this act shall not become operative until one year after the date the Secretary of State certifies an online filing and disclosure system pursuant to paragraph (7) of subdivision (b) of Section 84602 of the Government Code or January 1, 2023, whichever is later.

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