

AMENDED IN ASSEMBLY MAY 19, 2015

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1200**

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**Introduced by Assembly Member Gordon**

February 27, 2015

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An act to amend Section 82002 of, *and to add Section 86205.5 to*, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1200, as amended, Gordon. Political Reform Act of 1974: lobbying: procurement contracts.

Existing provisions of the Political Reform Act of 1974 regulate the activities of lobbyists, lobbying firms, and lobbyist employers, as defined, in connection with attempts to influence legislative and administrative action by legislative and other state officials, including requirements that lobbyists, lobbying firms, and lobbyist employers register and file periodic reports with the Secretary of State. *The act also prohibits a lobbyist or lobbying firm from engaging in certain activities, including, among others, accepting any payment that is contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.* For purposes of these provisions, “administrative action” is defined to include the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding.

This bill would additionally define the term “administrative action” to include governmental procurement, which would be defined to include

various actions regarding ~~procurement contracts~~, a state procurement contract for which the total estimated cost exceeds \$250,000, thereby making the above-described lobbying requirements applicable to actions that attempt to influence governmental procurement. *The bill would also exclude certain actions from the definition of “government procurement,” including submitting a bid, testifying at a public hearing relating to a procurement contract, or any activity undertaken by bona fide salesperson, as defined.*

*This bill would also authorize a lobbyist to be compensated on a commission basis for lobbying activities related to influencing administrative action relating to governmental procurement, as specified.*

Because a willful violation of the act’s provisions is punishable as a misdemeanor, 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 and compliance with specified procedural requirements.

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

Vote:  $\frac{2}{3}$ . 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 82002 of the Government Code is
- 2 amended to read:
- 3 82002. (a) “Administrative action” means any of the following:
- 4 (1) The proposal, drafting, development, consideration,
- 5 amendment, enactment, or defeat by any state agency of any rule,
- 6 regulation, or other action in any ratemaking proceeding or any
- 7 quasi-legislative proceeding, which shall include any proceeding
- 8 governed by Chapter 3.5 (commencing with Section 11340) of
- 9 Part 1 of Division 3 of Title 2.

1 (2) With regard only to placement agents, the decision by any  
2 state agency to enter into a contract to invest state public retirement  
3 system assets on behalf of a state public retirement system.

4 (3) Governmental procurement.

5 (b) “Ratemaking proceeding” means, for purposes of a  
6 proceeding before the Public Utilities Commission, any proceeding  
7 in which it is reasonably foreseeable that a rate will be established,  
8 including, but not limited to, general rate cases, performance-based  
9 ratemaking, and other ratesetting mechanisms.

10 (c) “Quasi-legislative proceeding” means, for purposes of a  
11 proceeding before the Public Utilities Commission, any proceeding  
12 that involves consideration of the establishment of a policy that  
13 will apply generally to a group or class of persons, including, but  
14 not limited to, rulemakings and investigations that may establish  
15 rules affecting an entire industry.

16 (d) (1) “Governmental procurement” means any of the  
17 following *with respect to a state procurement contract for which*  
18 *the total estimated cost exceeds two hundred fifty thousand dollars*  
19 *(\$250,000):*

20 (1)

21 (A) Preparing the terms, specifications, bid documents, request  
22 for proposals, or evaluation criteria for *a the* procurement contract.

23 (2)

24 (B) Soliciting for *a the* procurement contract.

25 (3)

26 (C) Evaluating *a the* procurement contract.

27 (4)

28 (D) Awarding, approving, denying, or disapproving *a the*  
29 procurement contract.

30 (5)

31 (E) Approving or denying an assignment, amendment, other  
32 than an amendment authorized and payable under the terms of *a*  
33 *the* procurement contract as the procurement contract was finally  
34 awarded or approved, renewal, or extension of *a the* procurement  
35 contract, or any other material change in *a the* procurement contract  
36 resulting in financial benefit to the offeror.

37 (2) “Governmental procurement” *does not include any of the*  
38 *following with respect to a state procurement contract for which*  
39 *the total estimated cost exceeds two hundred fifty thousand dollars*  
40 *(\$250,000):*

1 (A) Submitting a bid on the state procurement contract.

2 (B) Testifying at a public hearing regarding the state  
3 procurement contract.

4 (C) Any activity, including those described in paragraph (1),  
5 undertaken by a bona fide salesperson of an article of procurement.  
6 For purposes of this subparagraph, a “bona fide salesperson” is  
7 an individual who satisfies each of the following:

8 (i) The primary purpose of the individual’s employment is to  
9 cause or promote the sale of, or to influence or induce another to  
10 make a purchase of, an article of procurement.

11 (ii) The primary purpose of the individual’s employment is not  
12 to influence the actions of a public officer or state agency in  
13 regards to selecting vendors to supply articles of procurement  
14 under a state procurement contract.

15 (iii) The individual does not engage in any other activity that  
16 would qualify him or her as a lobbyist.

17 SEC. 2. Section 86205.5 is added to the Government Code, to  
18 read:

19 86205.5. Notwithstanding Section 86205, a lobbyist may be  
20 compensated on a commission basis only with respect to lobbying  
21 activities related to influencing administrative action for  
22 governmental procurement, as defined in subdivision (d) of Section  
23 82002.

24 ~~SEC. 2.~~

25 SEC. 3. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

34 ~~SEC. 3.~~

35 SEC. 4. The Legislature finds and declares that this bill furthers  
36 the purposes of the Political Reform Act of 1974 within the  
37 meaning of subdivision (a) of Section 81012 of the Government  
38 Code.

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