

AMENDED IN SENATE JUNE 30, 2015

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 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, *among others*, submitting a ~~bid~~, *bid or fee proposal*, testifying at a public hearing relating to a procurement contract, or any activity undertaken by a ~~bona fide salesperson, as salesperson or a placement agent, as those terms are defined.~~

This bill would also authorize a lobbyist, *other than a placement agent*, 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

1 governed by Chapter 3.5 (commencing with Section 11340) of  
2 Part 1 of Division 3 of Title 2.

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

6 (3) Governmental procurement.

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

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

18 (d) (1) “Governmental procurement” means any of the  
19 following with respect to a state procurement contract for which  
20 the total estimated cost exceeds two hundred fifty thousand dollars  
21 (\$250,000):

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

24 (B) Soliciting for the procurement contract.

25 (C) Evaluating the procurement contract.

26 (D) *Scoring criteria for the procurement contract.*

27 ~~(D)~~

28 (E) Awarding, approving, denying, or disapproving the  
29 procurement contract.

30 ~~(E)~~

31 (F) Approving or denying an assignment, amendment, other  
32 than an amendment authorized and payable under the terms of the  
33 procurement contract as the procurement contract was finally  
34 awarded or approved, renewal, or extension of the procurement  
35 contract, or any other material change in 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 or fee proposal on the state procurement  
 2 ~~contract.~~ *contract that does not involve any activity described in*  
 3 *paragraph (1), including attending a bidders' conference or*  
 4 *responding to requests for information; or responding to a*  
 5 *competitive selection process based on qualifications.*

6 (B) Testifying at a public hearing regarding the state  
 7 procurement contract.

8 (C) ~~Any activity, including those described in paragraph (1),~~  
 9 *activity undertaken by a bona fide salesperson of an article of*  
 10 *procurement. For purposes of this subparagraph, a "bona fide*  
 11 *salesperson" is an individual who satisfies each all of the following:*

12 (i) ~~The primary purpose of the individual's employment is to~~  
 13 ~~cause or promote the sale of, or to influence or induce another to~~  
 14 ~~make a purchase of, an article of procurement.~~

15 (ii) ~~The primary purpose of the individual's employment is not~~  
 16 ~~to influence the actions of a public officer or state agency in regards~~  
 17 ~~to selecting vendors to supply articles of procurement under a state~~  
 18 ~~procurement contract.~~ *agency, as described in paragraph (1).*

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

21 (D) *Any activity undertaken by a placement agent, as that term*  
 22 *is defined in Section 82047.3.*

23 (E) *Any activity relating to a contract awarded by the state*  
 24 *through the California Multiple Award Schedule (CMAS) or a*  
 25 *contract awarded through government multi-jurisdiction*  
 26 *purchasing schedules.*

27 SEC. 2. Section 86205.5 is added to the Government Code, to  
 28 read:

29 86205.5. Notwithstanding Section 86205, a ~~lobbyist~~ *lobbyist,*  
 30 *other than a placement agent,* may be compensated on a  
 31 commission basis only with respect to lobbying activities related  
 32 to influencing administrative action for governmental procurement,  
 33 as defined in subdivision (d) of Section 82002.

34 SEC. 3. No reimbursement is required by this act pursuant to  
 35 Section 6 of Article XIII B of the California Constitution because  
 36 the only costs that may be incurred by a local agency or school  
 37 district will be incurred because this act creates a new crime or  
 38 infraction, eliminates a crime or infraction, or changes the penalty  
 39 for a crime or infraction, within the meaning of Section 17556 of  
 40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.  
3 SEC. 4. The Legislature finds and declares that this bill furthers  
4 the purposes of the Political Reform Act of 1974 within the  
5 meaning of subdivision (a) of Section 81012 of the Government  
6 Code.

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