

AMENDED IN SENATE AUGUST 26, 2015

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

Introduced by Assembly Member Gordon

February 27, 2015

An act to amend ~~Section 82002 of, and to add Section 86205.5 to, Sections 82002 and 82039 of 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. For purposes of these provisions, “lobbyist” is defined, in part, as an individual who receives \$2,000 or more in economic consideration in a calendar month, or whose principal duties as an employee are, to communicate with specified officials for the purpose of influencing legislative or administrative action.~~

~~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 or fee proposal, testifying at a public hearing relating to a procurement contract, or any activity undertaken by a bona fide 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.~~

~~This bill would revise the definition of “lobbyist” to include specified conduct by an individual acting on behalf of any person other than his or her employer for the purpose of influencing administrative action that is governmental procurement, which is further 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 the specified attempts to influence governmental procurement.~~

~~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.

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

13 (3) Governmental procurement.

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

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

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

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

31 (B) Soliciting for the procurement contract.

32 (C) Evaluating the procurement contract.

1 (D) Scoring criteria for the procurement contract.
 2 (E) Awarding, approving, denying, or disapproving the
 3 procurement contract.

4 (F) Approving or denying an assignment, amendment, other
 5 than an amendment authorized and payable under the terms of the
 6 procurement contract as the procurement contract was finally
 7 awarded or approved, renewal, or extension of the procurement
 8 contract, or any other material change in the procurement contract
 9 resulting in financial benefit to the offeror.

10 ~~(2) “Governmental procurement” does not include any of the~~
 11 ~~following with respect to a state procurement contract for which~~
 12 ~~the total estimated cost exceeds two hundred fifty thousand dollars~~
 13 ~~(\$250,000):~~

14 ~~(A) Submitting a bid or fee proposal on the state procurement~~
 15 ~~contract that does not involve any activity described in paragraph~~
 16 ~~(1), including attending a bidders’ conference or responding to~~
 17 ~~requests for information; or responding to a competitive selection~~
 18 ~~process based on qualifications.~~

19 ~~(B) Testifying at a public hearing regarding the state~~
 20 ~~procurement contract.~~

21 ~~(C) Any activity undertaken by a bona fide salesperson of an~~
 22 ~~article of procurement. For purposes of this subparagraph, a “bona~~
 23 ~~fide salesperson” is an individual who satisfies all of the following:~~

24 ~~(i) The primary purpose of the individual’s employment is the~~
 25 ~~sale of an article of procurement.~~

26 ~~(ii) The primary purpose of the individual’s employment is not~~
 27 ~~to influence the actions of a public officer or state agency, as~~
 28 ~~described in paragraph (1).~~

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

31 ~~(D) Any activity undertaken by a placement agent, as that term~~
 32 ~~is defined in Section 82047.3.~~

33 ~~(E) Any activity relating to a contract awarded by the state~~
 34 ~~through the California Multiple Award Schedule (CMAS) or a~~
 35 ~~contract awarded through government multi-jurisdiction purchasing~~
 36 ~~schedules.~~

37 ~~(2) “Governmental procurement” does not include any activity~~
 38 ~~undertaken by a placement agent, as that term is defined in Section~~
 39 ~~82047.3.~~

1 ~~SEC. 2. Section 86205.5 is added to the Government Code, to~~
2 ~~read:~~

3 ~~86205.5. Notwithstanding Section 86205, a lobbyist, other than~~
4 ~~a placement agent, may be compensated on a commission basis~~
5 ~~only with respect to lobbying activities related to influencing~~
6 ~~administrative action for governmental procurement, as defined~~
7 ~~in subdivision (d) of Section 82002.~~

8 ~~SEC. 2. Section 82039 of the Government Code is amended to~~
9 ~~read:~~

10 ~~82039. (a) “Lobbyist” means either any of the following:~~

11 ~~(1) Any individual who receives two thousand dollars (\$2,000)~~
12 ~~or more in economic consideration in a calendar month, other than~~
13 ~~reimbursement for reasonable travel expenses, or whose principal~~
14 ~~duties as an employee are, to communicate directly or through his~~
15 ~~or her agents with any elective state official, agency official, or~~
16 ~~legislative official for the purpose of influencing legislative or~~
17 ~~administrative action, except for administrative action that is~~
18 ~~governmental procurement, as defined in subdivision (d) of Section~~
19 ~~82002.~~

20 ~~(2) A placement agent, as defined in Section 82047.3.~~

21 ~~(3) Any individual who receives two thousand dollars (\$2,000)~~
22 ~~or more in economic consideration in a calendar month, other~~
23 ~~than reimbursement for reasonable travel expenses, to~~
24 ~~communicate directly or through his or her agents on behalf of~~
25 ~~any person other than his or her employer with any elective state~~
26 ~~official, agency official, or legislative official for the purpose of~~
27 ~~influencing administrative action that is governmental~~
28 ~~procurement, as defined in subdivision (d) of Section 82002.~~

29 ~~(b) An individual is not a lobbyist by reason of activities~~
30 ~~described in Section 86300.~~

31 ~~(c) For the purposes of subdivision (a), a proceeding before the~~
32 ~~Public Utilities Commission constitutes “administrative action” if~~
33 ~~it meets any of the definitions set forth in subdivision (b) or (c) of~~
34 ~~Section 82002. However, a communication made for the purpose~~
35 ~~of influencing this type of Public Utilities Commission proceeding~~
36 ~~is not within subdivision (a) if the communication is made at a~~
37 ~~public hearing, public workshop, or other public forum that is part~~
38 ~~of the proceeding, or if the communication is included in the~~
39 ~~official record of the proceeding.~~

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

10 SEC. 4. The Legislature finds and declares that this bill furthers
11 the purposes of the Political Reform Act of 1974 within the
12 meaning of subdivision (a) of Section 81012 of the Government
13 Code.