

AMENDED IN SENATE FEBRUARY 10, 2016

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, *add, and repeal* Sections 82002 and 82039 of, *and to add Section 86207 to*, the Government Code, relating to the Political Reform Act of 1974, *and declaring the urgency thereof, to take effect immediately.*

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 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. 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 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. *This bill would provide that the act’s penalty provisions are the exclusive remedy for a violation of the act’s requirements concerning government procurement lobbying.*

The bill would make these provisions operative on January 1, 2017.

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 2/3 vote of each house and compliance with specified procedural requirements.

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

This bill would declare that it is to take effect immediately as an urgency statute.

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 82002 of the Government Code is
2 amended to read:

3 82002. (a) “Administrative action” means either of the
4 following:

5 (1) The proposal, drafting, development, consideration,
6 amendment, enactment, or defeat by any state agency of any rule,
7 regulation, or other action in any ratemaking proceeding or any
8 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 (b) “Ratemaking proceeding” means, for the purposes of a
7 proceeding before the Public Utilities Commission, any proceeding
8 in which it is reasonably foreseeable that a rate will be established,
9 including, but not limited to, general rate cases, performance-based
10 ratemaking, and other ratesetting mechanisms.

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

17 (d) *This section shall remain in effect only until January 1, 2017,*
18 *and as of that date is repealed, unless a later enacted statute, that*
19 *is enacted before January 1, 2017, deletes or extends that date.*

20 *SEC. 2. Section 82002 is added to the Government Code, to*
21 *read:*

22 *82002. (a) “Administrative action” means any of the following:*

23 *(1) The proposal, drafting, development, consideration,*
24 *amendment, enactment, or defeat by any state agency of any rule,*
25 *regulation, or other action in any ratemaking proceeding or any*
26 *quasi-legislative proceeding, which shall include any proceeding*
27 *governed by Chapter 3.5 (commencing with Section 11340) of Part*
28 *1 of Division 3 of Title 2.*

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

33 *(3) Governmental Procurement.*

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

39 *(c) “Quasi-legislative proceeding” means, for purposes of a*
40 *proceeding before the Public Utilities Commission, any proceeding*

1 *that involves consideration of the establishment of a policy that*
2 *will apply generally to a group or class of persons, including, but*
3 *not limited to, rulemakings and investigations that may establish*
4 *rules affecting an entire industry.*

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

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

11 *(B) Soliciting for the procurement contract.*

12 *(C) Evaluating the procurement contract.*

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

14 *(E) Awarding, approving, denying, or disapproving the*
15 *procurement contract.*

16 *(F) Approving or denying an assignment, amendment, other*
17 *than an amendment authorized and payable under the terms of the*
18 *procurement contract as the procurement contract was finally*
19 *awarded or approved, renewal, or extension of the procurement*
20 *contract, or any other material change in the procurement contract*
21 *resulting in financial benefit to the offeror.*

22 *(2) “Governmental procurement” does not include any activity*
23 *undertaken by a placement agent, as that term is defined in Section*
24 *82047.3.*

25 *(e) This section shall become operative on January 1, 2017.*

26 *SEC. 3. Section 82039 of the Government Code is amended to*
27 *read:*

28 82039. (a) “Lobbyist” means either of the following:

29 (1) Any individual who receives two thousand dollars (\$2,000)
30 or more in economic consideration in a calendar month, other than
31 reimbursement for reasonable travel expenses, or whose principal
32 duties as an employee are, to communicate directly or through his
33 or her agents with any elective state official, agency official, or
34 legislative official for the purpose of influencing legislative or
35 administrative action.

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

37 (b) An individual is not a lobbyist by reason of activities
38 described in Section 86300.

39 (c) For the purposes of subdivision (a), a proceeding before the
40 Public Utilities Commission constitutes “administrative action” if

1 it meets any of the definitions set forth in subdivision (b) or (c) of
2 Section 82002. However, a communication made for the purpose
3 of influencing this type of Public Utilities Commission proceeding
4 is not within subdivision (a) if the communication is made at a
5 public hearing, public workshop, or other public forum that is part
6 of the proceeding, or if the communication is included in the
7 official record of the proceeding.

8 *(d) This section shall remain in effect only until January 1, 2017,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2017, deletes or extends that date.*

11 SEC. 4. Section 82039 is added to the Government Code, to
12 read:

13 82039. (a) “Lobbyist” means any of the following:

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

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

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

32 (b) An individual is not a lobbyist by reason of activities
33 described in Section 86300.

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

1 of the proceeding, or if the communication is included in the official
2 record of the proceeding.

3 (d) This section shall become operative on January 1, 2017.

4 SEC. 5. Section 86207 is added to the Government Code, to
5 read:

6 86207. (a) Notwithstanding any other law, the penalties
7 imposed by this title shall be the exclusive remedy for a violation
8 of this chapter with respect to requirements for governmental
9 procurement lobbying.

10 (b) This section shall become operative on January 1, 2017.

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

20 SEC. 7. The Legislature finds and declares that this bill furthers
21 the purposes of the Political Reform Act of 1974 within the meaning
22 of subdivision (a) of Section 81012 of the Government Code.

23 SEC. 8. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety within
25 the meaning of Article IV of the Constitution and shall go into
26 immediate effect. The facts constituting the necessity are:

27 In order to provide the Fair Political Practices Commission with
28 authority and sufficient time to adopt regulations necessary to
29 implement the substantive requirements of this act before the
30 January 1, 2017, operative date, it is necessary that this bill take
31 effect immediately.

32 SECTION 1. ~~Section 82002 of the Government Code is~~
33 ~~amended to read:~~

34 82002. (a) "Administrative action" means any of the following:

35 (1) ~~The proposal, drafting, development, consideration,~~
36 ~~amendment, enactment, or defeat by any state agency of any rule,~~
37 ~~regulation, or other action in any ratemaking proceeding or any~~
38 ~~quasi-legislative proceeding, which shall include any proceeding~~
39 ~~governed by Chapter 3.5 (commencing with Section 11340) of~~
40 ~~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 influencing a state procurement contract~~
18 ~~for which the total estimated cost exceeds two hundred fifty~~
19 ~~thousand dollars (\$250,000):~~

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

22 ~~(B) Soliciting for the procurement contract.~~

23 ~~(C) Evaluating the procurement contract.~~

24 ~~(D) Scoring criteria for the procurement contract.~~

25 ~~(E) Awarding, approving, denying, or disapproving the~~
26 ~~procurement contract.~~

27 ~~(F) Approving or denying an assignment, amendment, other~~
28 ~~than an amendment authorized and payable under the terms of the~~
29 ~~procurement contract as the procurement contract was finally~~
30 ~~awarded or approved, renewal, or extension of the procurement~~
31 ~~contract, or any other material change in the procurement contract~~
32 ~~resulting in financial benefit to the offeror.~~

33 ~~(2) “Governmental procurement” does not include any activity~~
34 ~~undertaken by a placement agent, as that term is defined in Section~~
35 ~~82047.3.~~

36 ~~SEC. 2. Section 82039 of the Government Code is amended~~
37 ~~to read:~~

38 ~~82039. (a) “Lobbyist” means any of the following:~~

39 ~~(1) Any individual who receives two thousand dollars (\$2,000)~~
40 ~~or more in economic consideration in a calendar month, other than~~

1 reimbursement for reasonable travel expenses, or whose principal
2 duties as an employee are, to communicate directly or through his
3 or her agents with any elective state official, agency official, or
4 legislative official for the purpose of influencing legislative or
5 administrative action, except for administrative action that is
6 governmental procurement, as defined in subdivision (d) of Section
7 82002.

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

9 (3) Any individual who receives two thousand dollars (\$2,000)
10 or more in economic consideration in a calendar month, other than
11 reimbursement for reasonable travel expenses, to communicate
12 directly or through his or her agents on behalf of any person other
13 than his or her employer with any elective state official, agency
14 official, or legislative official for the purpose of influencing
15 administrative action that is governmental procurement, as defined
16 in subdivision (d) of Section 82002.

17 (b) An individual is not a lobbyist by reason of activities
18 described in Section 86300.

19 (e) For the purposes of subdivision (a), a proceeding before the
20 Public Utilities Commission constitutes “administrative action” if
21 it meets any of the definitions set forth in subdivision (b) or (c) of
22 Section 82002. However, a communication made for the purpose
23 of influencing this type of Public Utilities Commission proceeding
24 is not within subdivision (a) if the communication is made at a
25 public hearing, public workshop, or other public forum that is part
26 of the proceeding, or if the communication is included in the
27 official record of the proceeding.

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

37 SEC. 4. The Legislature finds and declares that this bill furthers
38 the purposes of the Political Reform Act of 1974 within the

1 ~~meaning of subdivision (a) of Section 81012 of the Government~~
2 ~~Code.~~

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