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To: Chair Remke and Commissioners Audero, Casher, Wasserman, and Wynne

From: Hyla Wagner, General Counsel
Emelyn Rodriguez, Senior Commission Counsel

Subject: Lobbying - Disclosure of Other Payments to Influence:
Adoption of Amendments to Regulation 18616, Reports by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action

Date: January 11, 2015

One of the fundamental purposes of the Political Reform Act¹ is to prevent improper influences over public officials by wealthy individuals and organizations that spend large amounts employing lobbyists to influence legislative and administrative actions. (Section 81001, subd. (f).) A key tool to achieve this goal is the Act's requirement that lobbyists, and the individuals and organizations that employ them, disclose payments they make to influence legislative and administrative action. (Section 81002, subd. (b).)

However, this important goal is hindered by current rules that allow trade groups, unions, corporations and special interest groups that hire lobbyists (i.e., lobbyist employers) to lump large sums of payments they make under a catchall, non-itemized category known as "other payments to influence." Unlike other reported payments, this category does not require any breakdown of relevant information such as the payee, the goods or services paid for or the amount paid.

This loophole in the current reporting requirement is problematic because "other payments to influence" can include expenditures that are instrumental in influencing public officials through activities that are closely related to lobbying, but do not meet the narrow definition of lobbying.² The "other" category can range from the benign payment for office rent to the hiring of consultants, including well-connected former politicians not registered as lobbyists but who influence action directly or indirectly. There also are expenditures for public affairs, grassroots advocacy, and media consulting – all of which goes virtually undetected under the "other" reporting category.

¹ The Political Reform Act (Act) is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission's regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Lobbyist is defined as any individual who receives \$2,000 or more in a calendar month, or who spends one-third or more of his or her time in a calendar month as an employee, to *communicate directly* or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. (Section 82039; Regulation 18239(c).)

The problem is compounded by the fact that recent trends in lobbying techniques have expanded not only in sophistication but in scope. Lobbyist employers continue to spend more *and* report greater percentages of their expenditures in the “other payments to influence” category, denying the public the ability to know to whom these payments are going and why they are being spent. This shift in lobbying tactics is evident by the reporting practices of the ten interest groups that routinely spend the most on lobbying:³

Year	Total Lobbying Reported	“Other Payments”	Percent of Total Reported as “Other Payments”
2000	\$12,329,439	\$6,385,993	52%
2014	\$35,746,455	\$24,572,865	69%

The net result is that the reporting of “other payments to influence” in a lump sum category is a growing problem that is thwarting the goals of transparency and accountability in the Act. Commission staff is proposing changes to the reporting requirements to keep pace with the new ways in which lobbyist employers are spending money to influence public officials and reporting those expenditures.

The proposed regulatory amendments would:

- Require more **detailed disclosure for “other payments to influence.”** Employers are already required to track and maintain “detailed records” of this information (Regulation 18615(c)(4)) - but it is not disclosed to the public.
- Itemize the **most significant expenses**, \$2,500 or more, to influence legislative or administrative actions, including the payee, the amount and the primary purpose of the payment.
- Use existing Form 640 (currently used by state and local government agencies that are required to itemize “other payments”) to foster **immediate implementation at limited expense**, and more importantly, to avoid any roadblocks from the technological and resource limitations of Cal-Access.

Lobbying is largely a self-regulated industry. Requiring more detailed reporting and disclosure is one of the most effective tools to promote compliance and facilitate enforcement against improper activity.

³ The 10 groups include Western States Petroleum Association, California State Council of Service Employees, Chevron Corporation and its subsidiaries, California Chamber of Commerce, California Hospital Association and California Association of Hospitals and Health Systems, Kaiser Foundation Health Plan Inc., Pacific Gas and Electric Co. and its affiliated entities, California Medical Association, California School Employees Association, and California Manufacturers and Technology Association. (Allen Young , *Oil Lobby Leads List of Top Spenders in 2014*, Sacramento Business Journal, Feb. 3, 2015, <http://www.bizjournals.com/sacramento/news/2015/02/03/oil-lobby-leads-list-of-top-spenders-at-the.html>.)

I. Need to Provide Greater Transparency and Accountability

A. Problems with Current Reporting Requirements

Section 86116 requires any lobbyist employer or person spending \$5,000 or more to influence legislative or administrative action to file quarterly reports disclosing payments in the following categories: (1) payments to lobbying firms, (2) payments to lobbyists, (3) activity expenses, and (4) other payments to influence legislative or administrative action. Section 86110 requires the filers to keep detailed accounts, records, bills and receipts in all these categories as required by regulations adopted by the Commission. However, the current rules only require the disclosure of the detailed information on the publicly filed forms for the first three categories and not on “other payments to influence.”

The current rules allow lobbyist employers and \$5,000 filers to avoid fully disclosing spending activities, and enable increasingly large sums of expenditures to be lumped under the catchall category without details. With special interest groups reporting greater percentages of their expenditures in this category, the public is denied the ability to monitor activities closely related to lobbying, such as the hiring of former government officials as consultants, or spending on advertising or public affairs campaigns.⁴

B. Valuable Information and Potential Problems are Concealed

Without greater transparency, “shadow lobbying”⁵ becomes a greater issue, as persons or firms not formally registered as lobbyists expend vast sums on activities aimed at influencing or altering legislative or agency action without detailed public disclosure.⁶ Most of these activities fall outside the legal definition of “lobbying.” However, they represent a significant, nearly invisible component of special interest influence on public policy. Without additional disclosure, the public cannot determine how interest groups spend money to influence state legislation and agency action.

Several published reports have detailed the growing amount of expenditures classified under the “other payments to influence” category.⁷ In many cases, the amounts in the catchall

⁴ Laurel Rosenhall, *California’s Lobby Laws Keep Many Influence-Peddling Details Secret*, Sacramento Bee, January 13, 2013 (<http://www.sacbee.com/news/investigations/the-public-eye/article2576369.html>).

⁵ Laurel Rosenhall, *California Strategies Walks Line Between Lobbying and Public Affairs*, Sacramento Bee, October 6, 2013 (<http://www.sacbee.com/news/politics-government/article2579039.html>).

⁶ The issue of “shadow lobbying” is not just a California phenomenon, but also a growing national problem according to published reports. One report stated, “on paper, influence peddling has declined. In reality, it’s just gone underground.” (Lee Fang, *The Shadow Lobbying Complex*, The Nation, Feb. 19, 2014).

⁷ Chris Megerian & John Meyers, *Oil Industry Pumped Cash Into Lobbying As Fight Over Energy Bill Raged*, Los Angeles Times, November 2, 2015 (<http://www.latimes.com/politics/la-pol-sac-oil-industry-pumped-cash-into-capitol-lobbying-campaign-20151102-story.html>); Marc Lifsher, *Top 10 California Lobbyist Employers Spent \$57 Million In 2 Years*, LA Times, Nov. 1, 2012 (<http://articles.latimes.com/2012/nov/01/business/la-fi-mo-top-lobbyist-employers-20121101>); Jim Miller, *California Special Interests Spent \$48.5 Million To Lobby In First Quarter*,

category far exceed payments to lobbyists and lobbying firms for actual “direct communications” with public officials that require itemized reporting. Focusing on the ten interest groups that spent the most on lobbying in 2014, the list below shows those with the highest percent reported under “other payments to influence:”

Percent of Total Reported as “Other Payments”⁸

1. Western States Petroleum Association = 81%
2. CA State Council of Service Employees = 79%
3. CA Manufacturers and Technology Association = 79%
4. CA Chamber of Commerce = 77%
5. Pacific Gas & Electric Co. = 70%

II. The Proposed Amendments

A. Information and Threshold for Itemization

Commission staff recommends that lobbyist employers and \$5,000 filers who file periodic reports under Section 86116 itemize expenditures on a separate form provided by the Commission (current Form 640). The threshold for reporting these “other payments to influence” would be \$2,500 or more to a payee. Form 640 would be submitted as an attachment with the report required under Section 86116. The filer would be required to disclose:

- The name and business address of the payee;
- The total payments made during the reporting period;
- The cumulative amount paid during the calendar year; and
- A payment code to describe the primary purpose of the payment.

Disclosure of the name and address of the payee provides key information about persons who engage in activities closely related to lobbying to influence legislative or administrative action. For instance, some related firms share the same address and the same employees or consultants who perform various functions. By connecting these entities and their activities, we get a more complete picture of who is taking action to influence public officials and the actions they are taking. Requiring this disclosure will aid in compliance and help detect violations.

Furthermore, as recently reported, a significant amount of the money is spent “to get ordinary Californians riled up about an issue so you’ll pressure lawmakers to do what the lobbyists want.”⁹ This refers to a growing trend by special interest groups to create media or “grassroots” campaigns to influence the public on a particular issue, who in turn are relied on to

Sacramento Bee, May 12, 2015 (<http://www.sacbee.com/news/politics-government/capitol-alert/article20747769.html>).

⁸ See *Summary of Expenditures by Top 10 Lobbyist Employers in 2014* on page 7 for a breakdown of total expenditures.

⁹ Laurel Rosenhall, *A Lobbying Rule to Catch Up with the Times*, CALMatters, January 6, 2016 (<https://calmatters.org/articles/a-lobbying-rule-to-catch-up-with-the-times/>).

influence their public officials. As reported, “[t]hese tactics have become a growing part of the way the biggest interest groups work to influence state officials as they adapted to the imposition of term limits in the 1990s, which changed the relationships between lobbyists and legislators.”¹⁰ However, the sponsors behind these media campaigns are not always clear. The additional disclosure required under the current proposal would reveal the interest groups funding the campaigns, providing valuable cues to help the public better decipher the messages.

B. Use of Payment Codes to Track Spending and Promote Compliance

The amendments to Regulation 18616 also would require the filer to use a specified payment code to identify the primary purpose of the itemized payment of \$2,500 or more listed on Form 640.¹¹ The proposed codes are based in part on payment categories for which the filers are currently required to maintain detailed records. The payment codes are categorized as follows:

- i. Salary – Compensation of employees other than lobbyists who are engaged for 10% or more of their time in one month in activities related to lobbying (Section 86116, subd. (h)(1); Regulation 18615(c)(4)(A));
- ii. Lobbyist Expenses – Expenses incurred by a lobbyist and paid directly by the filer, or expenses incurred by the filer for goods or services used by a lobbyist or used to support or assist a lobbyist in connection with his or her activities as a lobbyist (Regulation 18615(c)(4)(B) & (C));
- iii. Legislative related-services – Legislative-related services performed by a lobbying firm in the absence of express or implied authorization to engage in *direct communication* related to researching, monitoring, analyzing or drafting statutes, or recommending strategy, providing advice, or similar services concerning pending or proposed legislative or administrative action as required under Regulation 18614(b)(2);
- iv. Consultants & Government Relations – Contracts for economic consideration with a business entity or individual, other than a lobbying firm or lobbyist, to provide governmental consulting, advocacy, or strategy;
- v. Public Affairs – Coalition building, grassroots campaigns and public policy initiatives including news releases, media campaigns, literature and mailings, canvassing, and special events;
- vi. Advertising – Including billboards, print, radio, television, text, email and other electronic advertising;
- vii. Research - Including feasibility studies, analysis, polling, and public opinion research;

¹⁰ Rosenhall, *A Lobbying Rule to Catch Up with the Times*, CALMatters, January 6, 2016.

¹¹ The \$250 threshold at which state and local government agencies are currently required to provide detailed reporting of “other payments to influence” under Section 86116.5 would not be changed.

viii. Lobbying Events –Including event planning, rentals, equipment, and transportation for members of organizations or the public to meet public officials, hold rallies or attend hearings to influence legislative or administrative action;

ix. Other – for all other payments not covered by one of the above listed categories.

C. Overhead Expenses and Other Lump Sum Payments

Section 86116, subdivision (h)(1), requires filers to include overhead expenses under “other payments to influence.” These expenses are limited to office overhead and operating expenses associated with influencing legislative or administration action, and do not include regular, ongoing business expenses incurred regardless of the filer’s activities to influence. (Reg. 18616(g)(2).)

However, these payments do not provide useful information and shroud key expenditures by special interest groups. Staff recommends that overhead expenses such as rent, utilities, and office supplies required by Section 86116, subdivision (h)(1), not be itemized but continue to be reported in the lump sum totals of “other payments to influence” on Form 635 (lobbyist employers) and Form 645 (\$5,000 filers), and then be a separate lump sum for “overhead expenses” on Form 640 as is currently required by state and local governments.

D. Immediate Implementation at Limited Expense

In researching various ways to obtain more detailed information, one of the main challenges staff has faced is technological. The California Automated Lobbying and Campaign Contribution and Expenditure Search System (Cal-Access), is the state’s campaign finance database managed by the California Secretary of State’s office (SOS). It is a repository for campaign and lobbying information, and provides online access to financial information supplied by state candidates, donors, lobbyists, and other filers.

Forms on the Cal-Access system have fixed fields and space restrictions that limit how much new information can be entered. SOS technical staff stated that adding new fields to any of the relevant lobbying forms was not feasible. After further consultation with SOS, Commission staff concluded that the simplest, most cost-effective, and quickest approach is to revise Form 640. This allows the proposed regulatory amendment to be implemented with minimal costs and resources, without the use of new forms or programs, and therefore can be accomplished within a short time frame.

III. Staff Recommendation

The proposed regulatory amendments will provide greater transparency and more relevant disclosure of activities by special interest groups seeking to influence public officials. Staff recommends the Commission adopt proposed amendments to Regulation 18616.

Attachments:

Proposed Regulation 18616; Amended Form 640

Summary of Expenditures by Top 10 Lobbyist Employers in 2014

Lobbyist Employer	Total Lobbying Reported	“Other Payments”	Percent of Total Reported as “Other Payments”
Western States Petroleum Association	\$8,883,933.07	\$7,201,681.16	81%
CA State Council of Service Employees	\$5,879,429.69	\$4,642,198.10	79%
Chevron Corp. and its subsidiaries	\$4,306,915.95	\$2,989,241.48	69%
CA Chamber of Commerce	\$3,930,691.95	\$3,036,397.68	77%
CA Hospital Assn. and CA Assn. of Hospitals and Health Systems	\$2,970,619.30	\$1,016,150.41	34%
Kaiser Foundation Health Plan Inc.	\$2,802,720.21	\$1,579,125.48	56%
Pacific Gas & Electric Co.	\$1,645,486.32	\$1,150,645.43	70%
CA Medical Association	\$1,902,829.79	\$496,399.86	26%
CA School Employees Association	\$1,770,413.30	\$1,162,494.00	66%
CA Manufacturers and Technology Association	\$1,653,416.01	\$1,298,531.68	79%