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To: Chair Miadich and Commissioner Hatch

From: Dave Bainbridge, General Counsel
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Subject: Lobbying Law Basics

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INTRODUCTION

According to the Secretary of State's 2019-2020 lobbying directory, there are approximately 1,875 registered lobbyists, 269 lobbying firms, and 3,300 lobbyist employers registered in California. But concern exists that significant lobbying activity occurs at the state level that does not get reported. The Law & Policy Committee is exploring the issue of unregistered lobbying to consider what the Commission should do to ensure greater transparency in state lobbying activities. To facilitate Committee discussion, this memo provides basic information about how the Act defines lobbying, and the registration and reporting requirements it places on lobbyists and those who employ lobbyists. It also provides a brief survey of lobbying rules in other jurisdictions for purposes of comparison.

DEFINITIONS

In California, to lobby is to “communicate directly or through [an] agent with an elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.” (Section 82039.) The Act regulates five types of lobbying “filers:” lobbyists; lobbying firms; lobbyist employers; lobbying coalitions, and; \$5,000 filers.

An individual can qualify as either an in-house lobbyist or a contract lobbyist. (Section 82039; Regulation 18239(c).) An in-house lobbyist is an individual who spends one-third or more of her time in a calendar month for which she is compensated by her employer to communicate directly or through agents with a qualifying official for the purpose of influencing legislative or administrative action.¹ (Regulation 18239(a)(2), (c).) A contract lobbyist is an individual who receives \$2,000 or more in a calendar month to communicate directly or through agents with a qualifying official for the purpose of influencing legislative or administrative action.²

¹ By regulation, staff interprets the statutory language “principal duties as an employee” as one-third or more of compensated time employed in a calendar quarter devoted to direct communication with a qualifying official. (See Section 82039(a)(1).)

² The “presumption rule” specifies situations that give rise to a rebuttable presumption that certain payments made to a qualifying official are for direct communication with the official for the purpose of influencing legislative or administrative action. (See Regulation 18239(d)(2).)

Once a person qualifies as a lobbyist, i.e. meets the definition of a lobbyist, that person and his/her clients are subject to the Act's lobbying registration and reporting requirements, amongst other restrictions. Therefore, the definition of lobbying is central to the issue of unregistered lobbying.

A lobbyist must either work for a lobbying firm or be employed as an in-house lobbyist. A lobbying firm is a business entity or an individual that is compensated for directly communicating with a qualifying official for the purpose of influencing legislative or administrative action. (Section 82038.5; Regulation 18238.5(a).) A business entity may qualify as a lobbying firm if the entity receives or becomes entitled to receive compensation for lobbying and at least one employee, partner, owner, or officer is a lobbyist, or the entity receives or becomes entitled to receive at least \$5,000 in a calendar quarter for the purpose of influencing legislative or administrative action on behalf of any person and at least one employee, partner, owner, or officer engages in direct communication to lobby. (Section 82038.5; Regulation 18238.5(a).) An individual may qualify as a lobbyist if the individual is a lobbyist compensated for lobbying on behalf of someone other than the individual's employer or if the individual is a lobbyist compensated for lobbying on behalf of the individual's employer and someone else. (Regulation 18238.5(c).)

A lobbyist employer is any individual, business entity, or other organization that directly employs an in-house lobbyist to engage in direct communication for the purpose of influencing legislative or administrative action, or retains a lobbying firm to engage in direct communication for the purposes of influencing legislative or administrative action. (Section 82039.5.)

Similar to a lobbyist employer, a lobbying coalition is a group of ten or more persons or entities formed primarily to influence legislative or administrative action whose members make payments to the coalition for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm.³ (Regulation 18616.4(a).)

Lastly, a \$5,000 filer is an entity or individual who does not employ an in-house lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence legislative or administrative action.⁴ (Section 82038.5(a)(2); Regulation 18238.5(a).)

REGISTRATION AND REPORTING

Once a lobbyist, lobbying firm, or a lobbyist employer/ lobbying coalition with an in-house lobbyist qualifies, it has 10 days to register with the Secretary of State. A lobbyist qualifies by meeting the definition of a lobbyist discussed above. The entities qualify by paying a lobbyist to lobby. Registration is not required for \$5,000 filers or any lobbyist employer/lobbying coalition that only contracts with a lobbying firm and does not employ an in-house lobbyist.

³ Electronic filing is required if reportable payments, expenses, gifts, or other items total \$2,500 or more in a calendar quarter, or if firm or employer files electronically. If a filer is required to make electronic disclosure, additional paper disclosure is not required.

⁴ Electronic filing is required if reportable payments, expenses, gifts, or other items total \$2,500 or more in a calendar quarter, or if firm or employer files electronically. If a filer is required to make electronic disclosure, additional paper disclosure is not required.

Lobbyists, lobbying firms, lobbyist employers, lobbying coalitions, and \$5,000 filers are all required to file disclosure reports. (See Section 86100 et. seq.) Reports are due at the end of the month following the calendar quarter. They disclose such information as money paid and received for lobbying, interests being lobbied, official being lobbied, activity expenses, campaign contributions, et cetera.⁵

LOBBYING DEFINITIONS AND RULES IN OTHER JURISDICTIONS

Federal

The Lobbying Disclosure Act of 1995 defines a lobbyist as “any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a three-month period.” A client is “any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity.”⁶ A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees.” Additionally, any organization that spends more than \$10,000 towards lobbying activities must also be registered.

According to the Lobbying Disclosure Act, several authorized definitions include:

- “Lobbying activities” means “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.”
- “Lobbying contact” means “any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official.”

The number of registered lobbyists in Washington is estimated to be over 13,000. Since 2008, north of \$3 billion per year has been consistently spent on lobbying activities.⁷

Other States

Nearly all states require lobbyists, and those who hire lobbyists, to submit periodic disclosure reports. The names and definitions of lobbying filers differ, but these laws generally require lobbyists to submit public reports that identify how much money is spent on lobbying, what legislative issues are being lobbied, and for which officials’ benefit the expenditures are made. State laws are relatively uniform in terms of reporting requirements. However, states vary in the frequency of reporting. Some states require lobbyists file reports monthly or semimonthly

⁵ Electronic filing is required if reportable payments, expenses, gifts, or other items total \$2,500 or more in a calendar quarter, or if firm or employer files electronically. If a filer is required to make electronic disclosure, additional paper disclosure is not required.

⁶ Under the federal Lobbying Disclosure Act, an organization employing in-house lobbyists is exempt from registration if its total expenses for lobbying activities does not exceed and is not expected to exceed \$13,000 during a quarterly period. The registration threshold for lobbying firms is \$3,000.

⁷ See the Center for Responsive Politics based on data from the Senate Office of Public Records.

throughout the year, or monthly or semimonthly only while the legislature is in session. Several states require lobbyists to submit quarterly reports and some only one annual disclosure statement. States also differ regarding how much needs to be spent before disclosure is necessary and the form of disclosure.

The states also have varying qualifying monetary thresholds, but most states use compensation received or expended as their lobbying metrics. For example, Arkansas defines a lobbyist as a person who receives or expends \$400 in a calendar quarter; Connecticut requires \$3,000 in a year; Georgia sets its thresholds at receipt of \$250 in a year or expenditure of \$1,000 a year; Indiana sets receipt or expenditure at \$500 in a year; Michigan sets expenditure at \$1,000 in a year or \$250 on a single public official in a year; Texas sets receipt or expenditure at \$200 in a calendar quarter; Pennsylvania, Virginia, and West Virginia have the lowest thresholds as receipt of any economic consideration qualifies an individual as a lobbyist, and; Wyoming sets its receipt threshold at \$500 in a year.

Some states use other metrics for determining when a person qualifies as a lobbyist. Nevada does not require an individual to be compensated for lobbying to fall within its lobbying regulation parameters.⁸ Maine defines a lobbyist as any person who is specifically employed for the purpose of and who engages in lobbying in excess of eight hours in any calendar month.⁹ Wisconsin sets the bar at ten hours.¹⁰

Many states take a more expansive scope of lobbying regulation than California's, which is limited to legislative and administrative action.¹¹ (See Section 82037 and 82002.) For instance, Florida's lobbying regulation parameters include the nonaction by the legislature, as well as attempts to obtain goodwill of a member or employee of the state legislature.¹² A few states expand lobbying regulation to the judicial branch.¹³ In their definition of lobbying, several states include indirect communication, that is, grassroots lobbying.¹⁴ The Act's definition of lobbying is limited to direct communication or communication through an agent. (Section 82039.) However, Form 640 – Other Payments to Influence Legislative or Administrative Action captures grassroots lobbying by lobbyist employers/lobbying coalitions and \$5,000 filers.

⁸ See Nev. Rev. Stat. Ann. § 218H.080.

⁹ See Me. Rev. Stat. tit. 3, § 312-A.

¹⁰ See Wis. Stat. Ann. § 13.68.

¹¹ Please note that “legislative action” includes the action of the Governor in approving or vetoing bills and encompasses executive branch appointments that require Senate confirmation.

¹² See Fla. Stat. Ann. § 11.045.

¹³ See Ga. Code Ann. § 21-5-73; Mo. Ann. Stat. § 105.470; Mass. Gen. Laws Ann. ch. 3, § 43.

¹⁴ See Ark. Code § 21-8-402; Colo. Rev. Stat. § 24-6-301; Miss. Code. Ann. § 5-8-3; 65 Pa. Stat. and Cons. Stat. Ann. § 13A03; Tenn. Code Ann. § 3-6-301; Va. Code Ann. § 2.2-419; Vt. Stat. Ann. tit. 2, § 264.