

AMENDED IN ASSEMBLY APRIL 12, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2002

Introduced by Assembly Members Mark Stone, Atkins, and Levine
(Principal coauthors: Assembly Members Alejo and Gordon)

(Principal coauthor: Senator Jackson)

(Coauthors: Assembly Members Bloom, Chiu, Gonzalez,
Jones-Sawyer, McCarty, O'Donnell, Rendon, Thurmond, Ting,
Weber, Williams, and Wood)

(Coauthors: Senators Allen, Block, Leno, Monning, Pavley, and Wolk)

February 16, 2016

An act to amend Sections 82002, 82039, and 86300 of the Government Code, and to amend Sections 30324 and 30325 of the Public Resources Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, as amended, Mark Stone. Political Reform Act of 1974: California Coastal Commission: communications.

Existing law establishes the California Coastal Commission in the Natural Resources Agency and designates the commission as the state coastal zone planning and management agency for all purposes. Existing law prohibits a commission member or an interested person, as defined, from conducting an ex parte communication unless the commission member fully discloses and makes public that communication within 7 days after the communication or, if the communication occurs within 7 days of the next commission hearing, to the commission on the record of the proceeding at that hearing.

This bill would require a commission member to fully disclose in writing 24 hours before a commission hearing any ex parte communication conducted within 7 days of the commission hearing relating to a matter that will be discussed at the hearing, and would prohibit a commission member or an interested person from conducting such an ex parte communication within 24 hours before the commission hearing.

The Political Reform Act of 1974 provides for the regulation of the lobbying industry, including defining the term “lobbyist” and regulating the conduct of lobbyists. Among its provisions, the act prohibits lobbyists from engaging in certain activities, including accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action. Under the act, a lobbyist is, among others, an individual whose principal duties as an employee are to communicate with, among others, any agency official for the purpose of influencing legislative or administrative action. For these purposes, “administrative action” is defined as the proposal, drafting, development, consideration, amendment, enactment, or defeat by a state agency of any rule, regulation, or other action in any ratemaking or quasi-legislative proceeding and “agency official” is defined as any member, officer, employee, or consultant of any state agency who participates in any administrative action in other than a ministerial capacity.

This bill would revise the definition of “administrative action” to include, with regard to proceedings before the California Coastal Commission, specified actions relating to the review, approval, and appeal of certain permit actions and coastal plans and programs. The bill would, however, exclude from these provisions relating to lobbyists an employee of a local government agency seeking, within the scope of his or her employment, to influence quasi-judicial decisions of the commission. The bill would also, for purposes of ~~a quasi-judicial matter~~ *those matters* before the California Coastal Commission, limit the definition of “agency official” to a member of the commission.

Existing law makes a knowing and willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by expanding those crimes.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes

with 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.

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.

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) For purposes of proceedings before the California Coastal
14 Commission, the proposal, drafting, development, consideration,
15 amendment, enactment, or defeat of any rule, regulation, permit
16 action, federal consistency review, appeal, local coastal program,
17 port master plan, public works plan, long-range development plan,
18 or categorical or other exclusion from coastal development permit
19 requirements.

20 (b) "Ratemaking proceeding" means, for the purposes of a
21 proceeding before the Public Utilities Commission, any proceeding
22 in which it is reasonably foreseeable that a rate will be established,
23 including, but not limited to, general rate cases, performance-based
24 ratemaking, and other ratesetting mechanisms.

25 (c) "Quasi-legislative proceeding" means, for purposes of a
26 proceeding before the Public Utilities Commission, any proceeding
27 that involves consideration of the establishment of a policy that

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

4 SEC. 2. Section 82039 of the Government Code is amended
5 to read:

6 82039. (a) “Lobbyist” means either of the following:

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

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

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

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

26 (d) Notwithstanding Section 82004, for purposes of a
27 ~~quasi-judicial~~ matter before the California Coastal Commission,
28 as described in paragraph (3) of subdivision (a) of Section 82002,
29 “agency official,” as used in subdivision (a) of this section, shall
30 only mean a member of the California Coastal ~~Commission~~.
31 *Commission and does not include staff of the commission.*

32 SEC. 3. Section 86300 of the Government Code is amended
33 to read:

34 86300. The provisions of this chapter are not applicable to any
35 of the following:

36 (a) An elected public official acting in his or her official capacity
37 or an employee of the state acting within the scope of his or her
38 employment. However, an employee of the state, other than a
39 legislative official, who attempts to influence legislative action
40 and who would be required to register as a lobbyist, except for the

1 provisions of this subdivision, shall not make gifts of more than
2 ten dollars (\$10) in a calendar month to an elected state officer or
3 legislative official.

4 (b) A newspaper or other periodical of general circulation, book
5 publisher, radio or television station, any individual who owns,
6 publishes, or is employed by any such newspaper or periodical,
7 or radio or television station, which in the ordinary course of
8 business publishes news items, editorials, or other comments, or
9 advertisements that directly or indirectly urge legislative or
10 administrative action, if that newspaper, periodical, book publisher,
11 radio or television station, or individual, engages in no further or
12 other activities in connection with urging legislative or
13 administrative action other than to appear before a committee of
14 the Legislature or before a state agency in support of or in
15 opposition to such action.

16 (c) A person when representing a bona fide church or religious
17 society solely for the purpose of protecting the public right to
18 practice the doctrines of such church.

19 (d) An employee of a local government agency seeking, within
20 the scope of his or her employment, to influence quasi-judicial
21 decisions of the California Coastal Commission.

22 SEC. 4. Section 30324 of the Public Resources Code is
23 amended to read:

24 30324. (a) (1) No commission member, nor any interested
25 person, shall conduct an ex parte communication unless the
26 commission member fully discloses and makes public the ex parte
27 communication by providing a full report of the communication
28 as follows:

29 (A) If the communication occurs more than seven days before
30 the next commission hearing, to the executive director within seven
31 days after the communication.

32 (B) Except as provided in subparagraph (C), if the
33 communication occurs within seven days of the next commission
34 hearing, to the commission on the record of the proceeding at that
35 hearing.

36 (C) If the communication occurs within seven days of the next
37 commission hearing and relates to a matter that the commission
38 will discuss at the hearing, to the commission in writing at least
39 24 hours before that hearing.

(2) Notwithstanding paragraph (1), no commission member, nor any interested person, shall conduct an ex parte communication within 24 hours before a commission hearing regarding a matter that the commission will discuss at the hearing.

(b) (1) The commission shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) (i) The identity of the person or persons initiating and the person or persons receiving the communication.

(ii) The identity of the person on whose behalf the communication was made.

(iii) The identity of all persons present during the communication.

(C) A complete, comprehensive description of the content of the ex parte communication, including a complete set of all text and graphic material that was part of the communication.

(2) The executive director shall place in the public record any report of an ex parte communication.

(c) Communications shall cease to be ex parte communications when fully disclosed and placed in the commission's official record.

SEC. 5. Section 30325 of the Public Resources Code is amended to read:

30325. (a) Nothing in this article prohibits any person or any interested person from testifying at a commission hearing, workshop, or other official proceeding, or from submitting written comments for the record on a matter before the commission. Written comments shall be submitted by mail or delivered to a commission office, or may be delivered to the commission at the time and place of a scheduled hearing.

(b) Any person who communicates with the members of the commission regarding an administrative action of the commission, as defined in paragraph (3) of subdivision (a) of Section 82002 of the Government Code, and who qualifies as a lobbyist, as defined in subdivision (a) of Section 82039 of the Government Code, shall comply with the requirements of Chapter 6 (commencing with Section 86100) of Title 9 of the Government Code.

SEC. 6. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974

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

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