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REPORT

INVESTMENT ADVISERS

California Assembly Bill No. 1743 Amends California "Pay to Play" Laws: A Detailed Summary

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I. High Level Summary

California Assembly Bill No. 1743 (Bill) passed the California Senate on August 30, 2010, and the California Assembly on August 31, 2010. The Bill was enacted by the California Governor on September 30, 2010. The Bill will take effect on January 1, 2011.

The Bill amends the California Government Code (Government Code) in several important respects. Broadly speaking, the amendments to the Government Code fall into two categories: (1) amendments to the provisions of the Government Code that relate to ''placement agents;'' and (2) amendments to the lobbyist provisions of the Government Code that relate to the Political Reform Act of 1974 (Lobbyist Act). California's amendments to the Government Code are important because they are part of a series of nationwide responses to allegations of improper ''pay to play'' tactics by certain placement agents.

We note that most of the amendments focus on a placement agent's relationships with *state* public retirement systems, not *local* public retirement systems. However, the Bill will add Section 7513.87, which will provide that ''placement agents'' in connection with any potential system investment made by a *local* public retirement system must (1) file applicable reports with a local government agency that requires ''lobbyists'' to register and file reports, and (2) comply with applicable

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requirements imposed by a local government agency pursuant to Section 81013.[1] Unlike for ''placement agents'' with respect to *state* public retirement systems, ''placement agents'' with respect to *local* public retirement systems will be subject to applicable requirements imposed by the local government agency. Thus, placement agents may need to undertake special efforts to understand these requirements.

California's amendments first focus on expanding the existing regulation of placement agents who act as intermediaries with respect to public retirement systems in California. General means of regulating placement agents will include, without limitation, increased registration, transparency, restrictions on contributions, certain prohibitions and audit requirements. While placement agents were previously regulated under the provisions of the Government Code that specifically applied to ''placement agents,'' they were not regulated under the Lobbyist Act. The framework of the Lobbyist Act was initially designed to regulate lobbyists, and, as a result, application of the Lobbyist Act to placement agents is somewhat convoluted.

One of the major consequences of subjecting placement agents to the Lobbyist Act is that placement agents will be prohibited from receiving contingent fees when attempting to influence the decision by any state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system. However, it would not eliminate the ability of such parties to receive contingent fees in connection with *local* public retirement assets on behalf of a local public retirement system, unless local retirement systems otherwise prohibit it.

II. Amendments to the Placement Agent Provisions of the Government Code

(1) Amendments

The Bill will amend Section 7513.8 to define the following terms as used in Sections 7513.85, 7513.86, 7513.87, 7513.9 and 7513.95 of the Government Code:

''Board'' will mean the retirement board of a public pension or retirement system as defined in subdivision (h) of Section 17 of Article XVI of the California Constitution.[2] The California Constitution defines ''retirement board'' as the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system.

''External manager'' will mean (1) a person who is seeking to be, or is, retained by a board to manage a portfolio of securities or other assets for compensation, or (2) a person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a board.[3]

The Bill expands the concept of ''placement agent'' (defined below) to cover a situation where a placement agent acts as an intermediary on behalf of investment managers, broker-dealers, and institutional investors in connection with the offer or sale of the securities, assets, or services of an ''external manager,'' and therefore goes beyond only situations where a ''placement agent'' acts on behalf of a fund manager. In addition, certain associated persons of ''external managers,'' that do not devote sufficient time managing the assets controlled by the ''external manager,'' could be considered ''placement agents'' when they approach certain board investment vehicles as well as a board.

''Placement agent'' will mean a person or entity hired, engaged or retained by, or acting on behalf of, an ''external manager'' or on behalf of another ''placement agent,'' who acts or has acted *for compensation* as a finder, solicitor, marketer, consultant, broker or other intermediary in connection with the offer or sale of the securities, assets or services of an ''external manager'' to a board or an ''investment vehicle,'' (defined below) either directly or indirectly.[4] Notwithstanding the foregoing, an employee, officer, director, equityholder, partner, member or trustee of an ''external manager'' who spends one third or more of his or her time, during a calendar year, managing the assets owned, controlled, invested or held by the ''external manager'' will not be a ''placement agent.''[5]

An ''investment vehicle'' as used in the context of the definition of ''placement agent'' will mean a corporation, partnership, limited partnership, limited liability company, association or other entity, either domestic or foreign, managed by an ''external manager'' in which a board is the majority investor and that is organized in order to invest with, or retain the investment management services of, other ''external managers.''[6] Thus, outside intermediaries, certain associated persons of ''external managers'' that do not devote sufficient time to the ''external manager'' as well as their affiliates could be considered ''placement agents'' when they approach ''investment vehicles'' in addition to approaching a board.

(2) Section 7513.85

The Bill will affect Section 7513.85, since the new definition of ''placement agent'' and ''external manager'' applies to Section 7513.85. The amendments to the placement agent provisions of the Government Code result in greater transparency for ''placement agents.'' In the event there are payments to ''placement agents'' in connection with system investments in or through ''external managers,'' ''external managers'' will generally be forced to adopt a policy developed by the board that requires certain disclosures about the placement agent relationship. Section 7513.85 currently requires the board to develop a policy that requires certain disclosures regarding payments to ''placement agents'' in connection with system investments in or through ''external managers.'' The system shall not enter into any agreement with an ''external manager'' that does not agree in writing to comply with the policy.[7] Such disclosure will include, without limitation, (1) disclosure of the existence of relationships between ''external managers'' and ''placement agents;'' (2) a description of any and all compensation of any kind provided, or agreed to be provided, to a ''placement agent;'' and (3) a description of the services to be performed by

[1] Section 7513.87(a).
[2] Section 7513.8(a).
[3] Section 7513.8(b).
[4] Section 7513.8(d)(1).
[5] Section 7513.8(d)(2).
[6] Section 7513.8(d)(3).
[7] Section 7513.85(c).

  SRLR ISSN 0037-0665

the ''placement agent.''[8] In general, any ''external manager'' or ''placement agent'' that violates such policy shall not solicit new investments from the system for five years after the violation was committed.[9]

(3) Section 7513.86

The Bill adds Section 7513.86, which will provide generally that if a person acts as a ''placement agent'' in connection with any potential system investment made by a *state* public retirement system, that person must register as a ''lobbyist'' under the Lobbyist Act and be in full compliance with the Lobbyist Act. Notwithstanding the foregoing, for purposes of Section 7513.86, an individual who is an employee, officer, director, equityholder, partner, member or trustee of an ''external manager'' who spends one third or more of his or her time, during a calendar year, managing the assets controlled, invested or held by the ''external manager'' will not be a ''placement agent.''[10]

In addition, notwithstanding the foregoing, for purposes of Section 7513.86, an employee, officer or director of an ''external manager,'' or of an affiliate of an ''external manager,'' will not be a ''placement agent'' if all of the following apply: (1) the ''external manager'' is registered as an investment adviser or a broker-dealer with the SEC or, if exempt from or not subject to registration with the SEC, any appropriate state securities regulator; (2) the ''external manager'' has been selected through a competitive bidding process subject to Section 22364(a) of the Education Code of Section 20153(a) thereof, as applicable, and is providing services pursuant to a contract executed as a result of that competitive bidding process; and (3) the ''external manager'' has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a state public retirement system in California.[11]

(4) Section 7513.87

In addition, the Bill will add Section 7513.87, which will provide that ''placement agents'' in connection with any potential system investment made by a *local* public retirement system must (1) file applicable reports with a local government agency that requires ''lobbyists'' to register and file reports, and (2) comply with applicable requirements imposed by a local government agency pursuant to Section 81013.[12] Section 7513.87 will not apply to an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an ''external manager'' who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested or held by the ''external manager.''[13] Unlike for ''placement agents'' with respect to *state* public retirement systems, ''placement agents'' with respect to *local* public retirement systems will be subject to applicable requirements imposed by the local government agency. Thus, placement agents may need to undertake special efforts to understand these requirements.

(5) Section 7513.9

The Bill also affects Section 7513.9, since the new definition of ''placement agent'' will apply to that section. Section 7513.9 provides that a ''placement agent,'' prior to acting as a ''placement agent'' in connection with any potential system investment, must make certain disclosures to a board about certain aspects that could taint the disinterestedness of the board and lead to conflicts of interest, such as certain contributions and gifts.

Section 7513.9(a) provides that a ''placement agent,'' prior to acting as a ''placement agent'' in connection with any potential system investment, shall disclose to the board all campaign contributions made by the ''placement agent'' to any elected member of the board during the prior 24-month period. Additionally, any subsequent campaign contribution made by the ''placement agent'' to an elected member of the board during the time the ''placement agent'' is receiving compensation in connection with a system investment shall also be disclosed.[14]

Under subsection (b), any ''placement agent,'' prior to acting as a ''placement agent'' in connection with any potential system investment, shall disclose to the board all gifts, as defined in Section 82028, given by the ''placement agent'' to any member of the board during the prior 24-month period. Additionally, any subsequent gift given by the ''placement agent'' to any member of the board during the time the ''placement agent'' is receiving compensation in connection with a system investment shall also be disclosed.[15]

III. Amendments to the Lobbyist Act

(1) General Overview of Changes

The Bill either amends or affects the definitions of several key terms in the Lobbyist Act. The changes to these key terms form the backbone of how the Lobbyist Act will subject many ''placement agents'' to lobbyist regulation. Several of the Lobbyist Act's compliance obligations discussed below relate to attempts to influence ''administrative actions'' and ''agency officials.'' Under the Bill, such provisions will generally apply when ''placement agents'' seek to influence the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a state public retirement system.

Prior to the Bill, the term ''lobbyist'' did not include ''placement agents'' as defined in Section 82047.3 of the Lobbyist Act. Under the Bill, these ''placement agents'' will be subject to the compliance obligations relating to ''lobbyists'' under Section 82039. Unlike the definition of ''placement agent'' in Section 7513.8(d) of the Government Code, the definition of ''placement agent'' for purposes of the Lobbyist Act (1) may potentially exclude entities, and (2) will only include ''placement agents'' who raise investments from or obtain access to *state* public retirement systems in California, as opposed to any public pension or retirement system. Outside intermediaries, certain associated persons of ''external managers'' that do not devote sufficient time to the ''external manager'' and their affiliates could be considered ''placement agents'' when they approach state public retirement system investment vehicles, in

[8] Section 7513.85(a).
[9] Section 7513.85(b).
[10] Section 7513.86; Section 82047.3(b)
[11] Section 7513.86; Section 82047.3(c).
[12] Section 7513.87(a).
[13] Section 7513.87(b).
[14] Section 7513.9(a).
[15] Section 7513.9(b).

addition to approaching a state public retirement system directly.

Many of the Lobbyist Act provisions refer to ''lobbying firms'' and ''lobbyist employers.'' Under the Bill, a ''lobbying firm'' will include any business entity (including an individual contract lobbyist) that, other than reimbursement for reasonable travel expenses, receives or becomes entitled to receive compensation as ''placement agent'' (1) for the purposes of influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a state public retirement system; or (2) to communicate directly with any elective state official, legislative official, or any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a state public retirement system. ''Lobbyist employers'' will include any ''placement agent'' other than a ''lobbying firm'' who (1) employs one or more ''lobbyists'' for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a state public retirement system; or (2) contracts for the services of a ''lobbying firm'' for the purpose of influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a state public retirement system.

Since ''placement agents'' as defined in Section 82047.3 of the Lobbyist Act will become ''lobbyists'' under the Lobbyist Act, they, their firms, and employers will be subject to the provisions of the Lobbyist Act relating to ''lobbyists,'' ''lobbying firms,'' and ''lobbyist employers,'' respectively. The Lobbyist Act subjects ''lobbyists,'' ''lobbying firms,'' and ''lobbyist employers'' to regulation in several respects that include: (1) certain improprieties with respect to the Fair Political Practices Commission (Section 83105, et seq.); (2) certain limitations on contributions to elected state officers (Section 85702, et seq.); (3) certain registration, disclosure, and transparency requirements (Section 86100, et seq.); (4) general prohibitions (Section 86201, et seq.); (5) certain prohibitions against certain relationships subject to conflicts of interest between ''lobbyist employers'' on the one hand and public officials and elected state officers on the other hand (Section 87100, et seq.); (6) certain audits that ''lobbying firms'' and ''lobbyist employers'' may be subject to; and (7) a time-out provision under Section 91002 that provides that no person convicted of a misdemeanor under the Lobbyist Act shall be a candidate for any elective office or act as a ''lobbyist'' for a period of four years following the date of the conviction. These provisions are summarized below.

(2) Definitions

The Bill will either amend or affect the definitions of several key terms in the Lobbyist Act. The changes to these key terms form the backbone of how the Lobbyist Act will subject many ''placement agents'' to lobbyist regulation.

(a) Definition of ''Administrative Action''

The Bill will revise the definition of ''administrative action'' in Section 82002(a)(2) of the Lobbyist Act by expanding such definition so that ''administrative action'' will include for purposes of the Lobbyist Act with regard to ''placement agents'' only, the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a *state* public retirement system. Thus, ''administrative actions'' will include ''placement agents'' engaging in a broad range of intermediary activities with respect to *state* public retirement systems. The amendments to the term ''administrative action'' presumably will also affect the definition of ''agency official'' under Section 82004 of the Lobbyist Act, since ''agency official'' includes any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any ''administrative action'' in other than a purely clerical capacity.[16] Several of the Lobbyist Act's compliance obligations discussed below relate to ''administrative actions'' and ''agency officials.'' These provisions will generally apply when ''placement agents'' seek to influence the decision by any state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system.

(b) Definition of ''External Manager''

The Bill will add the definition of ''external manager'' in Section 82025.3 of the Lobbyist Act. ''External manager'' will be defined in Section 82025.3 to mean (1) a person who is seeking to be, or is, retained by a *state* public retirement system in California to manage a portfolio of securities or other assets for compensation, or (2) a person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a *state* public retirement system in California. Unlike for purposes of Sections 7513.85, 7513.86, 7513.87, 7513.9 and 7513.95 of the Government Code, ''external manager'' under the Lobbyist Act will include only (1) persons seeking to be or who are retained by *state* public retirement systems in California, as opposed to by any public pension or retirement system; or (2) certain persons who offer or sell or have offered or sold securities to a *state* public retirement system in California, as opposed to any public pension or retirement system.

(c) Definition of ''Lobbyist''

The Bill will revise the definition of the term ''lobbyist'' in Section 82039 of the Lobbyist Act so that it will include (A) any individual who receives $2,000 or more in economic consideration in a calendar month, other than reimbursements for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, ''agency official'' or legislative official for the purposes of influencing ''administrative action,'' or (B) a ''placement agent'' as defined in Section 82047.3 of the Lobbyist Act. A person will not be a ''lobbyist'' by reason of activities described in Section 86300.[17] Prior to the passage of the Bill, the term ''lobbyist'' did not include ''placement agents'' as defined in Section 82047.3 of the Lobbyist Act. ''Placement agents'' as defined in Section 82047.3 of the Lobbyist Act will therefore be subject to the compliance obligations relating to ''lobbyists'' under Section 82039.

(d) Definition of ''Placement Agent''

The Bill will insert the definition of ''placement agent'' in Section 82047.3 of the Lobbyist Act, which will be defined as an individual hired, engaged or re-

[16] Section 82004.
[17] Section 82039(b).

  SRLR ISSN 0037-0665

tained by, or acting on behalf of an ''external manager,'' or on behalf of another ''placement agent,'' who acts or has acted, *for compensation* as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets or services of an ''external manager'' to a *state* public retirement system in California or an ''investment vehicle,'' either directly or indirectly. Unlike the definition of ''placement agent'' in Section 7513.8(d) of the Government Code, the definition of ''placement agent'' for purposes of the Lobbyist Act (i) may potentially not include entities and (ii) will only include ''placement agents'' who raise investments from or obtain access to *state* public retirement systems in California, rather than any public pension or retirement system.

Notwithstanding the foregoing, an individual who is an employee, officer, director, equityholder, partner, member or trustee of an ''external manager'' who spends one third or more of his or her time, during a calendar year, managing the assets owned, controlled, invested or held by the ''external manager'' will not be a ''placement agent.''[18] This carve-out is similar to the carve-out under Section 7513.8(d). Thus, certain associated persons of ''external managers'' that devote sufficient time to the ''external manager'' will not be ''placement agents.'' However, outside intermediaries, certain associated persons of the ''external manager'' who do not devote sufficient time to the ''external manager'' as well as their affiliates could be considered ''placement agents'' for such purposes.

In addition, notwithstanding the foregoing, an employee, officer or director of an ''external manager,'' or of an affiliate of an ''external manager,'' will not be a ''placement agent'' if all of the following apply: (1) the ''external manager'' is registered as an investment adviser or a broker-dealer with the SEC or, if exempt from or not subject to registration with the SEC, any appropriate state securities regulator; (2) the ''external manager'' has been selected through a competitive bidding process subject to Section 22364(a) of the Education Code of Section 20153(a) thereof, as applicable, and is providing services pursuant to a contract executed as a result of that competitive bidding process; and (3) the ''external manager'' has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a *state* public retirement system in California.[19] This carve-out will add a carve-out not provided for under Section 7513.8(d) of the Government Code.

(e) Definition of ''Investment Vehicle''

The Bill will add the term ''investment vehicle'' in Section 82047.3(d), which will be defined as a corporation, partnership, limited partnership, limited liability company, associate or other entity, either domestic or foreign, constituting or managed by an ''external manager'' in which a *state* public retirement system in California is the majority investor and that is organized in order to invest with, or retain the investment management services of, other ''external managers.''[20] Thus, outside intermediaries, certain associated persons of ''external managers'' that do not devote sufficient time to the ''external manager'' as well as their affiliates could be considered ''placement agents'' when they approach ''investment vehicles'' in addition to approaching a *state* public retirement system directly. Unlike the definition of ''investment vehicle'' in Section 7513.8(d) of the Government Code, the definition of ''investment vehicle'' for purposes of the Lobbyist Act will only include ''investment vehicles'' in which certain *state* public retirement systems in California were the majority investor, rather than ''investment vehicles'' in which certain public pensions or retirement systems were the majority investor.

(f) Definition of ''Lobbying Firm''

Although the Bill will not directly amend the definition of ''lobbying firm'' in Section 82038.5 of the Lobbyist Act, it will affect the existing definition of ''lobbying firm'' under the Lobbyist Act, since that definition ties into ''administrative actions'' and ''agency officials.'' A ''lobbying firm'' is currently defined under the Lobbyist Act as any business entity, including an individual contract lobbyist, which meets either of the following criteria: (1) the business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purposes of influencing legislative or ''administrative action'' on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a ''lobbyist;'' or (2) the business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, ''agency official,'' or legislative official for the purpose of influencing legislative or ''administrative action'' on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or ''administrative action.''[21] A person will not be a ''lobbying firm'' by reason of activities described in Section 86300.[22]

Thus, a ''lobbying firm'' will include any business entity (including an individual contract lobbyist) that receives or becomes entitled to receive compensation as ''placement agent,'' other than reimbursement for reasonable travel expenses, (1) for the purposes of influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a *state* public retirement system, or (2) to communicate directly with any elective state official, legislative official or any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any decision by any state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system.

(g) Definition of ''Lobbyist Employer''

Although the Bill will not directly amend the definition of ''lobbyist employer'' in Section 82039.5 of the Lobbyist Act, it will affect the existing definition of ''lobbyist employer'' under the Lobbyist Act since that definition ties into ''administrative actions'' and ''lobbyists.'' A ''lobbyist employer'' is currently defined under the Lobbyist Act as any person or entity, other than a ''lobbying firm,'' who: (a) employs one or more ''lobbyists'' for economic consideration, other than reimburse-

[18] Section 82047.3(b).
[19] Section 82047.3(c).
[20] Section 7513.8(d)(3).
[21] Section 82038.5.
[22] Section 82038.5(b).

ment for reasonable travel expenses, for the purpose of influencing legislative or ''administrative action,'' or (b) contracts for the services of a ''lobbying firm'' for economic consideration, other than reimbursement for reasonable travel expense, for the purposes of influencing legislative or ''administrative action.''[23]

Thus, ''lobbyist employers'' will include any placement agent other than a ''lobbying firm'' who (a) employs one or more ''lobbyists'' for economic consideration, other than reimbursement for reasonable travel expenses, for the purposes of influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a *state* public retirement system, or (b) contracts for the services of a ''lobbying firm'' for the purposes of influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a *state* public retirement system.

(3) Compliance Issues

Since ''placement agents'' as defined in Section 82047.3 of the Lobbyist Act will now be ''lobbyists'' under the Lobbyist Act, we discuss the provisions of the Lobbyist Act relating to ''lobbyists'' that we feel will be most relevant to ''placement agents.'' Note that many persons and entities connected to influencing the decision by any state agency to enter into a contract to invest state public retirement assets on behalf of a *state* public retirement system will fall under the definition of ''lobbying firm'' and ''lobbyist employer.'' This article therefore discusses the provisions of the Lobbyist Act relating to ''lobbying firms'' and ''lobbyist employers'' that are most relevant to ''placement agents.'' This article uses the terms ''lobbyist,'' ''lobbying firm'' and ''lobbyist employer'' to illustrate how the Bill will attempt to fit regulation of placement agents into the existing framework for ''lobbyists,'' ''lobbying firms'' and ''lobbyist employers.''

(a) Fair Political Practices Commission

Under Section 83105, ''lobbyists'' cannot be members of the Commission. Under Section 83115, the Commission shall investigate possible violations of the Lobbyist Act relating to ''lobbyists.'' Under Section 83117.5, ''lobbyists'' cannot give ''gifts'' to members of the Commission of more than $10 per month. ''Gift'' as used in that section means a gift made directly or indirectly by a state candidate, an elected state officer, a legislative official, an agency official or a lobbyist or by any person listed in Section 87200.

(b) Limitation on Contributions

Under Section 85702, a ''lobbyist'' may not make a contribution to an elected state officer or candidate for elected state office, if that ''lobbyist'' is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer. The term ''agency'' under the Lobbyist Act currently includes ''state agencies'' and ''local government agencies'' as defined in Sections 82049 and 82051 of the Lobbyist Act respectively.

(c) Transparency

''Lobbyists'' are subject to registration and reporting obligations under Sections 86100 to 86118 of the Lobbyist Act at both the individual level and at the level of ''lobbying firms'' and ''lobbyist employers.''

Every ''lobbying firm'' and ''lobbyist employer'' who is required to file a registration statement under the Lobbyist Act shall register with the Secretary of State no later than 10 days after qualifying as a ''lobbying firm'' or ''lobbyist employer.''[24] ''Lobbying firms'' and ''lobbyists'' will register with the California Secretary of State on California Form 601. A Form 604 (Lobbyist Certification Statement) must be completed by each owner, partner, officer or employee of the ''lobbying firm'' who qualifies as a ''lobbyist.'' A Form 602 (Lobbying Firm Activity Authorization) must be completed by each ''lobbyist employer'' or lobbying coalition which the ''lobbying firm'' contracts. The fee for each ''lobbyist'' to register is $25. Note that it is not necessary to attach a Form 604 (Lobbyist Certification Statement) or a registration fee for any ''lobbyist'' who is separately registered as a ''lobbying firm'' or who is employed by a ''lobbying firm'' with which the ''lobbyist's'' firm subcontracts.

Registration for ''lobbyists,'' ''lobbying firms'' and ''lobbyist employers'' must be renewed between November 1 and December 31 of each even-numbered year.[25] Changes in registration statements must be filed on Form 605 (Amendment to Registration) within 20 days after the change.[26] However, if the change includes the name of a person by whom a ''lobbying firm'' is retained, the registration statement of the ''lobbying firm'' must be amended and filed on Form 605 (Amendment to Registration) to show that change prior to the ''lobbying firm's'' attempting to influence any legislative or ''administrative action'' on behalf of that person.[27]

''Lobbyist employers'' which qualify as ''lobbyist employers'' *under Section 82039.5(b)*,[28] as well as persons who are neither ''lobbyists,'' nor ''lobbyist employers,'' nor ''lobbying firms'' but who directly or indirectly make payments to influence legislative or ''administrative action'' of $5000 or more in value in any calendar quarter are not required to register, but they must file certain statements as described below. ''Lobbyist employers'' that qualify under Section 82039.5(b) include any person, other than a lobbying firm, who contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or ''administrative action.''

Under Section 86100 and 86103, ''lobbyists'' must prepare certifications that accompany the registration of the ''lobbying firm'' in which the ''lobbyist'' is a partner, owner, officer or employee, or as part of the registration of the ''lobbyist employer'' by which the ''lobbyist'' is employed. In particular, without limitation, the certification must include a statement that the ''lobbyist'' has completed, within the previous 12 months or will complete no later than June 30 of the following year, the course described in Section 8956(b) relating to ethical issues and laws related to lobbying.[29] The certification must also state that the ''lobbyist'' has read and understands the prohibitions contained in Sections 86203 and 86205,[30] each of which are discussed below.

[23] Section 82039.5.

[24] Section 86101.
[25] Section 86106.
[26] Section 86107(a).
[27] *Id*.
[28] Section 86100(d).
[29] Section 86103(d).
[30] Section 86103(c).

  SRLR ISSN 0037-0665

Under Sections 86104(d), the registration of a ''lobbying firm'' must include, without limitation, the interests of the person with whom the ''lobbying firm'' contracts to provide lobbying services and a list of the state agencies whose ''administrative actions'' the ''lobbying firm'' will attempt to influence for such person.[31]

Under Section 86105(e), the registration of a ''lobbyist employer'' must include, without limitation, the lobbying interests of the ''lobbyist employer,'' and a list of the state agencies whose legislative or ''administrative actions'' the ''lobbyist employer'' will attempt to influence.

The Secretary of State shall publish a directory of registered individual ''lobbyists,'' ''lobbying firms,'' and ''lobbyist employers.''[32] Thus, the identities of many placement agents will become publicly disclosed.

''Lobbyists,'' ''lobbying firms,'' and ''lobbyist employers'' which receive payments, make payments or incur expenses or expect to receive payments, make payments or incur expenses in connection with activities which are reportable pursuant to the Lobbyist Act shall keep detailed accounts, records, bills, and receipts as shall be required by regulations adopted by the Commission.[33] Section 86111(a) defines ''activity expense'' to include most lobbying expenses that benefit any elective state official, legislative official, ''agency official,'' state candidate, or a member of the immediate family of one of these individuals. Where ''activity expenses'' must be disclosed, the following information must be provided: (a) the date and amount of the activity expense; (b) the full name and official position, if any, of the beneficiary of each expense, a description of the benefit, and the amount of benefit; (c) the full name of the payee of each expense if other than the beneficiary; and (d) any other information required by the Commission consistent with the purposes and provisions of the Lobbyist Act.[34]

Each person filing a report who sends any printed invitation to an elected state officer, candidate for elective state office, legislative official or ''agency official'' shall include on the invitation or on a letter attached to the invitation the following statement that is at least as large and readable as 8-point Roman boldface type, in a color or print that contrasts with the background so as to be easily legible: ''Attendance at this event by a public official will constitute acceptance of a reportable gift.''[35] If attendance at the event will not constitute a reportable gift by an elected state officer, candidate for elective state office, legislative official or ''agency official'' pursuant to Section 87207(a)(1), then such notice shall not be required.[36] Section 87207(a)(1) provides that a $50 gift will be reportable.

''Lobbyists'' must complete periodic reports which contain (1) a report of all ''activity expenses'' by the ''lobbyist'' during the reporting period; and (2) a report of all contributions of one hundred dollars ($100) or more made or delivered by the ''lobbyist'' to any elected state officer or state candidate during the reporting period.[37] A ''lobbyist'' is required to provide the original of his or her periodic report to his or her ''lobbyist employer'' or ''lobbying firm'' within two weeks following the end of each calendar quarter.[38]

''Lobbying firms'' must also file periodic reports during the month following each calendar quarter.[39] The periodic reports must disclose, without limitation, each ''activity expense'' incurred by the ''lobbying firm'' including those reimbursed by a person who contracts with the ''lobbying firm'' for lobbying services.[40] A total of all activity expenses of the lobbying firm and all of its lobbyists shall be included.[41] If the ''lobbying firm'' subcontracts with another ''lobbying firm'' for ''lobbying services,'' the ''lobbying firm'' must report all payments made to the subcontractor.[42] In addition, the ''lobbying firm'' must disclose the date, amount, and the name of the recipient of any contribution of $100 or more made by the ''lobbying firm'' to an elected state officer, a state candidate, a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support such officers or candidates.[43] Finally, under Section 86114(b), if a ''lobbying firm'' receives compensation to communicate directly with any elective state official, ''agency official,'' or legislative official for substantial or regular activities undertaken for the purpose of influencing legislative or ''administrative action,'' the ''lobbying firm'' must report, subject to a carve-out for individuals who engaged in purely clerical actions, the name and title of each partner, owner, officer, and employee of the ''lobbying firm'' who, on at least five separate occasions during the reporting period, engaged in direct communication with any elective state official, legislative official, or ''agency official,'' for the purpose of influencing legislative or ''administrative action'' on behalf of a person who contracts with the ''lobbying firm'' for lobbying services.[44] This does not include individuals whose actions were purely clerical.[45]

Under Section 86115, (a) any ''lobbyist employer'' or (b) any person who directly or indirectly makes payments to influence legislative or ''administrative action'' of five thousand dollars ($5,000) or more in any calendar quarter must file periodic reports during the month following each calendar quarter (unless all payments are of the type described in Section 82045(c)).[46] Section 82045(c) covers payments which directly or indirectly benefit any elective state official, legislative official, or ''agency official'' or a member of the immediate family of any such official. It could be a drafting error in the Bill that this exception could potentially apply to placement agents.

Those periodic reports under Section 86116(h) must contain the total of all other payments to influence legislative or ''administrative action'' including overhead expenses and all payments to employees who spend 10 percent or more of their compensated time in any one month in activities related to influencing legislative or ''administrative action.'' Such periodic reports must dis-

[31] Section 86104(d)(6).
[32] Section 86109.
[33] Section 86110.
[34] Section 86112.
[35] Section 86112.3.
[36] Section 86112.3(b).
[37] Section 86113(a).
[38] Section 86113(b).
[39] Section 86114.
[40] Section 86114(a)(5).
[41] *Id.*
[42] Section 86114(a)(6).
[43] Section 86114(a)(7).
[44] Section 86114(b).
[45] *Id.*
[46] Section 86117(a).

close each ''activity expense'' of the filer.[47] They must also disclose the date, amount, and the name of the recipient of any contribution of $100 or more made by the filer to an elected state officer, a state candidate, or a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support the officer or candidate.[48]

Each person filing a report must provide the beneficiary of a gift listed with a report with certain information within 30 days following the end of each calendar quarter in which the gift was provided.[49] For the purposes of meeting these disclosure requirements, a ''lobbying firm'' or ''lobbyist employer'' may provide the beneficiary with a copy of the ''activity expense'' section of the report submitted to the Secretary of State.[50]

Certain reporting requirements that must be made by filing state and local agencies will also be amended by virtue of the amended definitions of ''lobbyist'' and ''administrative action.''[51] Such reports cover various types of lobbyist payments and expenses, and various types of payments and expenses relating to influencing ''administrative actions.''[52]

(e) Prohibitions

''Lobbyists'' are currently subject to certain prohibitions under Sections 86201 to 86205 of the Lobbyist Act. These prohibitions depend on the terms ''lobbyist,'' ''lobbying firm'' and ''administrative action.''

The Bill will add Section 86206, which will provide that such prohibitions will not prohibit the payment of fees for contractual services provided to an investment manager by a ''placement agent,'' as defined in Section 82047.3, who is registered with the SEC and regulated by the Financial Industry Regulatory Authority, except as provided in Section 86205(f). However, notwithstanding the foregoing, the prohibition in Section 86205(f) against a ''lobbying'' or ''lobbying firm'' accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or ''administrative action'' will still apply.

The prohibitions of Section 86201 to 86205 include the following:

■ It shall be unlawful for a ''lobbyist,'' or ''lobbying firm,'' to make ''gifts'' to one person aggregating more than ten dollars ($10) in a calendar month, or to act as an agent or intermediary in the making of any ''gift,'' or to arrange for the making of any ''gift'' by any other person.[53] The term ''gift'' is defined to include a gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an ''agency official'' of any agency required to be listed on the registration statement of the ''lobbying firm'' or the ''lobbyist employer'' of the ''lobbyist.''[54] Thus, a ''gift'' will include a gift made by ''lobbyists'' and ''lobbying firms'' that were ''placement agents'' directly or indirectly to any state candidate, elected state officer or legislative official, or to a member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in the decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system.

■ It shall be unlawful for any person knowingly to receive any ''gift'' which is made unlawful by Section 86203.[55]

■ No ''lobbyist'' or ''lobbying firm'' shall:[56]

♦ Do anything for the purpose of placing any elected state officer, legislative official, ''agency official,'' or state candidate under personal obligation to the ''lobbyist,'' the ''lobbying firm,'' or the ''lobbyist's'' or the ''lobbing firm's'' employer.[57] This provision will prevent ''lobbyists'' and ''lobbying firms'' that were ''placement agents'' from doing anything for the purpose of placing any elected state officer, legislative official, member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in the decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system or state candidate under personal obligation to the ''lobbyist,'' the ''lobbying firm'' or the ''lobbyist's'' or the ''lobbying firm's'' employer.

♦ Deceive or attempt to deceive any elected state officer, legislative official, ''agency official,'' or state candidate with regard to any material fact pertinent to any pending or proposed legislative or ''administrative action.''[58] This provision will prevent ''lobbyists'' and ''lobbying firms'' that were ''placement agents'' from deceiving or attempting to deceive any elected state officer, legislative official, member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in the decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system or state candidate with regard to any material fact pertinent to any pending or proposed legislative action or decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system.

♦ Cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its passage or defeat.[59]

♦ Attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative or ''administrative action'' or to cause any communication to be sent to any elected state officer, legislative official, ''agency official,'' or state candidate in the name of any fictitious person or in the name of any real person, except with the consent of such real person.[60] This provision will prevent ''lobbyists'' and ''lobbying firms'' that were ''placement agents'' from attempting to create a fictitious appearance of public favor or disfavor of any proposed legislative action or decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system, or causing any communication to be sent to any elected state officer,

[47] Section 86116(f).
[48] Section 86116(g).
[49] Section 86112.5(a).
[50] Section 86112.5(b).
[51] Section 86116.5.
[52] *Id*.
[53] Section 86203.
[54] Section 86201.
[55] Section 86204.
[56] Section 86205.
[57] Section 86205(a).
[58] Section 86205(b).
[59] Section 86205(c).
[60] Section 86205(d).

  SRLR ISSN 0037-0665

legislative official, member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in the decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system, or state candidate in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

♦ Represent falsely, either directly or indirectly, that the ''lobbyist'' or the ''lobbying firm'' can control the official action of any elected state officer, legislative official, or ''agency official.''[61] This provision will prevent ''lobbyists'' and ''lobbying firms'' that were ''placement agents'' from representing that they can control, among others, the official action of any elected state officer, legislative official or member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in the decision in other than a ministerial capacity by a state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system.

♦ Accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or ''administrative action.''[62] This provision will prevent ''lobbyists'' and ''lobbying firms'' that were ''placement agents'' from receiving contingent fees when attempting to influence the decision by any state agency to enter into a contract to invest *state* public retirement assets on behalf of a *state* public retirement system. However, it would not eliminate the ability of such parties to receive contingent fees in connection with *local* public retirement assets on behalf of a *local* public retirement system, unless local public retirement systems otherwise prohibit it.

(f) Conflicts of Interest

Section 87100 to 87105 contains prohibitions on certain conflicts of interest, which generally prohibit ''public officials'' and ''elected state officers'' from influencing a range of government decisions where they have certain relationships with a ''lobbyist employer'' and are therefore subject to a conflict of interest. The term ''public official'' generally means every member, officer, employee or consultant of a state or local government agency, subject to certain carve-outs.[63]

(g) Audits

Under Section 90001, each ''lobbying firm'' and each ''lobbyist employer'' who employs one or more ''lobbyists'' shall be subject to an audit on a random basis with these ''lobbying firms'' or ''lobbyist employers'' having a 25-percent chance of being audited.[64] When a ''lobbying firm'' or ''lobbyist employer'' is audited, the individual ''lobbyists'' who are employed by the ''lobbying firm'' or the ''lobbyist employer'' shall also be audited.[65] Section 90002(a) provides that audits and investigations of ''lobbying firms'' and ''lobbyist employers'' shall be performed on a biennial basis and shall cover reports filed during a period of two years. Under Section 90002(b), if a ''lobbying firm'' or ''lobbyist employer'' keeps a separate account for all receipts and payments for which reporting is required, the requirement of an audit under subdivision (a) of Section 90001 shall be satisfied by an audit of that account and the supporting documentation required to be maintained by Section 86110.

(h) Effect of Convictions

Under Section 91002, no person convicted of a misdemeanor under the Lobbyist Act shall be a candidate for any elective office or act as a ''lobbyist'' for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction. Any person violating Section 91002 is guilty of a felony.

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[61] Section 86205(e).
[62] Section 86205(e).
[63] Section 82048(a).
[64] Section 90001(a).
[65] *Id*.