

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 1151 (Hurtado) – As Amended June 17, 2024

SENATE VOTE: 37-0

SUBJECT: Political Reform Act of 1974: foreign agents.

SUMMARY: Requires certain individuals who engage in specified activities related to influencing legislative and administrative action on behalf of a foreign principal to register with the Secretary of State (SOS) as an agent of a foreign principal, as defined, and file periodic disclosure reports. Specifically, **this bill:**

- 1) Requires any individual acting as an agent of a foreign principal to register with the SOS as an agent of a foreign principal in the same manner, with the same frequency, and with the same content as are required for a lobbyist and lobbying firm under the Political Reform Act (PRA).
- 2) Requires the registration of an agent of a foreign principal, in addition to the information required under the PRA for lobbyist and lobbying firm registration, to also include disclosure of any compensation received, contracted, or otherwise promised to the agent by each foreign principal.
- 3) Requires an agent of a foreign principal that qualifies as a lobbyist or lobbying firm under the PRA to also register with the SOS in accordance with existing law.
- 4) Requires the SOS, on the registration form for an agent of a foreign principal, to include a statement noting the existence of the federal Foreign Agents Registration Act of 1938 (FARA), and that registration with the state does not excuse an individual or entity from also registering with the federal government if their activities require such registration under federal law.
- 5) Requires an agent of a foreign principal to complete the ethics course required to be completed by a lobbyist in the same manner required of lobbyists, and requires an agent of a foreign principal to pay the same fee as required of lobbyists.
- 6) Codifies exemptions specified in FARA and provides that following persons are not required to register with the SOS as an agent of a foreign principal: diplomatic or consular officers; officials of a foreign government; staff members of diplomatic or consular officers; persons engaged in private and nonpolitical activities and activities that solicit funds; persons engaged in religious, scholastic, or scientific pursuits; persons engaged in the defense of a foreign government vital to the United States (US); and persons qualified to practice law who are representing a foreign principal before a court of law or the US government, as specified. Provides that an agent of a foreign principal that is registered under the federal Lobbying Disclosure Act of 1995 is not exempt from the registration requirements of this bill.

- 7) Requires the registration of a foreign principal's agent to be filed by email with the SOS and to be signed using a secure electronic signature. Requires the SOS to post all registration statements received on its internet website within five business days or, if the SOS receives the registration during the 16 days before the election, within 48 hours. Requires these provisions to become inoperative on the date the SOS makes the registration of a foreign principal's agent available for filing using the SOS's new online filing and disclosure system (also known as the Cal-Access Replacement System or CARS).
- 8) Requires the SOS, within one year of the SOS certifying the new CARS online filing and disclosure system, to make the registration of a foreign principal's agent available for filing using that online filing and disclosure system. Requires the registration of a foreign principal's agent to be filed online or electronically with the SOS, and requires the SOS to make a registration statement filed available to the public in the online filing and disclosure system. Requires these provisions to become operative on the date the SOS makes the registration of a foreign principal's agent available for filing using the SOS's new CARS online filing and disclosure system.
- 9) Requires an agent of a foreign principal to file periodic reports with the SOS in the same manner, with the same frequency, and with the same content as are required of lobbyists and lobbying firms under the PRA, as specified.
- 10) Prohibits an FPPC commissioner from being an agent of a foreign principal during the person's tenure on the FPPC.
- 11) Requires the FPPC to investigate possible violations of the PRA relating to an agent of a foreign principal, as specified.
- 12) Defines various terms, for the purposes of this bill.
- 13) Provides that the provisions of this bill are severable.
- 14) Provides that the provisions of this bill shall not be applied in a manner inconsistent with any provision of any treaty between the US and another country.

EXISTING LAW:

- 1) Establishes the federal FARA, and requires individuals engaging in political or advocacy work on behalf of foreign entity in the US to register with the Department of Justice and to disclose their relationship, activities, receipts, and disbursements in support of their activities, as specified. (22 U.S.C. §611 et seq.)
- 2) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA. (Government Code §§83100, 83111)

- 3) Makes violations of the PRA subject to administrative, civil, and criminal penalties. (Government Code §§83116, 91000-91005.5)
- 4) Requires each member of the FPPC to be an elector. Prohibits a member of the FPPC, during the member's tenure, from holding any other public office, serving as an officer of any political party or partisan organization, participating in or contributing to an election campaign, or employing or being employed as a lobbyist nor, during the member's term of appointment, seeking election to any other public office. (Government Code §83105)
- 5) Requires the FPPC, upon the sworn complaint of any person or on its own initiative, to investigate possible violations of the PRA relating to any agency, official, election, lobbyist, or legislative or administrative action, as specified. (Government Code §83115)
- 6) Prohibits a foreign government or foreign principal, as defined, from making, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, a state or local ballot measure or in connection with the election of a candidate to state or local office. Prohibits a person or a committee from soliciting or accepting a contribution from a foreign government or a foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure or in connection with the election of a candidate to state or local office. (Government Code §85320)
- 7) Defines a lobbyist as any person paid \$2,000 or more in a calendar month, or whose principal duties as an employee are, to communicate with state public officials for the purpose of influencing legislative or administrative actions. (Government Code §82039, California Code of Regulations §18239)
- 8) Requires lobbying firms and lobbyist employers that employ lobbyists (but not lobbyist employers that contract with lobbying firms) to register with the SOS. (Government Code §86100 et seq.)
- 9) Requires a lobbyist to prepare a lobbyist certification to be filed with the SOS as part of the registration of the lobbying firm in which the lobbyist is an employee, or as a part of the registration of the lobbyist employer by which the lobbyist is employed. (Government Code §86103)
- 10) Requires the registration of a lobbying firm to contain, among other items, the name, address, and telephone number of each person with whom the firm contracts to provide lobbying services, information sufficient to identify the nature and interests of each such person, and a list of the state agencies whose legislative or administrative actions the lobbying firm will attempt to influence for the person. (Government Code §86104)
- 11) Requires the appropriate legislative ethics committees to conduct at least semiannually an orientation course of the relevant statutes and regulations governing official conduct, as specified. Provides that the committees shall conduct at least semiannually an orientation course on the relevant ethical issues and laws relating to lobbying, in consultation with the FPPC, as specified. Requires the course to include information on each house of the

Legislature's policies against harassment, including sexual harassment, in connection with lobbying activities. Requires the committees to impose fees on lobbyists for attending the course on the relevant ethical issues and laws relating to lobbying, as specified. (Government Code §8956)

- 12) Requires a state lobbyist to attend an ethics course as a condition of registering as a lobbyist, as specified. (Government Code §86103)
- 13) Requires the SOS, in consultation with the FPPC, to provide online and electronic filing processes for use by specified political committees, lobbyists, lobbying firms, and lobbyist employers pursuant to the PRA. This online reporting and disclosure system is commonly referred to as the Cal-Access system. (Government Code §84602(a)(1))
- 14) Requires the SOS, in consultation with the FPPC, to develop and certify a new online filing and disclosure system for public use that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified. This system is commonly referred to as CARS. (Government Code §84602(b)(1))

FISCAL EFFECT: According to the Senate Appropriations Committee:

- The FPPC indicates that it would incur first-year costs of \$377,000, and \$363,000 annually thereafter, to implement its provisions of the bill (General Fund).
- SOS would incur unknown General Fund information technology costs to include the bill's requirements in its Cal-Access Replacement System.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Corruption is not some remote concept that exists in a faraway land. Corruption and abuses are on the rise not just abroad, but also here at home. Bad actors are employing both new and traditional schemes to influence our policies and political systems. California has the duty and responsibility to protect the integrity of its legislative processes and shed light on threats of any form of corruption. Currently under the federal Foreign Agents Registration Act (FARA), individuals acting on behalf of foreign principals as foreign agents to influence our democratic systems must disclose who they are representing. However, there is a severe lack of awareness amongst foreign agents' responsibility to disclose their influencing activities under FARA.

SB 1151 is a simple disclosure bill pushing for further transparency in our State's legislative and [regulatory] processes by requiring any person acting as a foreign agent within the state of California to disclose their affiliations to any foreign [principal]. By shedding light on the origins of political influence we can harness public trust in our political systems and ensure that we are legislating in with integrity. SB 1151 also incorporates an education piece by requiring the Secretary of State to include a statement on filing forms to educate any person acting as a

foreign agent about their responsibilities under the United States Foreign Agent Registration Act. Only then can we repair any public mistrust in our legislative and regulatory processes.

- 2) **Foreign Agents Registration Act (FARA):** The central purpose of FARA is to promote transparency with respect to foreign influence within the US by ensuring that the US government and the public know the source of certain information from foreign agents intended to influence American public opinion, policy, and laws, thereby facilitating informed evaluation of that information. FARA requires the registration of, and disclosures by, an agent of a foreign principal who, either directly or through another person, within the US: (1) engages in political activities on behalf of a foreign principal; (2) acts as a foreign principal's public relations counsel, publicity agent, information-service employee, or political consultant; (3) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of a foreign principal; or (4) represents the interests of the foreign principal before any agency or official of the US government. In addition, FARA requires agents to conspicuously label informational materials transmitted in the US for or in the interest of a foreign principal. There are some exemptions to FARA's registration and labeling requirements for specified categories of agents and activities.

The FARA Unit is part of the National Security Division of the Department of Justice, and is responsible for administering and enforcing FARA. The FARA Unit provides support, guidance, and assistance to registrants and potential registrants and processes registration filings and informational materials to make those materials available to the public. Additionally, the FARA Unit identifies FARA violations, reviews filings for deficiencies, and inspects registrants' books and records. The FARA Unit makes registration information and disclosures available to the public to inform the public about the activities of foreign agents within the United States. As of June 13, 2024, there are 719 active registrants under FARA.

This bill seeks to codify provisions of FARA into state law.

- 3) **Duplicative Filings:** Under current law if an agent of a foreign principal is engaged in lobbying activity sufficient for that person to be classified as a lobbyist under existing law, all provisions of state law that apply to lobbyists would be applicable to that person. Under the provisions of this bill, an agent of a foreign principal could be required to register as a lobbyist as well as an agent for a foreign principal. In other words, there could be situations in which an agent of a foreign principal would be required to provide duplicative filings. The author may wish to consider amending this bill to exempt an agent of a foreign principal who is engaged in lobbying activity sufficient for that person to be classified as a lobbyist under existing law, and thereby already required to register and file periodic reports with the SOS, from the filing requirements and ethics training course requirements in the bill. Instead, such individuals could identify themselves as an agent for a foreign principal within their required lobbying filings, and disclose any compensation received, contracted, or otherwise promised to the agent by each foreign principal on those filings.
- 4) **Exemptions:** Under federal law, FARA allows an agent of a foreign principal to be exempted from FARA's registration obligations if the agent's activities fall within one of the

following exemptions:

- Diplomatic officers and diplomatic staff
- Certain registered foreign officials who are not US citizens and are not public-relations counsels, publicity agents, or information-service employees
- Bona fide commercial activity and other activity not serving predominantly a foreign interest
- Humanitarian fundraising
- Religious, scholastic, academic, fine arts, or scientific pursuits
- Certain activities relating to the defense of foreign governments vital to the US defense
- Legal representation of a disclosed foreign principal before any court or law or agency of the US government
- Properly registered parties under the Lobbying Disclosure Act

This bill codifies all but one FARA exemption. FARA exempts an agent registered under the federal Lobbying Disclosure Act from FARA registration requirements. This bill does not include that same exemption. This could lead to confusion and an agent for a foreign principal could inadvertently violate the new state registration and filings requirements in this bill.

- 5) **Need for the Bill:** According to the author's office, there are deficiencies in current law that necessitate the need for this bill. First, despite the increasing sophistication of foreign influence campaigns, the existing framework of FARA lacks teeth in enforcing compliance and ensuring comprehensive disclosure. This deficiency allows hidden actors to operate within our democratic processes without accountability, potentially undermining the integrity of our elections, policies, and public discourse. Additionally, there is a general lack of awareness among both the public and agents engaging in lobbying or advocacy activities about the requirements and implications of FARA. This contributes to a state of vulnerability where foreign entities can operate covertly, exploiting loopholes in the law to advance their agendas without scrutiny.

Notwithstanding the author's stated concerns, the author has not provided the committee with any specific examples that demonstrate the need for this bill.

- 6) **Cal-Access Replacement Project:** In 1997, the Legislature passed and Governor Pete Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, which amended the PRA and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement, by the year 2000, an online filing and disclosure system for reports and statements required to be filed under the PRA, as specified. As a result, the SOS created and deployed a system called the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly referred to as Cal-Access. Cal-Access is 25 years old, and the SOS reports that components of the system are no longer supported by their vendor. As a result, the system has periodically crashed and denied public access. Given the limitations of the existing Cal-Access system, the Legislature has taken steps to replace that system. In 2016, the Legislature approved and the Governor signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016, which requires the

SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provide public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format, as specified. The new system is intended to be data driven, rather than form-based, and is intended to permit future compatibility with local campaign finance data. This system is commonly referred to as CARS.

- 7) **CARS Project Further Delayed:** According to the SOS, in July 2021, it partnered with the California Department of Technology to conduct an independent assessment of CARS and it was determined that CARS was not ready for a system launch. Consequently the SOS began planning for a CARS project restart. As a result, it is unlikely that the CARS system will be fully deployed until late 2026 at the earliest. Adding additional requirements to the new CARS system—as this bill proposes to do—could further delay the development of the system and possibly increase costs.
- 8) **Arguments in Support:** In support of a prior version of this bill, California Common Cause wrote:

Undue foreign influence on American politics and government has been a primary concern since the Country's founding. In this vein, Congress passed the Foreign Agents Registration Act (FARA) of 1938 (22 U.S.C. § 611 et seq.). FARA requires the registration of, and disclosures by, an "agent of a foreign principal" who, either directly or through another person, engages in political activity and government lobbying in the U.S. for the benefit of the foreign principal. Similarly, the Federal Election Campaign Act prohibits political spending by foreign nationals at the federal, state, and local levels, but excludes ballot measures and foreign-owned U.S. subsidiaries that do not coordinate with parent companies. California, has implemented stricter prohibitions on direct and independent political spending by foreign-owned U.S. subsidiaries, including on ballot measure campaigns.

Concern about foreign influence in U.S. elections, politics, and government has increased over the last ten years. Technology, political dark money, and shell companies have made it increasingly easy for foreign principals to engage in electioneering and influence-peddling of government officials without true accountability or public scrutiny.

SB 1151 would require an individual who engages in certain specified activities related to influencing legislative or administrative action to register as an agent of a foreign principal and file periodic reports with the Secretary of State in substantially the same manner as is required for a lobbyist and lobbying firm. While there are already registration requirements at the federal level, this complementary state framework would further improve transparency of potential foreign influence at the state and local level and improve enforcement by adding oversight of these actors by the Fair Political Practices Commission.

- 9) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (prior version)

Opposition

None on file.

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