

1 Amend 2 Cal. Code Regs., Section 18239 to read:

2 **§ 18239. Definition of Lobbyist.**

3 (a) Introduction.

4 (1) If an individual engages in direct communication, other than administrative
5 testimony, with a qualifying official for the purpose of influencing legislative or administrative
6 action on behalf of any person other than ~~his or her~~ the individual's employer, apply Section
7 82039 and subdivision (b) of this regulation to determine if the individual is a lobbyist.

8 (2) If an individual engages in direct communication, other than administrative
9 testimony, with a qualifying official for the purpose of influencing legislative or administrative
10 action on behalf of ~~his or her~~ the individual's employer only, apply Section 82039 and
11 subdivision (c) of this regulation to determine if the individual is a lobbyist.

12 (3) Except as provided in Section 86300, if an individual is a “placement agent” as
13 defined in Section 82047.3, the individual is a lobbyist for purposes of the Act, regardless of the
14 definitions in subdivisions (b) through (d), below. An individual does not become a placement
15 agent under Section 82047.3 solely as a result of communicating with a state public retirement
16 system representative provided that the individual accompanies a registered placement agent
17 who represents that individual or that individual's organization, is present only to provide
18 additional substantive information, and would not otherwise qualify as a placement agent under
19 Section 82047.3

20 (b) A lobbyist is an individual who receives or becomes entitled to receive \$2,000 or
21 more in compensation in a calendar month for engaging in direct communication, other than
22 administrative testimony, with one or more qualifying officials for the purpose of influencing
23 legislative or administrative action.

1 (c) A lobbyist is an individual who spends one-third or more of the time, in a calendar
2 month, for which the individual receives compensation from ~~his or her~~ the individual's
3 employer, engaging in direct communication, other than administrative testimony, with one or
4 more qualifying officials for the purpose of influencing legislative or administrative action.

5 (d) Definitions.

6 (1) "Administrative testimony" means either of the following:

7 (A) Influencing or attempting to influence administrative action by acting as counsel in,
8 appearing as a witness in, or providing written submissions, including answers to inquiries, that
9 become part of the record of any regulatory or administrative agency proceeding:

10 (i) That is conducted as an open public hearing for which public notice is given;

11 (ii) Of which a record is created in a manner that makes possible the creation of a
12 transcript; and

13 (iii) Where full public access is provided to the record or transcript and to all written
14 material that is submitted as part of the record.

15 (B) Any communication made at a public hearing, public workshop, public forum, or
16 included in the official record of any proceeding, as defined in Section 82002(b) or (c), before
17 the California Public Utilities Commission.

18 (2) "Compensation" means any economic consideration, other than reimbursement for
19 reasonable travel expenses (i.e., expenses for transportation plus a reasonable sum for food and
20 lodging). Under subdivision (b), if it is established in an administrative or civil action that an
21 individual received or is entitled to receive compensation of \$2,000 or more in a calendar month
22 from a person for services that include direct communication, other than administrative
23 testimony, with a qualifying official for the purpose of influencing legislative or administrative

1 action, there is a rebuttable presumption affecting the burden of producing evidence that all
2 compensation from that person to the individual during that calendar month is for direct
3 communication. This presumption can be rebutted by evidence that may include testimony,
4 records, bills, and receipts establishing the allocation of the individual's compensation for all
5 other goods and services provided.

6 (3) "Direct communication" means appearing as a witness before, talking to (either by
7 telephone or in person), corresponding with, or answering inquiries from, any qualifying official,
8 either personally or through an agent who acts under the individual's direct supervision, control,
9 or direction.

10 (A) Direct communication does not include any request for or provision of purely
11 technical data or analysis to an administrative agency by a person who does not otherwise
12 engage in direct communication for the purpose of influencing legislative or administrative
13 action.

14 (B) For the purpose of determining whether an individual qualifies as a lobbyist pursuant
15 to subdivision (c), an individual does not engage in "direct communication" when the individual
16 is an employee of a lobbyist employer, meets or speaks with a qualifying official in the company
17 of a registered lobbyist retained by the individual's lobbyist employer, and participates as a
18 subject matter expert regarding a legislative or administrative action at issue. For purposes of this
19 exception, an employee includes a member of a bona fide trade association or membership
20 organization.

21 (4) "Influencing legislative or administrative action" means communicating directly or
22 taking any other action for the principal purpose of supporting, promoting, influencing,
23 modifying, opposing, delaying, or advancing any legislative or administrative action.

- 1 (5) “Qualifying official” means:
- 2 (A) Any elected state official;
- 3 (B) Any legislative official;
- 4 (C) Any appointed, elected, or statutory member or director of any state agency;
- 5 (D) Any staff member of any state agency who makes direct recommendations to the
- 6 persons listed in subdivision (5)(C) of this subdivision, or who has decision-making authority
- 7 concerning such recommendations.
- 8 Note: Authority cited: Section 83112, Government Code. Reference: Section 82039,
- 9 Government Code.