

## Policy Alert

### California Law Requires Registration for Placement Agents

November 30, 2010

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Beginning January 1, 2011, California law will require placement agents to register as lobbyists before they engage in activities with state and local pension funds. In addition to the state law, placement agents working with local pension funds must also comply with local lobbying laws. This alert focuses on the impact of the new state law on placement agents working with state pension funds.

#### Revised Definitions

The new law amends the definitions of “placement agent” and “external manager” in the Public Pension and Retirement Plans chapter of the California Code and adds those definitions to the Political Reform Act of 1974. If an individual meets the definition of a placement agent and cannot avail himself of the exceptions, then he will be required to register and report as a lobbyist under the Political Reform Act. The relevant definitions are as follows—

“Lobbyist” means either—

- 1) an individual who receives \$2,000 or more in economic consideration in a calendar month, other than reimbursement 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 purpose of influencing legislative or administrative action; or
- 2) a placement agent (as defined below).

Importantly, the new law amended the definition of “administrative action” to include the decision by any state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system. By amending the definition of administrative action, any reference in the Political Reform Act to administrative action now specifically includes influencing contracts with a state public retirement system.

“Placement agent” means an individual hired, engaged or retained by, or serving for the benefit of or 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.

An “external manager” is defined as an individual, corporation, partnership, limited partnership, limited liability company or association that either (1) is seeking to be, or is, retained by a retirement board of a public pension or retirement system to manage a portfolio of securities or other assets for compensation or (2) 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 retirement board of a public pension or retirement system.

There are several exceptions to the definition of placement agent and, therefore, exemptions from the lobbyist registration requirement—



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- 1) An individual who is an employee, officer, director, equity holder, partner, member or trustee of an external manager and 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 is not a placement agent and is not required to register as a lobbyist.
- 2) An employee, officer or director of an external manager, or of an affiliate of an external manager, is not a placement agent if all of the following apply—
  - a. The external manager is registered as an investment adviser or broker-dealer with the Securities and Exchange Commission (SEC) or, if exempt from registration with the SEC, is registered with any appropriate state securities regulator.
  - b. The external manager has been selected through competitive bidding process.
  - c. The external manager has agreed to a fiduciary standard of care.

## Lobbyist Registration and Compliance Requirements

The new law prohibits a person from acting as a placement agent unless he is a registered lobbyist in full compliance with all aspects of the Political Reform Act as it applies to lobbyists. Furthermore, any external asset manager using the placement agent must file as a lobbyist employer.

### Registration

Placement agents must register as lobbyists, and external managers that employ placement agents must register as lobbyist employers. Registration is required within 10 days of qualifying as a lobbyist.

### Reporting

Applicable lobbying reports must be filed with the California Secretary of State. Lobbyists, lobbying firms and employers are required to report lobbying activities quarterly. The reports cover activity during the previous calendar quarter and are due on April 30, July 31, October 31 and January 31.

## Other Aspects of the Political Reform Act

Placement agents required to register as lobbyists will be subject to all restrictions faced by lobbyists, including the contingency fee ban, the gift restriction ban, the political contribution ban, ethics course requirement and penalties.

### Contingency Fees

Lobbyists and lobbying firms are prohibited from accepting payment contingent upon the defeat, enactment or outcome of any legislative or administrative action (which includes influencing decisions of a state retirement system regarding assets on behalf of the system).

### Gifts

Lobbyists and lobbying firms are prohibited from making gifts, or acting as intermediaries in making gifts, aggregating more than \$10 in a calendar month to a legislative official, state agency official, state candidate or officer, or to any official of an agency listed on their registration statement. The \$10 gift limit does not apply to lobbyist employers as long as a lobbyist or lobbying firm is not involved in making or arranging the gift. However, an official may not accept gifts from a single source in any calendar year with a total value of more than \$420.

### Contributions

Lobbyists may not contribute to state candidates or officeholders if they are registered to lobby the officeholder's (or candidate's) agency. A business entity, including a lobbying firm, may not contribute to such a state elected official or candidate if it is owned, in whole or in part, by a lobbyist or the lobbyist participates in the decision to make the contribution.



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## Ethics Training

Lobbyists are required to attend an ethics orientation course conducted by the Legislature. The Legislature will notify lobbyists of course dates and will provide a certificate of completion of the course. New lobbyists must take the course within 12 months after qualifying as a lobbyist.

## Penalties

Any person who knowingly or willfully violates any provision of the Political Reform Act is guilty of a misdemeanor. Persons convicted of a misdemeanor may be disqualified for four years from the date of conviction from serving as a lobbyist or running for elective office.

The full text of the law can be found [here](#).

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## CONTACT INFORMATION

If you have any questions concerning this alert, please contact —

**Melissa L. Laurenza**  
[m Laurenza@akingump.com](mailto:m Laurenza@akingump.com)  
202.887.4251  
Washington, D.C.

**Carrie Hoback Hill**  
[choback@akingump.com](mailto:choback@akingump.com)  
202.416.5153  
Washington, D.C.

**Julie B. Hodgson**  
[j Hodgson@akingump.com](mailto:j Hodgson@akingump.com)  
202.416.5152  
Washington, D.C.