

ELEC WHITE PAPER

LOBBYING REFORM



NUMBER FIVE

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State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

OWEN V. MCNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

S. ELLIOT MAYO
COMMISSIONER

NATIONAL STATE BANK BLDG., SUITE 1215
28 W. STATE STREET, CN-185
TRENTON, NEW JERSEY 08625-0185

(609) 292-8700

FREDERICK M. HERRMANN, Ph.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

ACKNOWLEDGMENT AND STATEMENT OF PURPOSE

The Commission takes great pleasure in thanking Its staff members who contributed to this report. Deputy Director Brindle was responsible for writing this far-reaching and comprehensive study. Research Intern Steven B. Kimmelman and Executive Director Herrmann provided various background materials. Director of Compliance and Information Evelyn Ford and Legal Director Nagy contributed their proofreading skills and many helpful comments. Also, thanks to Karen Knowles Brindle for her proofreading and suggestions.

ELEC would also like to thank those members of the Northeastern Regional Conference on Lobbying (NORCOL) and the Council on Governmental Ethics Laws (COGEL) who shared their expertise with its staff. The Commission's membership and participation in these two organizations has proved invaluable over the years in keeping track of the latest innovations and happenings in the governmental ethics community.

Executive Director Herrmann edited the entire manuscript, while Executive Secretary Josephine A. Hall did a marvelous and patient job with its wordprocessing.

This paper is part of a series of occasional analyses that the New Jersey Election Law Enforcement commission (ELEC) is publishing on topics of interest in the field of public disclosure. These studies are based on staff research as well as work by outside persons such as university professors and graduate students. Analyses written by external sources are published with a disclaimer. It is ELEC's goal to contribute substantive research for the ongoing debate on improving the way our State regulates the impact of money on its political process.

Owen V. McNany, III
Chairman

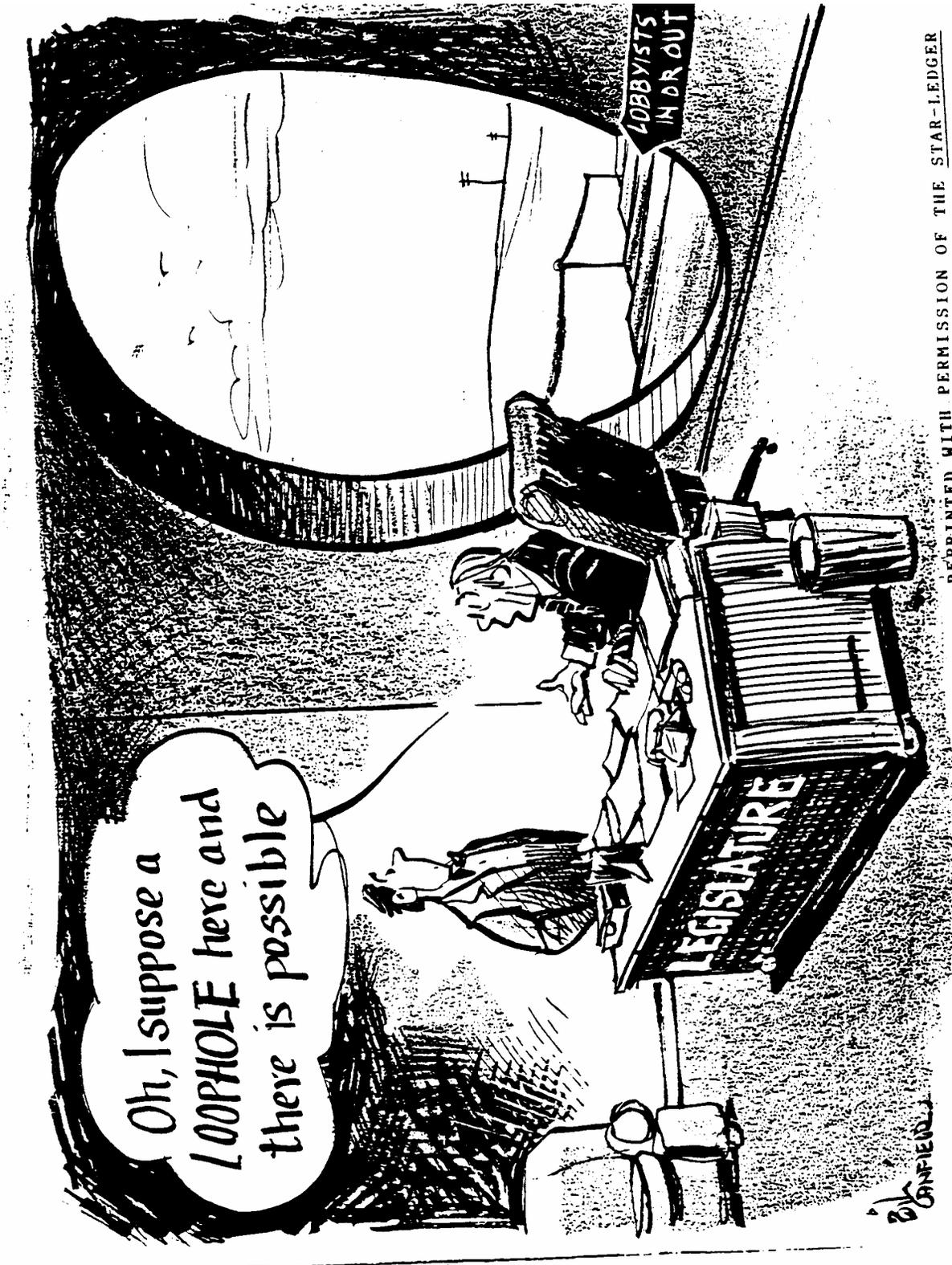
Stanley G. Bedford
Commissioner

David Linett
Commissioner

S. Elliott Mayo
Commissioner

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“The effect of [undue influence] is literally to change the form of our government from one that is representative of the people to an oligarchy, representative of special interests.”

Lincoln Steffens
The Shame of the Cities

“It’s very, very, hard to combat the tobacco industry's money when there's no pressure from constituents,' said Robert Singer, a former GOP Assemblyman from Ocean who sought unsuccessfully to mandate no-smoking areas in restaurants.

‘It was a choice of supporting me or the big dollar,' he said of his colleagues, 'and the big dollar won out in the absence of constituent pressure’”.

Chris Conway and Craig R. McCoy
The Philadelphia Inquirer
March 11, 1990

"[Fred Herrmann] said the law is . . . misguided in focusing on what was said to a legislator rather than what benefits a legislator was given. 'The issue isn't talking to legislators; it's creating them.'"

Robert Schwaneberg
The Star Ledger
February 21, 1990

“Ed McCool, Executive Director of Common Cause of New Jersey, the citizens’ lobby, said the money poured into lobbying gives special interests an advantage in the Statehouse.

‘Full-time hired guns,’ McCool said, ‘are now the thing you have to have to make your legislation move, and to me it’s an indication of legislation by special interests. What’s the public co do? It can’t hire a firm.’”

Rick Linsk
The Asbury Park Press
February 22, 1990

“New Jersey’s lobbying law is a joke. A bad joke. It’s so weak lobbyists don’t have to disclose how much they spend wining, dining and courting State legislators unless a specific bill is discussed. And ... lobbying works. Special interests wouldn’t waste their money if lobbying didn’t pay.”

Home News
March 4, 1990

“Much of the responsibility for the poor quality of disclosure today can be assigned to the mischievous one-word amendment enacted in the final hours of the legislative session that ended in January 1982. The word is ‘expressly.’

The addition of this modifier was endorsed by the Legislature at midnight before an empty gallery and an inattentive State House press corps. It was approved by [Governor Brendan] Byrne at 8:00 the next morning. Most legislators questioned later about their action said they didn’t realize what they were voting on at the time.

[A State House] lobbyist ... called this legislation a ‘Hail Mary’ bill - one which was requested by the lobbyists, which they never dreamed would win approval, and for which they are forever grateful.”

Neil Upmeyer
The Sunshine Boys

“The outcry ... over [undue lobbyist influence on the Legislative process] had to be stilled. The Daily Advertiser [of April 7, 1855] reasoned that New Jersey should be ashamed ... whether the allegations were true or not, ‘because such base charges were deemed to be possible, if not probable, even by members themselves, or committees of investigation would not have been appointed.’”

Fred Herrmann
Stress and Structure

“‘The best lobbyists’ work is basically just socializing,’ former Speaker [Tip] O’Neill’s spokesman, Chris Matthews, advised me.”

Hendrick Smith
The Power Game

WHITE PAPER NUMBER FIVE

INTRODUCTION

Rob Stuart, a representative of the New Jersey Public Interest Research Group (PIRC), commented recently about the passing of benefits by lobbyists to public officials:

If a legislator says, ‘I’m not going to talk business,’ he might not, but some of these lobbyists are persuasive – that’s why they get paid what they get paid And that’s got to be a motivation for going on ... trips ... to talk to these legislators.

We need to reduce the amount of informal and unregistered contact that goes on in order to improve the legislative process.¹

Mr. Stuart’s comments were made in response to an Associated Press story in early January that reported a group of lobbyists was forming a club called the Monday-Thursday Society, which was designed to encourage lobbyists and lawmakers to travel together at discount rates. The Monday-Thursday Society was aptly named since the Legislature meets on Mondays and Thursdays.

According to the report, the group sent letters to a wide range of lobbyists and legislators stating that the purpose of the undertaking was to offer “custom, discount group travel opportunities for the business of pleasure.”² Organizers of the group claimed that the “Monday-Thursday Society is an innocent plan by a group of friends to take advantage of group travel

rates.”³ They indicated that they believed contact between lobbyists and lawmakers should not be restricted to public hearing rooms.

Under current law, none of the expenditures potentially incurred by the Monday-Thursday Society lobbyists in connection with any vacations taken with legislators would necessarily be reportable. Unless direct communication on specific legislation takes place, none of the costs associated with the vacations would legally be required to be disclosed.

In perspective , this attempt at fraternization represents a formalization of a longheld, but informal, practice of lobbyists and lawmakers meeting together socially. Traditionally, these social outings ranged from simple lunches and dinners at local restaurants to lobbyist-sponsored trips to out-of-State conferences and events. Now, however, through the Monday-Thursday Society, there will be an organized and ongoing effort to bring lobbyists and elected officials together in social settings. Throughout the years, such prominent groups as the New Jersey Chamber of Commerce and the New Jersey Bankers Association , for example , have sponsored annual lobbyist/elected official outings, but the Monday-Thursday Society breaks new ground in its orchestrated and unprecedented attempt to bring the lobbying community together with public officials in pleasurable surroundings.

As much as any recent development, the Monday-Thursday Society highlights a most serious flaw in the current lobbying disclosure law; namely, that only expenditures for direct lobbying activity about particular

legislation need be disclosed to the public. Though there is at least an appearance that benefit passing to and social contact with public officials can be extremely beneficial to lobbyists in influencing public policy, such “goodwill lobbying” is not reportable. Even if a legislator’s entire trip is paid for by a lobbyist, the cost of that trip need never be disclosed unless “direct lobbying” takes place. In a word, the “express communication” loophole cheats the public out of adequate disclosure by denying it the right to know about how much money is being spent to influence the process of government and which public officials are receiving the benefits.

In this White Paper, the Commission will call for “goodwill lobbying” expenditures to be reported, especially the passing of benefits to public officials. Public officials would include legislative staff. It will urge that the “New Jersey Legislative Activities Disclosure Act” be amended to close the “express, direct, intentional communication” loophole in the law. But that is not all. It will build upon earlier attempts by the Commission and the Attorney General to reform the lobbying law by calling for one agency, ELEC, to administer it and by arguing that comprehensive lobbying disclosure must also include the reporting of “grassroots” and “executive branch” lobbying activities. “Grassroots lobbying” activity involves the mobilization of public support for a special interest’s position on an issue and can include the use of direct mail, broadcast and print media advertising, and polling. “Executive branch lobbying” involves attempting to influence the outcome of regulatory and rulemaking proceedings as well as proceedings dealing with the procurement of contracts and grants.

The Commission believes that lobbying is a fundamental right in a free society. It feels that it is an honorable profession that has a long history both in the United States and in New Jersey. Indeed, the expertise that lobbyists bring to the governmental process is invaluable and contributes greatly to the important give-and-take that inevitably occurs during a proposal's journey toward enactment. The Commission adheres to the view that the first amendment right of any group or individual to lobby lawmakers should not only be protected but also cherished.

While the Commission supports this right to lobby, it does, however, believe that the public has a right to know the extent of special interest lobbying, the amount of money being spent by these lobbyists in pursuit of their policy goals, and the names of those public officials receiving benefits. Only through adequate disclosure laws that provide a total picture of this activity can the credibility of the governmental process be upheld and trust in government be enhanced. As noted above, this total picture includes the reporting of expenditures for "goodwill lobbying," for "grassroots lobbying," and for "executive branch lobbying," as well as for direct lobbying as singled out in existing law.

In undertaking this report, the Commission intends to provide not only a brief history of lobbying regulation in New Jersey but also a blueprint for reform. Through its analysis of the current law and its discussions of other jurisdictions in which laws are stronger, the Commission hopes that its effort

will be a springboard for changing New Jersey's system of regulating lobbyists; change that is so critically needed.

As stated in the 1982 joint report of the Attorney General said the Election Law Enforcement Commission:

Experience under the current financial disclosure program by lobbyists and legislative agents leads to the undeniable conclusion that the current program is not complete, because it does not provide truly meaningful information to the public, and is in fact, impracticable if not impossible to enforce effectively.⁴

Without question, these words are as true today as eight years ago and serve as a reminder that lobbying reform is urgently needed and long overdue.

LOBBYING REGULATION IN NEW JERSEY: AN HISTORICAL LOOK

In his Star-Ledger series, Dan Weissman referred to lobbyists as “a group of people, representing special interests, who endeavor by personal persuasion, to influence legislation.”⁵

Indeed, this description is most accurate. In an effort to promote their interests, lawyers, builders, teachers, dentists, engineers, environmentalists, and women’s groups, etc. environmentalists, and women’s groups, etc., enlist the services of individuals to undertake the business of lobbying. These individuals utilize a number of strategies at their disposal to influence governmental policies, in the process often winning important victories for the special interests they represent.

Lobbying Profession Endures Poor ReRutation

Assuredly, there is nothing illegal or unethical about this activity. It is an essential part of the governmental process. Unfortunately, however, due to press accounts that have chronicled the improper actions of a few lobbyists, the public's perception of the profession of lobbying may be negative.

For example, in an article in The New Republic, Michael Kinsley wrote:

... the appropriate logo [for the Federal Office of Governmental Ethics] might be Michael Deaver's

outstretched hand on a background of cash, with the slogan \$500,000 please? That's a typical Deaver annual fee. Less than a year out of the gate, the former White House Deputy, Chief of Staff is billing clients at an annual rate of over \$4 million.⁶

More recently, a New York Times article pointed out:

In earlier congressional testimony, Mr. [James] Watt (Secretary of the Interior in the Reagan administration) acknowledged that despite a limited knowledge of housing issues, he had received more than \$400,000 in fees for lobbying H.U.D.⁷

The same article continued:

Another witness before the subcommittee, the former Number Two official at the housing agency, Philip Abrams, acknowledged in testimony that after leaving H.U.D., he had personally lobbied [an agency] executive assistant on behalf of a number of housing projects.⁸

In 1975, Joseph W. Katz, a prominent New Jersey lobbyist and former gubernatorial press secretary, told the following story: “‘My father is a lobbyist,’ the young girl responded to the teacher’s request that her pupils tell about their fathers’ occupations. ‘Isn’t that illegal?’ piped up another youngster”⁹

Mr. Katz’s story was story was told in jest and to illustrate the fact that lobbyists suffer from a poor reputation that is often undeserved.

Unfortunately, however, in light of the H.U.D. disclosures, as well as other recent revelations about lobbying activity, this story, told fifteen years ago, comes close to describing the perception that many people hold of the business of lobbying and the role that lobbyists play in the governmental process.

This negative impression of the lobbying profession is unfortunate, both for the public and for the lobbyists themselves. Perhaps only through complete disclosure, disclosure that contributes to a better understanding of the lobbyists' role in the democratic process, and one which enhances the public's trust in government, can this impression be changed. If nothing else, meaningful disclosure will enable the public to receive the lobbying information about lobbying it deserves and to which it is entitled.

Lobbying is Constitutionally Protected

The right to petition the government, or the right to lobby government officials about a particular cause, derives from the United States Constitution.

The First Amendment to the Constitution provides that:

Congress shall make no law ... abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances.¹⁰

In 1946, the United States Congress, consistent with the First Amendment, affirmatively recognized lobbying as indigenous to the process by passing the “Regulation of Lobbying Act” as part of the “Legislative Reorganization Act.” In effect, the Lobbying Act, as much as initiating a program for regulating lobbyists, also clarified the fact that lobbying was a rightful activity protected by the Constitution.¹¹

Years later, in 1989, in accordance with legislation passed by Congress, the U. S. Office of Management and Budget (OMB) issued guidelines for the disclosure of executive branch lobbying, indicating that the sanctioning of lobbying activity is extended to the executive branch as well as the regulating of that activity.¹²

In New Jersey the right to lobby is similarly protected by the State Constitution. Moreover, it was first officially recognized as an organized activity in 1964, when the Legislature passed its first law regulating lobbying.¹³ Later, in the 1971 reforms,¹⁴ and in the 1973 Campaign Act,¹⁵ the Legislature again recognized the protected status of lobbying even as it endeavored to further refine the laws regulating the disclosure of lobbying activity. The subsequent New Jersey Supreme Court decision in 1980¹⁶ and the amendments to the “Legislative Activities Disclosure Act,”¹⁷ which deleted the lobbying regulatory provision from the Campaign Act, further demonstrated that the right to lobby is accepted.

Certainly, this right to lobby is not only accepted but also recognized by time and history as an important part of democratic government. While it is true that special interests can undertake organized and well financed campaigns to further their own particular interests, it is equally true that this activity is constitutionally protected. Moreover, the efforts of organized special interest lobbyists are actually beneficial to the process. For instance, lobbyists can and do provide valuable information to legislators and officials of the executive branch that might not otherwise be provided. Certainly, the more information an elected official has the better off he or she will be when it comes to making an informed decision. Undeniably, this function is an integral part of the democratic process.

In New Jersey, during the 1988-89 legislative session, members of the State Senate and Assembly introduced some 9,000 bills.¹⁸ Perhaps more than any other statistic, the sheer enormity of the number of bills introduced demonstrates clearly why lobbyists are such an essential part of the system. Despite the fact that there has been an increase in non-partisan and partisan legislative staff throughout the years, and correspondingly in its capacity to provide officials with research support services, lobbyists are needed to supplement a massive informational effort. There are times when specialized information is required and it is only the lobbyist who can provide it. Of course, public officials and their staffs then need to sift and evaluate the lobbyist's information.

Lobbyists Have Disproportionate Influence

Despite their traditional and important role, it is, nevertheless, crucial to keep in mind that the efforts of lobbyists, in addition to being self-serving, are informed, organized, and well financed. Because of these facts, there is a certain advantage that lobbyists have over ordinary citizens in terms of influencing the governmental process.

As Governor Mario Cuomo of New York said when he was that State's Secretary of State, "some people have a disproportionate voice. Not illegal, not necessarily unethical, but disproportionate."¹⁹

It is a fair assumption to make that in New Jersey lobbyists have a disproportionate voice vis-a-vis the general public when it comes to influencing legislation and other governmental actions. Certainly, this "voice" is protected by the Constitution, and as noted above, important to the process. But as acknowledged by John Torok, the New Jersey Dental Association's lobbyist, "sixty-five percent of the bills get through on clout."²⁰ Unlike individual citizens "lobbyists have become the fourth branch of New Jersey government, the branch that works in the halls, behind the scenes and in committee rooms to shape the laws the Legislature passes and the Governor signs."²¹

Lobbyists Use PACs, Relationship Building and Grassroots Tactics to Gain Clout

“Clout” derives from a combination of factors. Certainly, the information that lobbyists are able to provide to legislators and members of the executive branch contributes to it. But equally important is the way lobbyists have been able to exploit a campaign finance system in New Jersey that places no limits on contributions to legislators or local candidates. Moreover, lobbyists have recognized the importance of building relationships with public officials and have endeavored to do so as part of a broad strategy to successfully influence the legislative and executive processes. Finally, well-heeled lobbyists can add to this “clout” through employing direct mail and polling techniques and broadcast and print advertising to build grassroots support for a particular point of view.

In terms of the campaign finance system, lobbyists, utilizing political action committees (PACs), are major players in today’s high stakes atmosphere. Often the lobbyist directly administers and controls the PAC. But even if he or she does not, which is often the case, the two, nevertheless, work together to help the lobbyist gain access to public officials for the purpose of influencing policy.

In its earlier White Paper, Trends in Legislative Campaign Financing: 1977-1987, the Commission noted that “special interest political action committees (PACs) were a major source of funding for legislative candidates in 1987.”²²

According to data contained in the report, the number of PACs operating in New Jersey increased by 118 percent between 1983 and 1987. Moreover, PAC contributions to legislative candidates during this period increased by 87 percent, \$1.5 million to \$2.8 million.²³ Since 1983, the proportion of legislative contributions attributable to PACs increased from 16 percent to 19 percent.²⁴ In 1983, Senate and Assembly candidates raised approximately \$9 million, of which \$1.5 million came from PACs. Four years later, in 1987, Senate and Assembly candidates raised a record \$14.8 million, of which \$2.8 million derived from PACs.²⁵

In 1989, when only the Assembly was up for election, candidates reported a record \$9.8 million in contributions.²⁶ Though ELEC's analysis of PAC participation in this election has not been completed yet, there is little doubt that their involvement will prove significant.

Of course, the PAC numbers for these years do not reflect total special interest spending because they do not include contributions made directly by corporations and unions. Indeed, actual participation in New Jersey elections by special interests is understated by citing just the PAC statistics. Nevertheless, for the purposes of this paper, the use of the PAC statistics is instructive in terms of demonstrating that the use of the campaign system by the special interests as part of their strategy to lobby effectively is enormous.

Use of the . campaign-finance system is but one of the strategies employed by lobbyists to gain access and influence the process. Another strategy, and an important one, is relationship building. The newly created Monday-Thursday Society exemplifies this strategy and the importance placed on it.

For 1987, lobbyists reported expenditures of \$7.7 million. In 1988, those expenditures jumped to \$10.5 million, increasing by 36 percent.

The number of people participating in organized lobbying activity also continued to climb during this one-year period. For 1987, there were 397 reports filed and for 1988 that number increased to 502.²⁷

Unfortunately, the actual proportion of this money spent on “goodwill lobbying,” or relationship building, is impossible to determine. Because the law does not require officials to disclose expenditures made to benefit public officials unless the expenditures are made “expressly” for lobbying on a piece of legislation, the amount of money expended to build relationships is not required to be disclosed. Nevertheless, from the amounts of money reportedly spent by lobbyists, it is a safe bet that the amount of money spent for this “goodwill” lobbying is sizeable.

Finally, in addition to making contributions and to building relationships, well-financed and organized lobbyists may undertake a “grassroots lobbying” strategy to gain access and influence. This strategy, designed to mobilize constituency groups and the general public in support of

a special interest's point of view, can employ the use of mass media advertising and computer technology to influence policy outcomes successfully. Naturally, a high powered "grassroots" campaign, which utilizes these modern communication techniques, would be costly and out of the reach of ordinary citizens. Only the organized special interests would have this capability of moving public opinion in one direction or the other and thereby impacting upon, albeit indirectly, the political process.

Like expenditures for "goodwill lobbying," money spent on behalf of "grassroots lobbying" is not reportable under current law unless direct communication with legislators or the Governor or his staff, including the cabinet, takes place as part of this effort. Certainly, any meaningful reform should capture this activity, the extent of which is difficult to determine in New Jersey because of the weakness of the existing lobbying disclosure law.

As noted, lobbying is a protected and cherished right of a free society. Certainly, "direct lobbying" and "grassroots lobbying, are both legal and proper. However, this "grassroots lobbying" activity like "direct lobbying," should be disclosed. In this way, both the lobbying community, with a more positive image intact, as well as the governmental process, infused with greater credibility and public trust, will benefit.

Lobbying Disclosure in New Jersey Has a Checkered History

The disclosure of lobbying activity has a rather checkered history in New Jersey. The first formal attempt to regulate lobbying in the Garden State occurred in 1964. In that year, a law was enacted to provide for the identity of persons undertaking lobbying and the disclosure of their activity.

Under this statute, any individual employed for the purpose of lobbying the legislature had to register with the Secretary of State and file quarterly reports with that office. These reports disclosed persons represented by the lobbyist, referred to in the 1964 law as a “legislative agent,” and the activity undertaken to influence legislation. Under this early statute, failure to comply with the law constituted a misdemeanor and came under the criminal code. According to the 1964 Act, any amount of money spent to “influence legislation by direct communication” over a threshold amount of \$500 was reportable.²⁸

Seven years later, in 1971, the Legislature passed and the Governor signed into law the “Legislative Activities Disclosure Act.” In some ways, this statute, which replaced the 1964 Act, strengthened and expanded the earlier law. In other ways it weakened it.

For instance, while keeping the registration and quarterly filing responsibilities, it expanded the requirements for both. Along with the “notice of representation,” or registration statement, a legislative agent was

required to disclose the category of legislation upon which he or she would be lobbying and the terms of his or her employment arrangement. In like measure, quarterly reports had to include a description of the legislation upon which the lobbyist worked. Also, for the first time, these legislative agents had to wear name tags when they lobbied in the State House. Unlike the 1964 statute, however, the 1971 Act watered down the law by replacing the criminal sanctions of the Act with the questionable enforcement tool of vesting the Attorney General with the power to ask the court to compel compliance with the disclosure requirements.²⁹ Both the 1964 and 1971 statutes only applied to “direct lobbying” activities and not to “goodwill lobbying.”

In 1973, in the midst of the Watergate era, “The Campaign Contributions and Expenditures Reporting Act,” which created the New Jersey Election Law Enforcement Commission, was enacted into law. Contained in the original Campaign Reporting Act, was a requirement that “political information organizations” file annual reports with the Commission detailing all contributions and expenditures made during the preceding calendar year to influence the course of legislation. What was significant about this provision in the Campaign Act was the fact that it provided the Commission the opportunity to regulate both “direct” and “goodwill lobbying” activity. Thus, almost twenty years ago, the Legislature recognized that lobbying included much more than only activity undertaken in the context of “direct Communication” on specific legislation.³⁰

According to an article in the New York Times in August of 1975, “the section [concerning “political information organizations”] was inserted at the last moment in 1973, and the legislation was aimed at disclosing election campaign finances. Its insertion, actually, was an effort to sabotage the bill. However, the effort boomeranged and the section was approved by the Legislature along with the parent bill and signed into law by then Republican Governor, William T. Cahill.”³¹

Consequently, the Commission required lobbyists to report extensively to it and expounded this position in a ruling made in January 1974. In this action, the Commission ruled that any group that sought to influence legislation - from the Roman Catholic Church to the American Civil Liberties Union - would be required to file disclosure reports.³²

The lobbying provisions of the 1973 “Campaign Contributions and Expenditures Report Act” never went into effect. Before the provisions could be implemented, they were challenged in the courts, first by the American Civil Liberties Union in Federal Court, and then in the State Superior Court by the Chamber of Commerce, the New Jersey Bankers Association, the New Jersey Builders Association, the New Jersey Association of Realtors, and the New Jersey Retail Merchants Association.

Superior Court Judge Irwin V. Kimmelman granted a temporary restraining order that prevented the law from being implemented on March 15, 1974. Then, in his Chancery Division decision of the Superior Court in New Jersey Chamber

of Commerce v. New Jersey Election Law Enforcement Commission, Judge Kimmelman, in July 1975, held for the plaintiff and declared the section of the Campaign Act in question to be unconstitutional.³³

Essentially, this section was declared unconstitutional, not in the name of the larger and well organized lobbying groups such as the Chamber of Commerce, but in the name of the less organized, smaller grassroots organizations that form to oppose or support legislation. The section was struck down not because it required the disclosure of “goodwill” as well as “direct” lobbying expenditures, but because, under the umbrella term, “political information organization” it required all groups that spent money in seeking to influence legislation to file lengthy disclosure reports. The court, in effect, said that the section violated constitutional rights of free speech and assembly of smaller groups.

Judge Kimmelman characterized the Commission’s policy thusly: “well-meaning groups who charter a bus and descend upon the State capital to campaign for or against abortion laws, or for a State income tax, ... all of whom incur expenditures in varying amounts to voice their opinions on these subjects, are unknowing violators of the Act.”³⁴

As a result of the Superior Court decision, the lobbyist filing requirements as prescribed by the Campaign Act and subsequent regulations of the Commission were suspended. The implementation of any lobbyist disclosure

responsibilities had to await the outcome of the Commission's appeal to the State Supreme Court.

In a decision that in many ways represented a milestone in the effort to regulate lobbyists, the New Jersey Supreme Court on February 6, 1980 reversed the lower court's decision and upheld the law which required lobbying organizations to reveal the sources of their money as well as how they spend it in regards to supporting or opposing legislation.

In upholding the laws constitutionality and in rejecting arguments to the effect that the law placed curbs on First Amendment rights, the Supreme Court laid the foundation for the Commission to set-up guidelines for disclosure of lobbying activity. As part of its decision, however, the court did acknowledge the concern of many persons that the law not be so broad as to have a "chilling" effect on First Amendment rights. In paying heed to this concern, the five-member judicial panel narrowed the application of the law to only those groups that undertook a "significant" financial activity as well as lobbying activity on a "substantial basis."³⁵ Moreover, the Supreme Court said that the law applied to "... activity which consists of direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals.³⁶ Finally, the Court struck down as too low the \$100 reporting threshold initially adopted by the Commission as well as the \$750 reporting threshold which the Superior Court had cited as adequate. The

Supreme Court left it up to the Election Law Enforcement Commission to determine the proper threshold.

During the 90-day period given the Commission by the court to establish a monetary reporting threshold, the Commission adopted \$2,500 as the level at which lobbying organizations would have to report their contributions and expenditures. Thus, lobbyists would finally be required to report their activity to the Commission in early 1981, or so it seemed at the time.

The struggle to implement the lobbyist disclosure law was not quite over. In June of 1980, Senate bills 1396 and 1397 were introduced that narrowed the scope of lobbying activity required to be reported to expenditures dealing expressly with legislation.³⁷ The Legislature passed the legislation and sent it to Governor Brendan T. Byrne, who conditionally vetoed Senate bill 1396 pending an amendment that would require lobbyists to report entertainment expenses even if no direct communication on lobbying occurred.³⁸ In other words, Governor Byrne's conditional veto strengthened the disclosure aspects of the legislation by requiring lobbyists to report expenses in connection with "goodwill" lobbying that were made in relation to lobbying communications. No longer would it be a prerequisite for reporting that discussion on specific pieces of legislation occur. In 1981, the Legislature concurred with Governor Byrne's conditional veto recommendations and enacted the "Lobbyist Activities Disclosure Act," thereby repealing the "political information organization" section in the Campaign Act. As a result, the Commission discontinued its lobbyist filing program begun in early 1981 and

proceeded to hold a public hearing on new regulations pursuant to the newly enacted law.

Next, the Commission adopted regulations that were consistent with the 1981 legislation signed by Governor Byrne. These regulations excluded such items as administrative “overhead” from reporting but required expenditures for “goodwill” lobbying to be reported by lobbyist organizations.³⁹

Before the Commission could implement its latest rules, however, the Legislature acted again. In a last-minute maneuver in late 1981, the Legislature amended the “Lobbyist Activities Disclosure Act” to reinsert the “expressly” loophole language. Despite the fact that the amendment undermined Governor Byrne’s conditional veto and weakened the disclosure aspects of the law, the Governor signed the amendment into law.⁴⁰

Finally, after years of wrangling, lobbyists began to report their activity to the Commission in February of 1982. Unfortunately, however, the expenditure information reported by lobbyists was incomplete. The outcome of the courtroom and legislative battles had resulted in lobbying disclosure being placed in one statutory framework, but a statutory framework that was less than complete. With the “expressly” loophole intact lobbyists were free to build relationships with the Governor, members of the Governor’s staff, and legislators and pass benefits to them without being required to report the cost of associated activities. As it turns out, they were also free to undertake “grassroots lobbying” activity and “executive branch lobbying”

activity without being subject to any disclosure. Unless specific legislation was discussed the public would not be apprised of expenditures made by lobbyists to foster relationships that most certainly would help them to gain the access required to exert considerable influence upon the legislative process. Moreover, the public would not be informed of expenditures for “grassroots lobbying” or of expenditures relative to lobbying on executive branch rules, regulations, and procurement. Finally, the lobbying of legislative staff was not reportable.

LOBBYING: STRATEGIES FOR ACCESS

The New Jersey Supreme Court, in its benchmark decision of 1980, recognized that the regulation of lobbyists was a constitutionally protected endeavor.⁴¹ Implicit in this decision was the recognition that lobbyists, organized and often well financed, are a breed apart from ordinary citizens when it comes to influencing the processes of government. Accordingly, it is commonly accepted that special interest lobbyists should be treated differently under the law from ordinary citizens when it comes to disclosing their advocacy activities. The extent of that different treatment, however, in terms of how much of a bonafide lobbyist's activity should be reported, is in question and has been for almost a decade.

Lobbying a Growing Business

There is no question that lobbying is a business and a growing business at that. Certainly, special interest advocates have used their skills in Trenton for many years. But just like the growth in campaign financing in the Garden State, lobbying has increased most dramatically in recent years, making it a leading growth industry.

According to the most recent registration figures of the Attorney General, there are 622 registered lobbyists in New Jersey. The number of registered lobbyists has increased by 45 percent since the third quarter of

1985, the earliest figures attainable from the Attorney General. There were 430 persons registered with the Attorney General at that time.⁴²

For 1988, the Election Law Enforcement Commission received 502 reports. This number represents a sizeable increase in the number of reports received since the program began. For 1981, the Commission received 232 reports. Thus, lobbyist reporting entities have increased by 116 percent over a seven year period.⁴³

The fact that lobbying is a growth industry as well as a big business is not just represented by the increase in their number. More to the point are the expenditure totals shown on the most recent reports. These figures suggest not only that large sums of money are being spent by lobbyists but also that large sums of money are being made by “legislative agents,” or those individuals and firms that are being employed by the special interests to represent them in Trenton. Moreover, the reports, though they leave very much in doubt regarding the amount of money actually being spent on influencing legislation and public officials, show definitively that overall expenditures by lobbyists have increased significantly through the years.

Lobbying expenditures reported for 1981 amounted to \$3 million. At the end of the decade, as reported for 1988, lobbyists spent \$10.5 million for an increase of 250 percent.⁴⁴

Tracing lobbying expenditures since 1986, it is evident that there has been a systematic and persistent growth in lobbying. For 1986, lobbyists reported spending \$5.8 million; for 1987, \$7.7 million; and for 1988, as noted above, they reported expenditures of \$10.5 million. Thus, during only this two-year period lobbyists spending increased by 81 percent.⁴⁵

Incredibly, while the amount of money reported as being spent directly on legislators and the Governor and his staff has always been exceedingly low, it has actually declined since 1986. In 1986, \$37,993 was reported spent on these public officials; in 1987, \$28,180; and in 1988, \$23,493.⁴⁶

These figures highlight the inadequacy of the current law and the consequent deficiency in disclosure that results. The totals reported as being spent on legislators and the Governor and his staff pertain only to those occasions when legislation was specifically discussed. The disclosure reports completely exclude any information about “goodwill lobbying,” “grassroots lobbying,” and “executive branch lobbying,” all of which are aspects of the business that make up a complete picture of actual lobbying activity.

Despite this loophole in the law, however, the increasing expenditures reported by lobbyists indicate that lobbying in New Jersey is big business and getting bigger. Certainly, high-powered lobbyists with strong governmental connections come at a premium. Their access to important elected representatives, as well as to executive branch officials, contributes to

their being significant players in the governmental process. As noted in a Star-Ledger article: “These paid representatives of vested interests play such a pivotal role that even when they seemingly lose a battle, they often manage to work language changes in legislation to give their clients loopholes or escape hatches in the impending law.”⁴⁷

Lobbyists Understand the Governmental Process

The path of legislation toward enactment is not an easy one. It is filled with twists and turns, as well as detours. Often roadblocks are set-up that block the course of legislation altogether. Similarly, the path taken by regulatory proposals through the executive branch and the Office of Administrative Law (OAL) in the Department of State is complicated and difficult. In addition, it is not always easy for a local unit of government to prepare a bid for State or federal money or for businesses to secure government contracts. In these areas, lobbying can be an indispensable part of the road to success.

For instance, if a bill is first introduced into the Assembly it must go through several steps before it can become law. It must be released from the appropriate committee or committees and it must then be approved by a majority of the members of the Assembly. The bill must follow the same path in the State Senate, and may be sent back to the Assembly for amendment. Once both Houses pass a bill, the legislation goes to the Governor. The Governor can either sign it, conditionally veto it, or veto it outright. If the Governor

conditionally vetoes the legislation, the two houses must concur in the Chief Executive's recommendations and pass it back to the Governor for signature. If the Governor vetoes the bill, it can only become law if two-thirds of the members of each house vote to override it.

Proposed regulations developed by executive agencies to carry out the provisions of the law also have several hurdles to overcome before they become effective. They must first be proposed by the appropriate agency. After a public comment period is held, the proposed regulations must be published in the New Jersey Register and then formally adopted.

Finally, grants and contract bids are also subject to levels of review by governmental agencies. Moreover, the proposals for these grants and contracts are normally subject to certain criteria in order for the grant or contract to be eligible to be awarded.

Without question, lobbyists with expertise in the legislative and executive policy-making processes, and with the access to the key players in these processes, can be of substantial help to the interests they represent. Their assistance can be invaluable in a special interest's quest to influence the introduction, passage, or defeat of legislation; the adoption or non-adoption of administrative rules; and the awarding of contracts and grants. Knowing the right "buttons" to push and the ability to push them is an important commodity in today's complex governmental atmosphere.

Lobbyists Employ a Variety of Strategies to Influence the Process

But just how do these special interest lobbyists, who have obvious advantages over the average citizen, go about influencing policy-making?

There are certain strategies that can be employed to influence decision making in the governmental process. In large measure, these strategies revolve around the goal of gaining access to elected representatives and policy makers. In order to be an advocate for the interest or interests a lobbyist supports, that lobbyist's voice must first be heard. Again, one of the ways to be heard is through access.

Relationship Building

One of the strategies for gaining access is through relationship building. Though not exclusively, one approach toward building personal ties is through the passing of benefits to legislators and their staff and key policy makers in the executive branch.

The foundation for many business deals is built over lunch, dinner or "power" breakfasts. In fact, many business deals are actually consummated during these social occasions. Doing business over lunch, etc., is a time-honored practice among business people worldwide, and one, incidentally, which is perfectly legal and practical. Certainly, it helps to feel comfortable, get to know, and learn to trust the people with whom you have to deal. Using

social occasions for business dealings is a proven technique for success and one that will continue to be utilized.

Just as “power” breakfasts can be used effectively in business, so too can they be used effectively in the market place of governmental policy making. In a word, there is no reason to believe that this proven business technique is not applied, nor should not be applied, by lobbyists in their attempt to influence public policy. This statement is not to imply, however, that a legislator’s vote, for instance, will be bought because a lobbyist took him or her out to lunch. Certainly not! But it is not stretching the imagination to suggest that a social occasion such as lunch will help the lobbyists’ cause. Without a doubt, these occasions help to build relationships which in turn help to gain for the lobbyist both access and the ability to be heard on legislation. Even if legislation is not specifically discussed, these occasions are helping to build the foundation for future action.

A lobbyist taking a legislator to breakfast or lunch is just a simple example of the way benefit passing can contribute to relationship building. Lobbyists and the special interests they represent often go way beyond this example in attempting to build friendly ties between themselves and the people they seek to influence. As noted above, conferences are often underwritten by the special interests, sometimes in far away and pleasurable settings. In one example previously noted, a group of lobbyists formed a Monday-Thursday

Society, the purpose of which is strictly entertainment and which has nothing to do with underwriting a public official's trip for business purposes.

In short, various techniques are applied by lobbyist, in their efforts to build relationships, thereby gaining access to legislators and other public officials and finally influence over the governmental process. Certainly, relationship building is an accepted practice, but the public has a right to know the extent to which it goes on as well as the officials who may benefit from it. Complete disclosure of this lobbying activity over reasonable thresholds is the only way to build public trust.

Use of the Campaign Finance System

Another way in which lobbyists attempt to gain access is through campaign contributions made by political action committees (PACs) that represent the same special interest that they do. In some instances, the lobbyist actually manages the PAC in question. But, even in instances where the PAC is administered by different individuals, the purpose behind such contributions is to boost the standing of the special interest and reinforce the efforts of the lobbyist to gain access and influence.

Evidence of this use of campaign contributions to gain access and influence can be seen in the way these contributions are directed. According to data contained in Trends in Legislative Campaign Financing: 1977-1987, the

special interest PACs gave the majority of their contributions to incumbents in the 1983 general elections for Senate and Assembly.

In 1983, 80 percent of all PAC contributions went to incumbents. In 1987, that ratio remained high when PACs made 71 percent of their contributions to incumbents.⁴⁸ Indicative of how successful this PAC strategy has been is the fact that in 1983, 96 percent of the incumbents won and in 1987, 98 percent of them won.⁴⁹

Regarding this PAC strategy, Trends in Legislative Campaign Financing: 1977-1987 states:

In determining to whom they would contribute, the PACs largely made their decisions on the basis of pragmatism as opposed to ideology. For example, Republican incumbents received \$1 million from these groups as did Democratic officeholders. The Republican officeholders in the Assembly, in which the GOP was in control, received the largest proportion of Assembly incumbents contributions, 70 percent. Democratic officeholders in the Senate, in which the Democrats were in control, likewise received the largest proportion of Senate contributions from PACs, 67 percent.⁵⁰

Thus, these statistics from recent legislative elections suggest a clear strategy on the part of the special interests to channel their contributions to where they will do the most good. The strategy is designed to maximize a

special interest's access to important officeholders, thereby improving its chances of influencing the process.

While it is a widely accepted fact that PACs dispense their money wisely for the purpose of increasing their influence, it must be pointed out that there is no evidence of a direct link between a campaign contribution and the votes that legislators cast. Though certainly this link has been suggested in newspapers and other publications both in New Jersey and nationally, there is no known study that has proven that such a link exists.

In fact, in "PAC Contributions and Roll-Call Voting," written by Diana M. Evans, Ms. Evans suggests that PAC money has less impact than commonly believed. She states: "Finally, lest the point: be lost in the glare of the spotlight on PAC contributions, it is still true that in most cases PAC money has less effect on members' voting than their partisan and ideological persuasions. Future research will, of course, take those variables into account, but should also focus on the circumstances under which legislation is considered to determine what other factors, in addition to conflict and consensus, conditions the effects of PAC contributions on Congress members' roll-call voting."⁵¹ In addition to the factors listed by Ms. Evans, interests of the district must certainly be added as another significant variable impacting upon a legislator's voting behavior.

Despite the lack of evidence of a direct link between PAC contributions and voting by legislators, there are still times when experts believe that

these contributions may-effect the process more strongly than at others. Known to the political science community as “consensual” issues, it is this type of bill that offers the greatest potential for PAC contributions to influence the voting.

According to Ms. Evans: “consensual bills are likely to be those that offer concentrated benefits and dispersed costs That is, a relatively small group, usually an economic interest group, seeks a benefit for its members at the expense of a large portion of the general public.”⁵² Perhaps more to the point, there is little conflict involved with a “consensual” issue or bill. Usually special interests are unopposed in lining up on one side of the issue or the other.

An example of a “consensual” issue in New Jersey is represented by the approval of a bill in 1988 that allowed dentists to diagnose and treat patients in the hospital. The legislation was initiated because the Department of Health prohibited dentists from taking medical histories or treating patients in a hospital setting. This bill, which clarified that a dentist, whose credentials were approved by the hospital, could do hospital dental work as long as a physician was consulted, became law on November 3, 1988 after being approved by a 75-0 vote in the Assembly and a 37-0 vote in the Senate. This bill was supported by the New Jersey Dental Association, the New Jersey Medical Society, and the New Jersey Hospital Association. While meeting little or no opposition, and at the same time receiving the support of powerful interests, this bill could be pointed to by political

scientists as one where it might be possible that campaign contributions could have an effect on the outcome of voting.⁵³

Compare this type of issue to one in which organized interests are posed on both sides. In this type of conflict situation, it is less likely that PAC contributions could even be thought to have an impact on members' voting. In New Jersey, this type of issue can be represented by a proposal on automobile insurance reform enacted into law in 1988. This proposal permitted motorists to limit their right to sue for pain and suffering in exchange for lower rates. It also allowed motorists to increase deductibles on collision and comprehensive coverage. In support of the legislation were the automobile insurance industry and insurance agents. Opposed to the bill were the New Jersey Branch of the Association of Trial Lawyers (ATLA), the New Jersey Bar Association, and Lawyers Encouraging Government and Law (L.E.G.A.L.).⁵⁴ In the end, as noted above, the legislation (S-2637) was passed by both houses of the Legislature and signed into law by Governor Thomas H. Kean. Obviously, many factors entered into the way legislators voted on this issue, not the least of which was the interest of their constituents. They voted on the basis of their philosophy, partisanship, and constituent interests, as much or more so than on the basis of any campaign contribution they may have been given.

Even though no provable link between PAC contributions and voting by legislators has been shown, and even though other factors have been more readily shown to affect the voting decisions of the representatives, there is

no question that lobbyists and their PACs use campaign contributions as a tool in their efforts to gain access and influence over the governmental process. Campaign contributions are a very important part of the special interest lobbyists strategy for success.

Use of Grassroots Techniques

A third strategy enlisted by lobbyists to influence public policy can be described as: using access to provide important information to legislator's and executive branch officials and sometimes supplementing these efforts with organized "grassroots" campaigns to pressure officials to cast votes or make policy decisions which fit with the interest being promoted.

In the first instance, a lobbyist would meet with the sponsor of the bill, providing information in support or opposition to the proposal. The next step could be to identify influential members of the legislative bodies for the purposes of providing information and attempting to influence their position on the issue. These influential members are the leadership in both houses, members of the appropriate committee or committees, and the Governor and his staff. In the matter of influencing administrative rules, the appropriate members of the executive department or agency, for instance, would be contacted. If these measures did not meet with success in either blocking or moving legislation along, the lobbyist would next have to communicate with all of the members of the Assembly and/or Senate to provide useful information and attempt to influence their vote.⁵⁵

To reinforce the progress lobbyists can make through direct contact with public officials and their attempts to educate and inform, organized “grassroots lobbying” is a tactic available to the special interests in their campaign to influence the process.

Organizing people at the “grassroots” can take several forms. One way that lobbyists build “grassroots” support for their positions is through contacting various groups and opinion makers and attempting to enlist them in their struggle. One of the ways these groups and opinion makers can assist the lobbyist is through contact with their lawmakers. These enlisted supporters can telephone their representatives, visit them personally, write letters, and testify at public hearings. The more that lobbyists can demonstrate support among “the people” for their position, the more effective will the lobbying effort be.

A corollary of this approach is represented by a lobbyist networking with other lobbyists with a common interest to forge an alliance to enact or defeat legislation. This networking and alliance building is an effective strategy and one that goes hand-in-hand with building support among “grassroots lobbying” groups and individuals.

In addition to these efforts, “grassroots lobbying” strategies can take on an even more sophisticated form. In this way, the communications revolution is by far and away the most significant development to impact upon lobbying at the “grassroots” level. Lobbying has always been about

communicating the views of constituency groups to governmental officials and the revolution in communications technology has enhanced that process. Through direct mail techniques, telemarketing, polling, and broadcast media, for instance, support or opposition to an issue can be mobilized as well as communicated to the public officials in question. Combined with a strong public relations effort, which includes building support among the press, these mass communications techniques could constitute a powerful weapon in the lobbyists campaign to mobilize and organize “grassroots” support on behalf of the interests they represent.

Lobbyists Use Many Tools

Lobbyists, then, have a number of tools at their disposal to help them do the job. Lobbyists, organized, knowledgeably, and with a financial base of support, provide information, build relationships, direct campaign contributions, and undertake “grassroots” efforts, all in the cause of influencing the governmental process in a way favorable to their particular interests. Certainly, these special interest advocates are a class apart from the individual citizen or ad hoc, underfinanced citizen group that seeks to petition the Legislature or executive branch on some issue of consequence to them. As such, these organized interests should be subject to a different standard in terms of reporting their activity and the cost of it. In this way, through complete disclosure, the public at large will be privy to important information which will go far toward building public trust and permitting citizens to make more informed voter choices.

In the words of one historian of lobbying, Karl Schriftgiesser:

It [lobbying] is as necessary to progressive legislation as it is to the preservation of the status quo. But for all its moral and legal rights to existence it has long been and will remain one of the great problems of practical politics, a continuous source of strife and discord within our democracy.⁵⁶

An important way to ease “one of the great problems” is through adequate and complete disclosure which reveals the full extent of lobbying activity in New Jersey.

THE LEGISLATIVE ACTIVITIES DISCLOSURE ACT”: ITS SHORTCOMINGS

“The New Jersey Legislative Activities Disclosure Act,” the subject of much court and legislative wrangling, declares that:

The Legislature affirms that the preservation of responsible government requires that the fullest opportunity be afforded to the people of the State to petition their government for redress of grievances and to express freely to individual legislators and to committees of the Legislature their opinion on legislation and current issues. The Legislature finds however, that the preservation and maintenance of the integrity of the legislative process requires the identification in certain instances of persons and groups who seek to influence the content, introduction, passage or defeat of legislation. It is the purpose of this Act to require adequate disclosure in certain instances in order to make available to the Legislature and the public information relative to the activities of persons who seek to influence the content, introduction, passage or defeat of legislation by such means.⁵⁷

Declaration of Intent

For the most part, the law’s “Declaration of Intent” captures the spirit and scope of the “Legislative Activities Disclosure Act” as envisioned by the Governor and Legislature in enacting it in 1981. It affirms the right to lobby and acknowledges the necessity of disclosing the identity and activities of organized lobbyists so as to preserve the integrity of the legislative

process. It also sets forth clearly the narrow scope of the law, which is to regulate lobbying activity relative to legislation only.

What the declaration of intent does not reveal, however, is the huge loophole brought about by the last minute amendment creating the “expressly” language and certain other shortcomings that have caused the New Jersey statute to miss the mark as a responsible lobbying law.

The statute in the Garden State requires dual reporting by lobbyists and legislative agents. A legislative agent is defined as any person who “receives or agrees to receive, directly or indirectly, compensation, in money or anything of value ... to influence legislation by communication...to the Legislature or the Governor or his staff.” A lobbyist, on the other hand, is “any person, partnership, committee, association, corporation, labor union, or any other organization that employs, engages or otherwise uses the services of any legislative agent to influence legislation.”⁵⁸

Lobbyists Must Register

Under the “Legislative Activities Disclosure Act,” legislative agents are required to register with the Attorney General and wear badges while in the State House. This registration is undertaken through the filing of a “notice of representation” which does exactly what the name implies. It provides the Attorney General with the name of the legislative agent, the name of the entity by which the legislative agent is retained or employed, and the

name of the entity in whose interest the legislative agent is working. Among other things, the “notice of representation” also calls for disclosure of the type of legislation on which the legislative agent will lobby.⁵⁹

Lobbyists File Quarterly Reports with the Attorney General

Once a legislative agent has registered with the Attorney General he or she is then required to file quarterly reports with that office. As prescribed in the statute, the legislative agent must list particular items of legislation and describe his or her activity during the three-month period relative to any type or general category of legislation. These legislative agents must also file added information as necessary to keep their “notice of representation” current. As a result of these filings, the Attorney General is able to provide a quarterly report of legislative agents which lists all registered legislative agents, whether they have filed on a timely basis, and the lobbyists they represent.⁶⁰

Lobbyists File Annual Financial Reports with ELEC

In addition to the filing requirements established with the Attorney General, legislative agents, and in some cases the lobbyist organizations themselves, must file annual financial reports with the Election Law Enforcement Commission. Basically, legislative agents or lobbyists must file yearly reports if they exceed a \$2,500 threshold amount for receipts or expenditures. According to the statute “each legislative agent or lobbyist

shall make and certify the correctness of a full annual report to the Election Law Enforcement Commission, of those monies, loans, paid personal services or other things of value contributed to it and those expenditures made, incurred or authorized by it for the purpose of direct, express and intentional communication with legislators or the Governor or his staff undertaken for the specific purpose of affecting legislation during the previous year.⁶¹ Included in those expenditures required to be reported are costs associated with “media, including advertising; entertainment; food and beverage; travel and lodging; honoraria; loans; gifts; and salary, fees, allowance or other compensation paid to a legislative agent,” which “expressly relate to direct, express and intentional communication” with legislators or the Governor or his staff for the purpose of influencing legislation.⁶²

Under the statute, expenditures for each category are only required to be reported in the aggregate, unless the expenditure that is made on behalf of a legislator, Governor, or Governor’s staff exceeds, in the aggregate, more than \$25 per day or \$200 per year. In such instances, the expenditure, together with the name of the public official upon which the expenditure was made, must be reported in detail. Also, any time an expenditure in excess of \$100 is made on any “specific occasion,” “the date and type of expenditure, amount of expenditure and to whom paid” must be included.⁶³

Regarding these annual reporting requirements of the Act, legislative agents, through the proper notification procedures, are permitted to file reports on behalf of the lobbyists they represent.

Dual Responsibility for Enforcement and Rule Making

Beyond specifying the registration and reporting responsibilities of legislative agents and lobbyists, the “Legislative Activities Disclosure Act” vests both the Attorney General and the Election Law Enforcement Commission with the authority to investigate and prosecute violations of the law. The Attorney General can impose criminal sanctions against violators, whereas, the Commission can levy a civil fine of up to \$1,000 per violation against those who do not comply with the annual reporting requirements of the Act.⁶⁴

Moreover, both the Attorney General and the Commission can adopt rules and regulations to effectuate the provisions of the Act. Also, the Attorney General is required to prepare an annual report on the administration of the Act, and compile quarterly reports summarizing the activities of registered legislative agents.⁶⁵ And finally, the statute excludes certain persons and activities from the reporting requirements. Among the entities exempted from reporting are: the media; officers or employees of all governmental units acting on behalf of those units; persons, representing non-profit organizations, who do nothing else but testify before a legislative committee or Commission and who receive no compensation beyond the payment of ordinary expenses; and persons who do not receive any compensation and desire only to express their personal views to a legislator or the Governor and his staff.⁶⁶

Not a Comprehensive Law

On the surface, the “Legislative Activities Disclosure Act” might appear to be comprehensive, one that indeed directs quite a bit of sunshine on the activities of legislative agents and lobbyists in their effort to influence public policy. In reality, however, this appearance is not the case. The law as presently constituted is sorely lacking as a lobbyist disclosure statute that is not only comprehensive and meaningful, but that also enhances disclosure and builds the public trust through shedding light on the whole spectrum of activities that actually comprise the business of lobbying.

Dual Administration Creates Confusion

One criticism of the current lobbying disclosure program is the fact that two State agencies, the Department of Law and Public Safety and the Election Law Enforcement Commission, both have responsibility for administering the law. The Attorney General oversees the registration of legislative agents and the quarterly reporting of their legislative activity, and the Commission oversees the annual reporting by lobbyists and legislative agents of their financial activity.

Certainly, this dual administrative arrangement is unnecessary and confusing. It also has resulted in a certain amount of overlap in reporting. As phrased in ELEC’s 1982 analysis with Attorney General Irwin I. Kimmelman, “to the extent that the financial disclosure statements require identification

of the lobbyist employing or retaining the legislative agent, and identification of legislative objectives, they duplicate the reports filed with the Attorney General.”⁶⁷

As also noted in the study quoted above, “there is no inherent reason why two agencies should be responsible for administering the lobbyist disclosure program.”⁶⁸ One agency alone could do the job better, eliminating confusion and duplication in the process. The study recommended ELEC.

At least two bills have been introduced which would accomplish this change. In the lower house, Assemblyman William Schluter’s bill, A-51, would give sole administrative jurisdiction to the Commission. An identical bill introduced in the upper chamber, S-284, sponsored by Senate President John Lynch, would make the same change. Both of these bills permit the Attorney General, upon notification by the Commission, to investigate and prosecute violators of the Act. In addition, the Commission retains its civil authority in the area of enforcement.

Concomitant with this provision to consolidate the administration of lobbying disclosure into one agency, the Election Law Enforcement Commission, the Schluter and Lynch bills go far toward eliminating confusion and a certain amount of duplication in reporting that currently exists in the present law. In a word, these bills eliminate the terms “legislative agent” and “lobbyist”. A “legislative agent” would become either a “contract lobbyist” or “employee lobbyist” and lobbyist would become a “lobbyist organization.” These new

definitions would more accurately depict the actual functions of these participants in the lobbying game. In addition to the redefinitions, the Schluter and Lynch bills would get rid of the duplication in reporting existent in the “Lobbyist Activities Disclosure Act.” Instead of requiring quarterly and annual reports, the bills would require only quarterly reports from the lobbying community. All of the information disclosed in the current two-tier system would be found in the quarterly reports. Moreover, all of the summary reports now required of the Attorney General would still be mandated, but now under the auspices of the Election Law Enforcement Commission.⁶⁹

Current Statute is Very Narrow in Scope

Beyond the current law’s weakness in embracing a dual system of administration, the “Lobbyist Activities Disclosure Act” gets poor grades for its limited and narrow scope. Very simply, the law fails to embrace a number of important activities that comprise the entire lobbying picture.

At the heart of the issue is the annual reporting provision of the “Legislative Activities Disclosure Act,” which states: “Each legislative agent or lobbyist shall make ... a full annual report to the Election Law Enforcement Commission of those moneys ... contributed to it and chose expenditures made ... for the purpose of direct, express and intentional communication with legislators or the Governor or his staff undertaken for the specific purpose of affecting legislation during the previous year.”⁷⁰

The key phrases, of course, are “direct, express and intentional communication” and “for the specific purpose of affecting legislation during the previous year” These phrases, though innocent sounding enough, are responsible for excluding a whole host of activities by lobbyists from reporting. In other words, only money spent by the special interests in the context of “direct” communication with legislators or the Governor or his staff on specific pieces of legislation is reportable. Thus, reporting is limited to lobbying activity only in relation to legislation and only in those instances when specific bills are discussed. Too, legislative staff is not covered.

Reporting of “Goodwill” Lobbying Excluded from Reporting

Among those activities that are unceremoniously excluded from reporting is “goodwill lobbying.” As noted previously, expenditures made by lobbyists for the purpose of relationship building, and when no legislation is discussed, are not reportable. The “direct” communication language in the statute has made sure of that; constituting a glaring weakness in the lobbying law.

Again, the bills introduced by Senator Lynch and Assemblyman Schluter, would delete this limiting language of the present law, thereby requiring “goodwill lobbying” expenditures, which are such a big part of lobbying, to be reported. Not only do these bills eliminate the “direct communication” language in the current law, but they also specifically state that

“expenditures made during the previous quarter providing benefits to legislators or their staffs or the Governor or his staff or to the members of the immediate family of legislators or of the Governor” are reportable.⁷¹ Thus, these bills would require “goodwill lobbying” to be reported in much the same way that would have been required under the initial bill signed into law by Governor Byrne prior to the “midnight” amendments. The requirements would also be similar to those in other states that require reporting of relationship-building lobbying expenditures.

For instance, in Maryland, where the lobbying law is considered to be strong, a sweeping definition of legislative action has permitted that State to require the reporting of “goodwill lobbying” activity. The key phrase in that law is “discussion of anything that comes within the jurisdiction of the General Assembly.” The Maryland State Ethics Commission has maintained that it is difficult for a legislator and lobbyist to have a meal, for instance, without discussing something “that comes within the jurisdiction of the General Assembly.” Through its expansive or broad interpretation of this phrase, the Maryland State Ethics Commission has been able to require reporting of this important information.⁷²

The New York Commission on Lobbying has taken a similar tact. This Commission has required “goodwill lobbying” expenditures to a reportable event even though there is no direct statutory authority for requiring this reporting. In New York, this broad interpretation of the lobbying disclosure law has not been challenged in the courts and has been supported by the public

perception that “goodwill lobbying” constitutes an integral part of a lobbyist’s overall strategy and should be reported.⁷³

Whether through a broad interpretation of a lobbying disclosure law, as in Maryland or New York, or through specific and direct statutory language, as envisioned in the Lynch and Schluter bills, “goodwill lobbying” should be a reportable activity under a comprehensive lobbying disclosure law. Under the very weak New Jersey law, the inclusion of the “direct communication” language specifically excludes this activity from being reported. Unlike the situations in Maryland and New York, there is no room in the statute for any other interpretation.

Grassroots Lobbying, Excluded from Reporting

The “direct communication” statutory language has undermined the disclosure law in another important area as well: namely, its capacity to require the disclosure of expenditures related to “grassroots lobbying.”

Specifically, because the law holds that only expenditures made in the context of “direct, express and intentional communication” on legislation with legislators, the Governor or his staff are reportable, a great deal of real “grassroots lobbying” activity is exempted from disclosure. For instance, a high powered special interest lobbyist organization may undertake a statewide mass mailing urging supporters to contact their legislators in support or opposition to legislation and the cost of the mailing would not have to be

reported. Likewise, this same organization could place advertisements on the radio and not have to report. Similarly, as is the case with the Allstate Insurance Company and the American Insurance Association in their fight against Governor James J. Florio's insurance reform package, organizations do not have to report the expenses associated with newspaper advertising campaigns. Finally, if a New Jersey business proceeded as the Exxon Corporation did in Maryland when it ran a television advertisement campaign against a bill that would protect independent owners of Exxon stations, it could air television commercials in support or opposition to legislation and not have to report the expense

Obviously, "grassroots lobbying" can be a very powerful tool in the hands of special interests and in their endeavors to influence the political process. Yet, because the New Jersey law requires that communication on legislation be undertaken directly with public officials in order for it to be reported, much of this activity can escape disclosure. The lack of a requirement for disclosure of this "grassroots" activity constitutes a major gap in New Jersey's law.

Other jurisdictions, to be sure, have recognized "grassroots lobbying" as important and in turn have required the reporting of it.

In Connecticut, for instance, expenditures made for "grassroots lobbying" are required to be reported. The authority for requiring this disclosure derives from a statute; specifically in its definitions section and

in the “paid communications” and “solicitations” sections. Though the statute exempts “grassroots lobbying” of a special interest groups’ members, it does require the reporting of mass media campaigns which seek to influence pending legislation aimed at the general public. Expenditures made for print or broadcast media advertising, or for direct mail, are reportable whether or not the advertisements urge the constituent public to contact their legislators or the Governor about a particular piece of legislation.

Two recent examples of “grassroots lobbying” in Connecticut illustrate how the Connecticut State Ethics Commission regulates “grassroots lobbying.” On one occasion the soft drink association undertook a major advertising campaign, part of which was to place promotional materials at soft drink machine locations, urging customers to contact their legislators to vote against a proposed soda tax. The cost associated with this “grassroots lobbying” campaign were reported by the soft drink association. On another occasion, during a debate on increasing the Connecticut sales tax from 7.5 percent to 8 percent, and expanding the universe of items subject to the tax, such as cable television; the cable television industry provided free air time for advertisements encouraging viewers to contact their legislators about voting against the measure. In this instance, the Connecticut State Ethics Commission directed the Cable Television Association to report \$500,000 in expenditures, an amount considered to be the fair market value of the advertisements.⁷⁴

In Washington State, the Washington State Public Disclosure Commission obtains its right to regulate “grassroots lobbying” through a statute. “Grassroots lobbying” activity is addressed directly in the law which requires any “program addressed to the public intended, designed or calculated primarily, to influence legislation” to be reported. Expenditures for “grassroots lobbying” are reportable in Washington whether the campaign addresses specifically a piece of legislation or more generally a topical issue. It captures this activity whether or not the “grassroots lobbying” communication urges members of the public to contact their legislators.

Besides requiring the cost of advertisements to be reported, the Washington Commission requires also that organizational solicitations to members be reported if they are done in the context of raising money to lobby on legislation. A classic example of this solicitation activity as part of a “grassroots” campaign is found in the Washington State Medical Association’s efforts to raise money from its members for the purpose of financing a lobbying campaign regarding a malpractice insurance issue. Under Washington State’s law, the names of contributors and the amounts of the contributions were reported, as well as how the money was spent.⁷⁵

Maryland also requires “grassroots lobbying” to be reported. Anytime that lobbyists spend in the aggregate more than \$2,000 for lobbying on the “grassroots” level, whether it be in sending out materials to tell people to contact their legislators or in placing ads in the newspaper, the cost of the effort is reportable. According to John O'Donnell, Executive Director of the

Maryland State Ethics Commission, media campaigns such as the one engaged in by the Exxon Corporation are also reportable. In media campaigns, states Mr. O'Donnell, the scope has to be "very, very, specific and narrow," such as direct advocacy relative to specific legislation or an issue that is currently a hot topic in the Legislature. Nevertheless, he said, Maryland requires this type of "grassroots" activity to be reported.⁷⁶

Finally, in New York State, the Commission on Lobbying has the statutory authority to require the reporting of "grassroots lobbying." Again, the standard in New York is a very narrow one with specific mention of a bill being necessary to require reporting. But, as in other states, the New York Commission recognizes this activity to be important and worthy of disclosure.⁷⁷

Executive Branch Lobbying Excluded from Reporting

Apart from the fact that the limiting language in the New Jersey statute precludes the reporting of costs associated with benefit passing and "grassroots" activity, it also stands in the way of disclosure of another important aspect of lobbying, namely "executive branch" lobbying.

Not only is there not a reference to "executive branch lobbying" in the "Legislative Activities Disclosure Act" but the direct communication "for the specific purpose of affecting legislation" language explicitly rules out requiring the disclosure of much that is involved in lobbying the executive

branch. Only if lobbying has to do with legislation and only if direct communication on specific legislation takes place with the Governor or his staff is the cost of such lobbying reportable. Expenditures associated with lobbying on administrative rules and regulations, for instance, or in connection with the procurement of contracts or grants, are excluded from reporting under the lobbying disclosure law.

Once again the reform bills introduced by Assemblyman Schluter and Senator Lynch address executive branch lobbying. In these bills, expenditures in the aggregate of more than \$100 in any one quarter or \$25 in any one day made in behalf of members of the executive branch or their immediate family members would be reportable. These expenditures would provide benefits to these individuals and involve efforts “to influence the promulgation of administrative rules or regulations or other executive actions.”⁷⁸

To be sure, capturing activity vis-a-vis “executive branch lobbying” would not be an easy task. In many ways, it could prove formidable. Any attempt to collar this activity through disclosure would necessarily have to be kept within manageable bounds. The guidelines for reporting this activity could not be overly broad and compliance with them would depend, to a great degree, on cooperation from executive branch officials. Moreover, in the area of procurement, the law would have to accommodate itself to an added group of participant filers. In other words, sales representatives and the like, would, in the procurement area, be added to the list of ordinary lobbyists whose activities would have to be disclosed.

Despite the obstacles presented by the disclosure of “executive branch lobbying,” it is eminently important to the democratic process that the attempt be made. An “executive branch lobbying” law would have to be reasonable and workable, but it should be enacted.

Indeed, attempts are being made in other states to capture this activity for public disclosure. Maryland, for instance, requires disclosure of “executive branch lobbying.” Its guidelines are based on a gift or benefit standard similar to that envisioned in the Lynch and Schluter bills. While not requiring any reporting of compensation to lobbyists, the Maryland law requires disclosure similar to its reporting requirements relative to lobbying on legislation.⁷⁹

In New York, the Commission on Lobbying requires reporting of lobbying activity in connection with administrative rules and regulations but not in connection with procurement. Under the New York rules, the Commission depends on a network of State agencies to insure compliance with the disclosure requirements. The New York scheme requires quarterly reports on regulatory and administrative rules lobbying to be submitted by each agency.⁸⁰

Florida, too, has recently enacted legislation which requires the disclosure of “executive branch lobbying.” Unlike New York, the Florida Ethics Commission, which is charged with implementing the new law, is requiring procurement lobbying to be reported. The Florida law, according to Helen Jones of the Florida Ethics Commission, is imperfect and is due to be

amended soon. Yet, through comprehensive regulations already drafted by the Florida Commission, a concerted effort is being made to capture activity related to the procurement of contracts and grants. The key to Florida's effort to get disclosure of procurement lobbying and to keep it manageable is in differentiating between activity in response to an agency-solicited bid and activity that is unsolicited. If a vendor's activity is limited to simply responding to a bid solicitation from an agency, then it is not required to be disclosed. If on the other hand, lobbying takes place or unsolicited efforts take place regarding the procurement of contracts and grants, then the individual making such attempts must register and report the lobbying activities.

The Florida Ethics Commission's lobbying disclosure program for procurement activity obviously targets a different universe of filers than does a program designed to disclose lobbying activity in connection with legislation and administrative rules. Moreover, its struggle to design an enforceable procurement lobbying disclosure program also depends heavily upon executive branch agency cooperation. In this effort, the Commission is endeavoring to educate and advise State agencies about the rules; and, in turn, to get the State agencies to advise vendors and sales representatives about their registration and filing responsibilities.⁸¹ The Florida experience, as well as the experiences in other states, demonstrates that the implementation of an executive lobbying disclosure program is difficult but absolutely essential if a complete and meaningful lobbying disclosure law is to be in place.

New Jersey Lacks Meaningful Disclosure

The New Jersey “Legislative Activities Disclosure Act” is narrow and limiting at best. Because of the “direct communication” language, the fact that the scope of the law only covers lobbying on legislation and ignores lobbying of legislative staff, and the limited application to only the highest level executive branch officials, the Act is extremely deficient. Meaningful disclosure of lobbying activity is practically nonexistent. In order to improve the law, and accommodate the public’s right to know, the Lobbyist Disclosure Act must be strengthened to encompass broadly “goodwill lobbying,” “grassroots lobbying,” and “executive branch lobbying.” Anything short of this reform is to shortchange democracy in New Jersey.

MEANINGFUL LOBBYING REFORM

The First Amendment to the United State Constitution grants people the right to assemble and to petition the Government for redress of grievances.”⁸² In other words, it protects the right to lobby.

Article I of the New Jersey Constitution reiterates and reinforces this right for all New Jerseyans. In Article I, paragraph 18, it reads:

The people have the right to assemble together, to consult for the Common good, to make known their opinions to their representatives, and to petition for redress of grievances.⁸³

Constitutional Right to Lobby not Contradicted by Disclosure

The right to lobby is not in question and never has been. Yet, It must be recognized that certain special interests have many more resources than the average citizen or group of citizens. These special interests will be more organized and more financially able than the individual citizen or group of citizens, and therefore capable of wielding a disproportionate influence over the political and governmental processes. In other words, they can have a greater influence over public policy than the more massive, but unorganized, general public; and have the potential to exert even undue influence on the process and its public officials. The right to lobby, inherent in the United States and New Jersey Constitutions, would be in no way undermined by

comprehensive lobbying disclosure laws that provide the general public with an overview of this special interest lobbying activity aimed at influencing legislators and executive branch officials on public policy.

Indeed, James Madison, in *The Federalist* (No. 10), foresaw the need for controlling or regulating special interests. He wrote:

Among the numerous advantages promised by a well-constructed union ... none deserves to be more accurately, developed than its tendency to break and control the violence of faction By, a faction, I understand a number of citizens, whether amounting to a majority or minority, of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.⁸⁴

Madison's call for regulating those interests that might be adverse to the public interest came to fruition in 1946 when Congress officially recognized lobbying and began to regulate it by passing the "Regulation of Lobbying Act." In New Jersey, the first formal attempt to regulate lobbying occurred in 1964. Since that time the law has been amended and challenged in court with the final outcome being the "Legislative Activities Disclosure Act" implemented in 1981.

Suggestions for Reform

With this paper, the Commission is attempting to rekindle the debate regarding lobbying disclosure in New Jersey and through this effort foster change in the “Legislative Activities Disclosure Act” that will be both meaningful and workable, capturing all information necessary for providing a full picture of the extent of lobbying activity in the Garden State. Toward that end, the Commission is offering the following suggestions for reform, all of which are believed to be necessary in order for the public to be fully informed regarding the actions of special interest lobbyists.

Goodwill Lobbying Expenditures Should Be Reported

The current statute should be amended to include the disclosure of “goodwill lobbying.” It is naive to believe that activity related to building relationships with legislators and executive branch officials does not impact positively upon a lobbyist’s ability to influence the political process. As noted in the text, this strategy is an important weapon in a lobbyist’s arsenal. It is one that is employed quite universally within the lobbying community and must be viewed as central to the efforts of the special interests to accomplish their policy goals.

Therefore, disclosure of expenditures made by lobbyists which benefit legislators and/or the Governor, members of the Governor’s or Legislature’s staff, or other executive branch members should be reportable under the Act.

These expenditures should be reported if they exceed a reasonable threshold amount for one day or a reasonable threshold amount during a three-month period. They should be reported even if the occasion is purely social and no legislation is discussed.

In the words of the 1982 joint report issued by the Attorney General and the Election Law Enforcement Commission, “meaningful disclosure of financial activity by lobbyists and legislative agents can never be realized unless all significant expenditures, including those which inure to the benefit of the Governor, or a legislator, or members of their staffs are subject to disclosure requirements. Public confidence in the integrity of the legislative process and disclosure program is necessarily compromised if the regulatory system permits a lobbyist to make personal benefic expenditures to lawmakers without disclosure.”⁸⁵ Certainly, whether or not a particular bill has been discussed, is irrelevant to the influence gained by passing a benefit to a public official. It is the treating as well as the talking that the public has a right to regulate.

Grassroots Lobbying Expenditures Should Be Reported

“Grassroots lobbying” can be an integral part of a high powered special interest lobby’s strategy for Success. This type of lobbying involves the mobilization of “grassroots” support in favor or opposition to legislation or administrative actions. “Grassroots lobbying” techniques can range from simple contacts to get key opinion makers to Trenton to testify in behalf of

or against legislation or administrative actions, to television advertising programs designed to build public support for a special interest's case. It can include direct mail techniques, public opinion polls, and print and broadcast media buys.

Special interest lobbies have the capability of undertaking such "grassroots" campaigns, the appeals of which can help them in effectively realizing their goal of influencing the political process. Through a well orchestrated effort that lets public officials know that there is "grassroots" support for their position on an issue, lobbyists can successfully achieve their aims.

Any comprehensive reform of the lobbying disclosure laws in New Jersey should require the reporting of expenditures made for "grassroots lobbying." Once again, a reasonable threshold expenditure amount should be included in the law which would trigger reporting of this type of activity. Moreover, the disclosure requirements in the law should be sufficiently narrow in scope so as to not be impracticable or unconstitutional. For instance, with respect to print and broadcast advertising, the appeal should be a clear statement for or against legislation or an administrative action. At the most, the requirement to disclose expenditures for mass advertising, if it is not just limited to advocacy on specific bills, etc., should only cover advocacy of positions on topical issues that are currently being acted upon by the Legislature or Executive Branch. With these qualifications in mind, however, it is essential to include "grassroots lobbying" activity in any reporting scheme.

Executive Branch Lobbying Expenditures Should Be Reported

Lobbying of members of the Executive Branch of government regarding administrative rules, regulations, and procurement occurs in New Jersey without being subject to disclosure. Despite the fact that regulations clarify and interpret the statutes and have the force of law, despite the fact that administrative rules and other actions affect public policy, and despite the fact that millions of dollars are dispensed yearly by State government through contracts and grants, lobbying expenditures relative to executive branch members who make these decisions need not be disclosed. The “Legislative Activities Disclosure Act” reaches only lobbying on legislation and of the upper echelons of the executive branch.

The lack of disclosure of “executive branch lobbying” activity represents a major flaw in current law. Meaningful reform of the “Legislative Activities Disclosure Act” should include the requirement that expenditures relative to lobbying a much broader representation of the members of the executive branch be disclosed. The lobbying activity covered by such a provision in the law would include that activity dealing not only with legislation but also with the adoption of administrative rules and regulations and the awarding of contracts and grants.

To be sure, the enactment and implementation of legislation requiring the reporting of much more comprehensive “executive branch lobbying” activity is no easy task, particularly with respect to procurement. Thresholds amounts

for expenditures made relative to both regulatory activity and procurement should be high enough to be reasonable and manageable. Also, thresholds on contract and procurement amounts which trigger reporting should be reasonable.

In addition, any system for capturing information relative to executive branch lobbying should include a statutorily built-in dependence on the cooperation of the executive branch to enhance compliance. Notification by State agencies with respect to the identification of those who have been lobbying on behalf of rule changes, contracts and grants, would be an important feature of any compliance effort. Moreover, the cooperation of the Department of the Treasury regarding the provisions of a list of contract vendors would be helpful. Finally, as in Florida, a distinction could be made between a contract vendor or grant consultant responding to an agency solicitation and these same individuals approaching the agency unsolicited. A provision such as this should help to keep the disclosure system manageable.

Admittedly, the enforcement of an “executive branch lobbying” program will be difficult. Yet, meaningful reform of the “Legislative Activities Disclosure Act” requires an attempt to capture this activity on the disclosure forms.

The Legislative Activities Disclosure Act Should Be Administered By One Agency, ELEC

The lobbying disclosure law is currently administered by two agencies. This arrangement has resulted in confusion and a certain amount of overlap in reporting. Registration is handled by the Attorney General as are quarterly reports of legislative activity. Annual reports of financial activity are submitted to the Election Law Enforcement Commission.

The dual system of administration of the lobbying disclosure law makes no sense and in reality is counter-productive. One agency would be able to handle the administration of the Act and could do so in a much more efficient and effective manner than is the case with the existing two-tier system.

Thus, consistent with past recommendations for reform, it is suggested that the law be changed to vest administrative authority in one agency of State government. Along with this administrative authority, of course, would go the authority to prosecute and penalize violators of the Act.

On the basis of its experience administering the "Campaign Contributions and Expenditures Disclosure Act," the Gubernatorial Public Financing Program, the "Personal Financial Disclosure Act," and, of course, the annual financial disclosure requirements of the "Legislative Activities Disclosure Act," the Election Law Enforcement Commission seems to be the one agency in State government best suited for such a task. What is more the Commission is well

known for its function as a disclosure agency and, as such, would be well equipped to conduct the educational programs necessary for achieving a high rate of compliance with the Act. Finally, the Election Law Enforcement Commission is an independent, bi-partisan Commission that has always acted in a nonpartisan manner. This very status would contribute to enhancing the public trust that the program was being administered completely and fairly. In the words of the 1982 joint report, the Commission “is prepared, at the direction of the Governor and Legislature, to assume responsibility for the program.”⁸⁶

Placing administrative responsibility for lobbyist disclosure in one agency instead of two is of paramount importance to meaningful reform and should be included in any change in the law.

Lobbyists Should Report Quarterly

Certainly, an outgrowth of having one agency administer the lobbying program would be the elimination of the annual report requirement and the continuation of registration and quarterly report requirements, but in expanded fashion. For Instance, if executive branch lobbying disclosure requirements are included in a reform package, the current registration program will have to be expanded beyond the current field of traditional lobbyists to include sales representatives and the like who work for contract vendors. And, quarterly reports would be expanded to include activity

reported on both the current quarterly reports to the Attorney General and the annual financial reports to the Commission.

A change in the reporting system to one requiring quarterly reports would benefit lobbyists and the public alike. As noted in the earlier report by the Attorney General and the Commission,

Quarterly reporting will significantly relieve the recordkeeping burdens currently imposed upon lobbyists and legislative agents, especially since they would be relieved of the burden of reporting on transactions as much as 12 months old. More importantly, the Legislature and the public should be provided with information that is reasonably current. Quarterly reporting will substantially increase the probability that members of the Legislature and the public know what organizations and persons are lobbying on behalf of what legislation, before action is taken upon the legislation.⁸⁷

The Terminology Referring to the Various Lobbyist Filing Entities Should Be Clarified

Throughout the years, the terms “lobbyist” and “legislative agent” referred to in current law, have created a certain amount of confusion, especially with regard to legislative agents who are contract lobbyists, or members of outside firms, and those who are salaried employees of a special interest. This confusion in the definitions has led to a certain amount of

misunderstanding as to who or what organization is required to report and what information is required to be reported.

The word “lobbyist” should be changed to lobby organization to clearly distinguish this entity from those individuals or firms who do their lobbying for them. A lobbyist organization more clearly denotes that this entity is not an individual or firm actually doing the lobbying, but rather the sponsor corporation, business partnership, labor union, association, or other organization retaining the services of these individuals or firms.

In addition, the term “legislative agent” should be changed to clarify the fact that those who lobby represent professional lobbying firms or are employed by a sponsoring organization. It should also be extended to include those individuals or firms who are not part of the regular lobbying community but nevertheless lobby for contracts and grants.

The Lynch and Schluter bills accomplish part of this task by using the term “contract lobbyist” to denote professional lobbyists and “employee lobbyists” to denote salaried employees whose job it is to lobby for the parent organizations. These terms are very appropriate and would be useful in any reform package. In terms of the new category of operatives who seek to influence the awarding of contracts and grants, perhaps the term “vendor lobbyist” is descriptive. In any event, whatever terms are used, the specific requirements for reporting of each one of these lobbyist entities should be spelled out. For instance, it should be clear that “contract lobbyists” would

be required to file reports. Unlike present law, “employee lobbyists” should be treated in the same way as “contract lobbyists” for the purposes of reporting. Instead of the “lobbyist organization” filing a report, which includes the activity of the “employee lobbyists,” it should be the “employee lobbyist” who files the report on behalf of the lobbyist organization. Finally, in the case of lobbying for contracts and grants by individuals other than in the normal lobbying categories of “contract” and “employee” lobbyists, these “vendor lobbyists” should have separate filing requirements. When procurement lobbying is undertaken by regular lobbyists, this activity can be included in their reports.

Precise terms are important in any law and are particularly important with respect to disclosure and the requirements of disclosure. Changes to the “Legislative Activities Disclosure Act” making it a more meaningful statute would necessarily require the inclusion of terms that adequately describe the functions of the various lobbyist entities.

Lobbying Disclosure Should Be Adequately Funded

Obviously, a complete and meaningful lobbying disclosure program requires that provisions to require the reporting of “goodwill lobbying” expenditures, the reporting of “grassroots lobbying” expenditures, and the reporting of “executive branch lobbying” expenditures, be included in the reform package. Yet, just as importantly, along with these more extensive and

thorough going measures, an effective lobbying disclosure program absolutely requires adequate funding.

It would do little good to enact a more stringent disclosure program without sufficient money to provide the staff and administrative support necessary to enforce it. A good law is ineffective without an adequate appropriation for the purposes of enforcement.

The reform package envisioned in this paper would require an initial appropriation of approximately \$260,000. The appropriation for this disclosure program could either derive from the normal appropriations process, or if the concept from the Commission's White Paper on Alternate Funding Sources⁸⁸ is embraced, from filing fees on lobbyists reporting to the Commission. These filing fees should be reasonable but sufficient to fund the program. Moreover, ELEC should be able to keep fine monies from an enhanced statutory fine provision as has also been suggested.

Undoubtedly, a complete and meaningful lobbyist disclosure program is called for in New Jersey. A most important part of such a program, however, is the funding to carry it out.

CONCLUSION

The Trenton Daily True American, in an 1850 editorial, spoke, “of the three branches of our Legislature.” The “third house,” it reported, was “Always very numerous and respectively filled, consisting of persons from every part of the State, ‘boring’ either for office, or for votes, upon some singularly interesting application.” Lobbyists, the paper’s Trenton readers found, were “the power behind the throne, greater than the throne itself.”⁸⁹

In 1951, Karl Schriftgiesser wrote in The Lobbyists:

lobbying had long been a recognized problem in the various states. The first State to give it legal consideration was Georgia, which, in its Constitution of 1877, declared lobbying to be a crime. Two years later California declared improper lobbying to be a felony. In 1890, Massachusetts passed an antilobby act which was to serve as a model for similar legislation in Maryland (1900) and Wisconsin (1905). New York, where lobbying had long been rife and where the term had originated as far back as 1820, followed suit after [an] investigation revealed the lengths to which great insurance corporations would go, in the words of [a state] justice, to hire adventurers for the promoting of their private interests.⁹⁰

As recently as 1982, Bob Narus declared in the New Jersey Reporter:

The most recent and glaring example [of lobbying influence] came last summer with the repeal of the lemon

rule, a Federal Trade Commission regulation that would have required used car dealers to disclose any known defects in cars they sell. The National Automobile Dealers Association spent close to a million dollars trying to defeat it. Congress, trusted about as much as used car salesmen these days, defeated it. Rules on the State level are of interest to car dealers as well. The New Jersey Automobile Dealers Association can be counted on to fight regulations they don't like, and one of its weapons is the New Jersey Conference of Automobile Retailers, a.k.a., N.J. CAR PAC.⁹¹

The business of lobbying has been riddled with suspicion throughout both New Jersey and American history. Dating back to the days of the American Revolution, when James Madison, in the Federalist Papers, indicated a concern over the impact of factions on the general good; to the 1850's in New Jersey, when the Daily True American ran its editorial on "the three branches of our Legislature;" to the 1950's when a comprehensive history of the subject was written; to the early 1980's when the New Jersey Reporter decried the activities of automotive lobbyists; to the present day, when lobbyists and lawmakers disagreed at a roundtable discussion sponsored by the Asbury Park Press about the influence of special interest money; the suspicion lingers.⁹²

According to a Congressional Quarterly book on lobbying, "the unsavory reputations of early practitioners gave the word a pejorative sense that lobbyists have been trying to shake ever since."⁹³ Still, there should be no question about the right to lobby or the fact that those who undertake the business of lobbying are an integral part of the democratic process. In fact,

it is widely acknowledged that the role lobbyists play in the process is vital and a necessary part of a legislator's or executive branch member's attempt to obtain the information necessary to make informed decisions.

According to a lobbying handbook developed by the New Jersey Division on Women, in the New Jersey Department of Community Affairs, in conjunction with the Eagleton Institute of Politics:

The right to lobby emanates from our Constitution, which provides every citizen the right to petition her or his government. Lobbying has become integrated into the legislative process at every level of government. In its constructive role, lobbying provides information necessary for the enactment of sensible laws. It is also a necessary outlet for expressing the goals of special interest groups.⁹⁴

Moreover, the same Congressional Quarterly book that takes note of the negative reputation of lobbyists also states:

Nevertheless, lobbyists gradually gained a more positive image. The public began to recognize that pressure groups and their agents perform some important and indispensable jobs. Such services today include helping to inform both Congress and the public about problems and issues, stimulating public debate, opening a path to Congress for the wronged and needy, and making known to members the practical aspects of proposed legislation whom it would help, whom it would hurt, who is for it and who is against it. The result of this process has been

considerable technical information produced by research on legislative proposals.

The whole history of lobbying in both New Jersey and the United States shows that the framers of the Constitution were right in establishing a First Amendment that not only protected the right of free speech, but also, “the right of the people ... to petition the government for redress of grievances.”⁹⁶ That same history shows also that James Madison was correct in foreseeing the dangers inherent in a system that allows pressure groups to form and be active.

Certainly, this dichotomy is real and is the reason why it is so critical that not only must the right of lobbying be protected, but also that a response to its dangers be made. To this end, a meaningful disclosure law is needed that will work toward building public trust in government and at the same time not in any way inhibit lobbying activity.

Such a disclosure law is envisioned by the Commission in its recommendations contained in this White Paper for reforming the “Legislative Activities Disclosure Act.” Specifically, the Commission believes that:

- 1) benefit passing to public officials during “goodwill lobbying” as well as “direct lobbying” should be disclosed to the public;
- 2) “executive branch lobbying” should be reportable;
- 3) lobbying of legislative staff should be reportable;
- 4) “grassroots lobbying” should be reportable;

- 5) a meaningful disclosure law can be best served through granting one agency of government, ELEC, the authority to administer the program, through developing new terms to describe adequately the functions of the various entities involved, and through streamlining reporting requirements to eliminate duplication and overlap; and,
- 6) adequate enforcement of such a statute requires funding at sufficient levels to allow the law to be enforced.

In many ways, lobbying has changed since the early days of the Republic. Those changes can best be described as going from Madison to Madison: from James Madison to Madison Avenue. At the same time that there have been changes, however, much has remained the same: lobbying is and always has been about communication, about access, and about influence.⁹⁷

In James Madison's day, the pressure lay with the land and commercial interests, in conflict with the debtor and creditor classes, and the coastal residents, in conflict with the rural and interior residents.

Today, the pressure can come from builders in conflict with environmentalists, or from corporations in conflict with labor unions.

The early pressure groups did not have television, did not have radio; and did not have direct mail, polls, and computers. There were no PACs. They did, however, have information, money, and the knowledge of the governmental process - and they assuredly understood the importance of access.

The modern day lobbyist can have all of the traditional elements of lobbying available plus the added modern-day tools of broadcast media, mass mail, and polling. Moreover, lobbyists probably employ a more sophisticated approach toward “goodwill lobbying.” But, this development has been necessary in order to enable today’s pressure groups to cope with a more active and complex government, and a plethora of rules and bureaucratic procedures for obtaining grants and contracts. Lobbying, then, has grown more sophisticated as government has grown more complex.

In a word, while much has changed, much has remained the same, and effectively “the essence of interest representation, like the heart of the legislative process, remains much as it was envisioned by, the framers or witnesses by the cautious revolutionaries [President Franklin Delano Roosevelt’s New Dealers] who recast American politics in the 1930’s.”⁹⁸

The buzz words are “access” and “influence,” in the past and present, and the attempts by organized interests to gain access and influence, though protected by the Constitution, must be regulated. And the only way to regulate this activity, thereby preserving and building the public’s trust, is through a meaningful lobbying disclosure law. The time for this action in New Jersey is long overdue.

NOTES

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14. P.L. 1971, c.183.
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32. Ibid.
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34. "Disclosure Law Curb Accepted."
35. New Jersey Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 N.J. at 79 (1980).
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39. N.J.A.C. 19:25-8.7(b)
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46. Ibid.
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63. Ibid.

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66. Ibid., subsection 27. Exemptions.
67. Legislative Activities Disclosure Act, p.24.
68. Ibid., p.25
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APPENDIX I
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APPENDIX II
GLOSSARY OF TERMS

Benefit Passing - When an expenditure is made on behalf of a governmental official by lobbyists or their agents. Benefits include expenditures for: entertainment, food and beverages, travel and lodging, honoraria, loans, gifts, or any other thing of value.

Broadcast media - Radio and television media, including local radio and television stations, radio and television networks, and cable television systems.

Clout - Disproportionate influence over the governmental process.

Conflictual issue - An issue upon which special interests line-up on different sides and compete with each other for influence.

Consensual issue - An issue upon which special interests line-up together in support or opposition.

Contract lobbyist - Outside firm enlisted by a special interest to undertake lobbying on its behalf.

Direct lobbying - Lobbying about particular legislation that generates the reporting of benefit passing under current law.

Direct mail - Form of advertising which sends printed material directly through the mail.

Employee lobbyist - An employee of a special interest who lobbies on its behalf, i.e., corporate vice-president for governmental relations.

Executive branch lobbying - Lobbying to influence regulatory, rulemaking, and procurement proceedings of executive agencies.

Goodwill lobbying - Lobbying undertaken when there is no mention of particular legislation. Lobbying that helps to build relationships but does not now generate the reporting of benefit passing and other financial activity.

Grassroots lobbying - Lobbying that generates public support for a special interest's position on an issue.

Legislative Agent - Outside firm or an employee of a special interest who lobbies on behalf of the special interest. Term used under current law.

Lobbyist organization - The special interest for which an employee lobbyist, a contract lobbyist, or a vendor lobbyist works.

Print media - Newspapers, newsletters, booklets, magazines, etc., Media in printed form as opposed to broadcast or electronically transmitted communications.

Telemarketing - Use of telephone as medium for promotion.

Vendor lobbyist - A lobbyist who lobbies solely on governmental contracts and grants. This category can include sales representatives of corporations, for example.

APPENDIX III

S-284 (LYNCH)/A-51 (SCHLUTER)

1 **AN ACT** concerning lobbyists and lobbyist organizations,
2 amending the title and body of P.L.1971, c.183 and repealing
3 section 5 thereof, amending other parts of the statutory law,
4 and making an appropriation.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the
7 *State of New Jersey*:

8 1. The title of P.L.1971, c.183 is amended to read as follows:
9 **AN ACT** to require the public disclosure of certain information
10 by certain persons seeking to influence legislation and the
11 promulgation of administrative rules and regulations and other
12 executive actions in this State, providing penalties for
13 noncompliance, and repealing the "Legislative Activities
14 Disclosure Act," approved October 16, 1964 (P. L. 1964. c.207).
15 (cf: P.L.1971, c.183, title)

16 2. Section 1 of P.L.1971, c.183 (C.52:13C-18) is amended to
17 read as follows:

18 1. The Legislature affirms that the preservation of responsible
19 government requires that the fullest opportunity be afforded to
20 the people of the State to petition their government for the
21 redress of grievances and to express freely to [individual
22 legislators and to committees of] the Legislature their opinion on
23 legislation and [current issues] to State agencies their opinion on
24 the promulgation of administrative rules and Regulations and
25 other executive actions. The Legislature finds, however, that the
26 preservation and maintenance of the integrity of the legislative
27 process and of the administrative rule-making and
28 regulation-making process requires the identification of certain
29 instances of persons and groups who seek to influence the
30 content, introduction, passage or defeat of legislation or who
31 seek to influence the content and promulgation of administrative
32 rules and regulations and other executive actions. It is the
33 purpose of this act to require adequate disclosure in certain
34 instances in order ,to make available to the Legislature and the
35 public information relative to the activities of persons who seek
36 to influence the content, introduction, passage or defeat of
37 legislation or who seek to influence the content or promulgation
38 of administrative rules and regulations and other executive

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.
matter underlined thus is new matter.

1 assigns by such means.

2 (cf: P.L. 1971, c. 183, s. 1)

3 3. Section 2 of P.L. 1971, c. 183 (C-52:13C-19) is amended to
4 read as follows:

5 2. This act shall be known as the “[Legislative] Lobbying
6 Activities Disclosure Act [of 1971].”

7 (cf: P.L. 1971, c. 183, s. 2)

8 4. Section 3 of P.L. 1971, c. 183 (C.52:13C-20) is amended to
9 read as follows:

10 3. For the purposes of this act, unless the context clearly
11 requires a different meaning:

12 a. The term "person" includes an individual, partnership,
13 committee, association, corporation, and any other organization
14 or group of persons.

15 b. The term "legislation" includes all bills, resolutions,
16 amendments, nominations and appointments pending or proposed
17 in either House of the Legislature, and all bills and resolutions
18 which, having passed both Houses, are pending approval by the
19 Governor.

20 c. [The term "Legislature" includes the Senate and General
21 Assembly of the State of New Jersey, the members and
22 members-elect thereof and each of them, all committees and
23 commissions established by the Legislature or by either House
24 and all members of any such committee or commission, and all
25 staff, assistants and employees of the Legislature whether or not
26 they receive compensation from the State of New Jersey.] The
27 term "legislator or his staff" or "legislators or their staffs"
28 means the members of the Senate and General Assembly of the
29 State of New Jersey, members-elect thereof, any person selected
30 to fill a vacancy in either house of the Legislature, the members
31 of all committees and commissions established by the Legislature
32 or by either House, and all staff, assistants and employees of the
33 Legislature whether or not they receive compensation from the
34 State of New Jersey.

35 d. The term "lobbyist organization" means. (1) any person,
36 partnership, committee, association, corporation, labor union[,] or
37 [any] other organization that employs an employee lobbyist, or
38 engages or otherwise uses the services of [any legislative agent to
39 influence legislation] a contract lobbyist, or (2) any partnership,
40 committee, association, corporation, labor union or other
41 organization that makes expenditures providing a benefit to a
42 legislator or his staff or the Governor or his staff or to the
43 immediate family of a legislator or of the Governor or to the
44 staff of a State agency or the head of a State agency or the
45 immediate family of the head of a State agency when those
46 aggregate expenditures exceed \$25 per day or \$100 in any
47 calendar-year quarter.

48 e. The term "Governor or his staff" includes the Governor or

1 the Acting Governor, the members of the Governor's Cabinet,
2 the secretary to the Governor, the Counsel to the Governor, and
3 all other employees of the Chief Executive's Office.

4 f. The term "lobbying communication [to the Legislature or
5 "to the Governor or his staff]" means:

6 (1) (a) any communication, oral or in writing or through any
7 other medium, addressed, delivered, distributed or disseminated
8 to [the Legislature] legislators or their staffs or any part thereof,
9 or to the Governor or his staff or [to] any part thereof [or
10 member thereof], as distinguished from a communication to the
11 general public including but not limited to [the Legislature]
12 legislators or their staffs or the Governor or his staff. If any
13 person shall obtain, reproduce or excerpt any communication or
14 part thereof which in its original form was not a lobbying
15 communication [to the Legislature or the Governor or his staff]
16 and shall cause such excerpt or reproduction to be addressed,
17 delivered, distributed or disseminated to the [Legislature]
18 legislators or their staffs or any part thereof, or the Governor or
19 his staff or any part thereof or member thereof, such
20 communication, reproduction or excerpt shall be deemed a
21 lobbying communication [to the Legislature or the Governor or
22 his staff by such person]; or

23 (b) any communication to the general public, oral or in writing
24 or on a billboard or through any other medium, which includes any
25 appeal to the recipient of the communication or to a Listener or a
26 reader to contact a legislator or the Governor in order to
27 influence legislation; or

28 (2) (a) any communication, oral or writing or through any
29 other medium, addressed, delivered distributed or disseminated
30 to the staff of a State agency or the head of a State agency, as
31 distinguished from a communication with the general public
32 including but not limited to the staff of a State agency or the
33 staff of a State agency. If any person shall obtain, reproduce or
34 excerpt any communication or part thereof which in its original
35 form was not a lobbying communication and shall cause such
36 excerpt or reproduction to be addressed, delivered, distributed or
37 disseminated to the staff of a State agency or the head of a State
38 agency, such communication, reproduction or excerpt shall be
39 deemed a lobbying communication; or

40 (b) any communication to the general public, oral or in writing
41 or on a billboard or through any other medium, which includes any
42 appeal to the recipient of the communication or to a listener or
43 reader to contact a State agency or the head or staff of a State
44 agency in order to influence the promulgation of administrative
45 rules or regulations or other executive actions.

46 9. The term ["legislative agent"] "contract lobbyist" means
47 any person who [receives or agrees to receive, directly or
48 indirectly, compensation, in money or anything of value including

1 reimbursement of his expenses where such reimbursement
2 exceeds \$100.00 in any 3-month period, to influence legislation
3 by communication, personally or through any intermediary, to the
4 Legislature or the Governor or his staff, or who holds himself out
5 as engaging in the business of influencing legislation by such
6 means, or who incident to his regular employment engages in
7 influencing legislation by such means; provided, however, that a
8 person shall not be deemed a legislative agent who, in relation to
9 the duties or interests of his employment or at the request or
10 suggestion of his employer, communicates to the Legislature or
11 the Governor or his staff concerning any legislation, if such
12 communication is an isolated, exceptional or infrequent activity
13 in relation to the usual duties of his employment] holds himself
14 out as engaging in the business of influencing legislation or the
15 promulgation of administrative rules and regulations or other
16 executive actions and who receives or agrees to receive, directly
17 or indirectly, compensation, in money or anything of value
18 including reimbursement of his expenses where such
19 reimbursement exceeds \$100.00 in any calendar-year quarter.

20 h. The term "influence legislation" means to make any
21 attempt, whether successful or not, to secure or prevent the
22 initiation of any legislation, or to secure or prevent the passage,
23 defeat, amendment or modification thereof by [the Legislature]
24 legislators or their staffs, or the approval, amendment or
25 disapproval thereof by the Governor in accordance with his
26 constitutional authority.

27 i. The term "statement" includes a notice of representation or
28 a report required by this act.

29 j. [The phrase "direct, express and intentional communication
30 with legislators undertaken for the specific purpose of affecting
31 legislation" means any communication initiated by a legislative
32 agent to the Legislature or the Governor or his staff having the
33 effect of transmitting information which reasonably can be said
34 to be intended to influence legislation.] (Deleted by amendment,
35 P.L. , c .)

36 k. The term "employee lobbyist" means any person who, in his
37 regular employment, engages in the business of influencing
38 legislation or the promulgation of a administrative rules or
39 regulations or other executive actions. No person shall be
40 deemed an employee lobbyist who, in relation to the duties or
41 interests of his employment or at the request or suggestion of his
42 employer, transmits a lobbying communication concerning any
43 legislation or the promulgation of administrative rules or
44 regulations or other executive actions, if the transmission of such
45 a communication is an isolated, exceptional or infrequent activity
46 in relation to the usual duties of his employment.

47 l. The term "expenditures providing a benefit" or "expenditures
48 providing benefits" means any expenditures for entertainment,

1 food and beverage travel and lodging honoraria, loans, gifts or
2 any other thing of value, except for (1) any money or thing of
3 value paid for past, present, or future services in regular
4 employment, whether in the form of a fee, expense, allowance,
5 forbearance, forgiveness, interest, dividend, royalty, rent, capital
6 gain, or any other form of recompense, or any combination
7 thereof, or (2) any dividends and other income paid on
8 investments, trusts, and estates.

9 m. The term “member of the immediate family” or “members
10 of the immediate family” means a person’s spouse, child, parent
11 or sibling residing in the same household.

12 n. The term “lobbying activity” means (1) making any
13 expenditures providing a benefit to a legislator or his staff or the
14 Governor or his staff or to the staff of a State agency or the head
15 of a State agency, or (2) preparing and transmitting a lobbying
16 communication.

17 o. The term “administrative rule or regulation,” when not
18 otherwise modified, means each agency statement of general
19 applicability and continuing effect that implements or interprets
20 law or policy, or describes the organization, procedure or
21 practice requirements of any agency adopted pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.). The term includes the amendment or repeal of any rule or
24 regulation, but does not include: (1) statements concerning the
25 internal management or discipline of any agency; (2) intraagency
26 and interagency statements; and (3) agency decisions and findings
27 in contested cases.

28 p. The term “commission” means the Election Law
29 Enforcement Commission established pursuant to section 5 of
30 P.L.1973, c.83 (C.19:44A-5).

31 q. The term “the head of a State agency” or “the heads of
32 State agencies means and includes the individual or group of
33 individuals constituting the highest authority within any agency.

34 r. The term "influence the promulgation of administrative
35 rules or regulations or other executive actions" means to make
36 any attempt, whether successful or not, to secure or prevent the
37 initiation of any administrative rule or regulation or other
38 executive action, or to secure or prevent the adoption or
39 modification thereof.

40 s. The term other executive action means the proposal,
41 drafting, development, consideration, amendment, adoption,
42 approval, rejection or postponement by any State agency or by
43 the Governor of any order, decision, grant procurement,
44 legislation, determination or any other quasi-legislative or
45 quasi-judicial action other than those governed by the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.).

48 t. The term the staff of a State agency" or "the staffs of

1 “state agencies” includes each of the employees of each of the
2 principal departments in the executive branch of the State
3 Government, and each of the employees of each of the boards,
4 divisions, commissions, agencies, departments, councils,
5 authorities, or offices in the State Government and each of the
6 officers within any such department now existing or hereafter
7 established and authorized by statute to make, adopt or
8 promulgate rules or regulations, except the office of the
9 Governor.

10 u. The term "specific event" means a single event or occasion,
11 such as a reception or a hospitality suite, for which it is
12 impossible to determine the exact amount of the specific benefit
13 received by each person attending the event or occasion.

14 (cf: P.L.1981, c.150, s-1)

15 5. Section 4 of P.L.1971, c.183 (C.52:13C-21) is amended to
16 read as follows:

17 4. a. Any person who, on or after the effective date of this
18 amendatory act, P.L. _____, C. _____, is employed as an employee
19 lobbyist, or is retained or engages himself as a [legislative agent]
20 contract lobbyist, shall, prior to any [communication to the
21 Legislature or to the Governor or his staff] lobbying activity, and
22 in any event within 30 days of the effective date of this
23 amendatory act or of such employment, retainer or engagement,
24 whichever occurs later, file a signed notice of representation
25 with the [Attorney General] Election Law Enforcement
26 Commission in such detail as the [Attorney General] commission
27 may prescribe, identifying himself and persons by whom he is
28 employed or retained, and the persons in whose interests he is
29 working, and the general nature of his proposed services as a
30 [legislative agent] contract lobbyist or as an employee lobbyist
31 for such persons, which notice shall contain the following
32 information

33 (1) his name, business title and business address [and regular
34 occupation];

35 (2) the name[,] and business address (and occupation of the
36 person] of the lobbyist organization or contract lobbyist from
37 which or whom he receives compensation for acting as a
38 [legislative agent] contract lobbyist or as an employee lobbyist;

39 (3) the name, business address and occupation of any person or
40 entity in whose interest he acts as [a legislative agent] an
41 employee lobbyist in consideration of the aforesaid compensation,
42 if such person or entity is (another] other than the person or
43 entity from whom said compensation is received;

44 (4) whether the person or lobbyist organization from whom he
45 receives said compensation employs him [solely as a legislative
46 agent, or whether he is a regular employee performing services
47 for his employer which] as an employee lobbyist whose duties are
48 limited to the influencing of legislation or influencing the

1 promulgation of administrative rules and regulations or other
2 executive actions, or as an employee lobbyist whose duties
3 include but are not limited to the influencing of legislation or
4 influencing the promulgation of administrative rules or
5 regulations or other executive actions;
6 (5) the length of time for which he will be receiving
7 compensation from the person or lobbyist organization aforesaid
8 for acting as a (legislative agent] contract lobbyist or as an
9 employee lobbyist, if said length of time can be ascertained at
10 the time of filing,
11 (6) the type of legislation or the particular legislation or the
12 type of administrative rules or regulations or other executive
13 actions or the particular administrative rules or regulations or
14 other executive actions in relation to which he is to act as
15 [legislative agent] a contract lobbyist or as an employee lobbyist
16 in consideration of the aforesaid compensation, and any
17 particular legislation or type of legislation or any particular
18 administrative rules or regulations or other executive actions or
19 type of administrative rules or regulations or other executive
20 actions which he is to promote or oppose;
21 (7) a full and particular description of any agreement,
22 arrangement or understanding according to which his
23 compensation, or any portion thereof, is or will be contingent
24 upon the success of any attempt to influence legislation or to
25 influence the promulgation of administrative rules or regulations
26 or other executive actions.
27 b. Any [legislative agent] contract lobbyist or employee
28 lobbyist who receives compensation from more than one person or
29 lobbyist organization for his services as a [legislative agent]
30 contract lobbyist or as an employee lobbyist shall file a separate
31 notice of representation with respect to each such person or
32 lobbyist organization except that a (legislative agent] contract
33 lobbyist or employee lobbyist whose fee for acting as such in
34 respect to the same legislation or type of legislation or in respect
35 to the same administrative rules and regulations or other
36 executive actions or type of administrative rules and regulations
37 or other executive actions is paid or contributed to by more than
38 one person or lobbyist organization may file a single statement,
39 in which he shall detail the name, business address and occupation
40 of each person or the name and business address of each lobbying
41 organization so paying or contributing.
42 c. Any partnership, committee, association, corporation, labor
43 union or other organization that intends to make expenditures
44 providing benefits to a legislator or his staff or to the Governor
45 or his staff or to a member of the immediate family of a
46 legislator or of the Governor or to the staff of a State agency or
47 to the head of a State agency or to a member of the immediate
48 family of the head of a State agency to the extent that the

1 partnership, committee, association, corporation labor union or
2 other organization would be defined as a lobbyist organization
3 pursuant to paragraph (2) of subsection 3 of P.L.1971, c.183
4 (C.52:13C-20) shall, prior to making such expenditures, file a
5 notice of intent with the commission in the form and manner
6 prescribed by the commission.

7 (cf: P.L.1971, c.183, s. 4)

8 6. Section 4 of P.L.1981, c.150 (C.52:13C-21a) is amended to
9 read as follows:

10 4. Any [legislative agent] contract lobbyist or employee
11 lobbyist or lobbyist organization not a resident of this State, or
12 not a corporation of this State or authorized to do business in this
13 State, shall file with the Election Law Enforcement Commission,
14 before attempting to influence legislation or to influence the
15 promulgation of administrative rules or regulations or other
16 executive actions, its consent to service of process at an address
17 within this State, or by regular mail at an address outside this
18 State.

19 (cf: P.L.1981, c.150, s. 4)

20 7. Section 1 of P.L.1977, c.92 (C.52:13C-21.1) is amended to
21 read as follows:

22 1. Any person who knowingly employs another person to serve
23 as a [legislative agent] contract lobbyist or as an employee
24 lobbyist who is not registered as required by section 4 of [the act
25 of which this act is a supplement] P.L.1971, c.183 (C.2:13C-21),
26 except upon the condition that such person register as a
27 [legislative agent] contract lobbyist or as an employee lobbyist as
28 provided by law or who continues to employ any such person who
29 has not registered within the time required by law, [shall, upon
30 conviction, be] is guilty of a [misdemeanor] crime of the fourth
31 degree.

32 (cf: P.L.1977, c.92, s.1)

33 8. Section 1 of P.L.1977, c.90 (C.52:13C-21.2) is amended to
34 read as follows:

35 1. Any [legislative agent] contract lobbyist or employee
36 lobbyist who knowingly represents an interest adverse to any of
37 his employer's without first obtaining such employer's written
38 consent thereto, after full disclosure to such employer of such
39 adverse interest. (shall, upon conviction, be] is guilty of a
40 [misdemeanor] crime of the fourth degree.

41 (cf: P.L.1977, c.90. s.1)

42 9. Section 1 of P.L.1977, c.91 (C.52:13C-21.3) is amended to
43 read as follows:

44 1. Any [legislative agent] contract lobbyist or employee
45 lobbyist who knowingly causes, influences, or otherwise secures
46 the introduction of any legislation or amendment thereto for the
47 purpose of thereafter being employed to prevent the passage
48 thereof, [shall upon conviction be] is guilty of a [misdemeanor]

1 crime of the fourth degree.

2 (cf: P.L. 1977, c.91, s.1)

3 10. Section 2 of P. L. 1981. c. 150 (C.52:13C-22.1) is amended to
4 read as follows:

5 2. [Each legislative agent or lobbyist shall make and certify
6 the correctness of a full annual report to the Election Law
7 Enforcement Commission of those moneys, loans, paid personal
8 services or other things of value contributed to it and those
9 expenditures made, incurred or authorized by it for the purpose
10 of direct, express and intentional communication with legislators
11 or the Governor or his staff undertaken for the specific purpose
12 of affecting legislation during the previous year. The report shall
13 include the following expenditures which expressly relate to
14 direct, express and intentional communication with legislators for
15 the specific purpose of affecting legislation: media, including
16 advertising; entertainment: food and beverage; travel and
17 lodging; honoraria: loans; gifts; and salary, fees, allowances or
18 other compensation paid to a legislative agent. The expenditures
19 shall be reported whether made to a legislator, legislative agent
20 or lobbyist. The expenditures shall be reported in the aggregate
21 by category, except that if the aggregate expenditures on behalf
22 of a legislator or the Governor or his staff exceed \$25.00 per day,
23 they shall be detailed separately as to the name of the legislator
24 or the Governor or his staff, date and type of expenditure,
25 amount of expenditure and to whom paid. Where the
26 expenditures in the aggregate on behalf of any one legislator or
27 the Governor or his staff exceed \$200.00 per year, the
28 expenditures, together with the name of the legislator or the
29 Governor or his staff, shall be stated in detail including the type
30 of each expenditure, amount of expenditure and to whom paid.
31 Where the expenditures in the aggregate with respect to any
32 specific occasion are in excess of \$100.00, the report shall
33 include the date and type of expenditure, amount of expenditure
34 and to whom paid. The Election Law Enforcement Commission
35 may, in its discretion, permit joint reports by legislative agents.
36 No legislative agent shall be required to file a report unless all
37 moneys, loans, paid personal services or other things of value
38 contributed to it for the purpose of direct, express and
39 intentional communication with legislators or the Governor or his
40 staff undertaken for the specific purpose of affecting legislation
41 exceed \$2,500.00 in any year or unless all expenditures made,
42 incurred or authorized by it for the purpose of direct, express or
43 intentional communication with legislators or the Governor or his
44 staff undertaken for the specific purpose of affecting legislation
45 exceed \$2,500.00 in any year.

46 Any lobbyist who receives contributions or makes expenditures
47 to influence legislation shall be required to file and certify the
48 correctness of a report of such contributions or expenditures if

1 the contributions or expenditures made, incurred or authorized by
2 it for the purpose of direct, express or intentional communication
3 with legislators or their staffs or the Governor or his staff
4 undertaken for the specific purpose of affecting legislation
5 exceed, in the aggregate, \$2,500.00 in any year. Any lobbyist
6 required to file a report pursuant to this section may designate a
7 legislative agent in its employ or otherwise engaged or used by it
8 to file a report on its behalf; provided such designation is made in
9 writing by the lobbyist, is acknowledged in writing by the
10 designated legislative agent and is filed with the Election Law
11 Enforcement Commission on or before the date on which the
12 report of the lobbyist is due for filing, and further provided that
13 any violation of this act shall subject both the lobbyist and the
14 designated legislative agent to the penalties provided in this act.]

15 a. Each lobbyist organization as defined in paragraph (1) of
16 subsection d. of section 3 of P.L.1971, c-183 (C.52:13C-20) shall
17 make and certify the correctness of a quarterly report and file it
18 with the Election Law Enforcement Commission not later than
19 April 15, July 15, October 15 and January 15 of each calendar
20 year for each quarter ending on the last day of the previous
21 month. The report shall contain the following information:

22 (1) the total amount of expenditures made during the previous
23 quarter providing benefits to legislators or their staffs or the
24 Governor or his staff or to the members of the immediate family
25 of legislators or of the Governor when those expenditures exceed
26 \$100 for that quarter. If the aggregate expenditures on behalf of
27 a legislator or his staff or the Governor or his staff or a member
28 of the immediate family of a legislator or of the Governor exceed
29 \$25 per day, they shall be detailed separately as to the name of
30 the legislator or his staff or the Governor or his staff or the name
31 of the member of the immediate family of the legislator or the
32 Governor, the full title of the legislator's or Governor's staff
33 person, the date and type of the expenditure, the amount of the
34 expenditure and the payee, if any. Where the expenditures in the
35 aggregate on behalf of any one legislator or his staff or the
36 Governor or his staff or a member of the immediate family of a
37 legislator or of the Governor exceed \$100 per quarter
38 expenditures, together with the name of the legislator or his staff
39 or the Governor or his staff or the name of the member of the
40 immediate family of the legislator or the Governor and the full
41 title of the legislator's or Governor's staff person, shall be
42 stated in detail, including the type of each expenditure, the
43 amount of the expenditure and the payee, if any. Where the
44 expenditures in the aggregate with respect to any specific event
45 are in excess of \$100, the report shall include the date and type
46 of the expenditure, a description of the persons invited to or
47 attending the event, the amount of the expenditure and the
48 payee, if any;

1 (2) the total amount of expenditure made during the previous
2 quarter providing benefits to the staffs of State agencies or the
3 heads of State agencies or to members of the immediate family
4 of the heads of State agencies when those expenditures exceed
5 \$100 for that quarter. If the aggregate expenditures on behalf of
6 a member of the staff of a State agency or the head of a State
7 agency or a member of the immediate family of the head of a
8 State agency exceed \$25 per day, they shall be detailed
9 separately as to the name and full title of the member of the
10 staff of the State agency or of the head of the State agency or
11 the name of the member of the immediate family of the head of
12 the State agency, the name of the State agency, the date and
13 type of the expenditure, the amount of the expenditure and the
14 payee, if any. Where the expenditures in the aggregate on behalf
15 of any one member of the staff of a State agency or the head of a
16 State agency or a member of the immediate family of the head of
17 a State agency exceed \$100 per quarter, the expenditures,
18 together with the name and title of the member of the staff of
19 the State agency or the head of the State agency or the name of
20 the member of the immediate family of the head of the State
21 agency and the name of the State agency, shall be stated in
22 detail, including the type of each expenditure, the amount of the
23 expenditure and the payee, if any. Where the expenditures in the
24 aggregate with respect to any specific event are in excess of
25 \$100, the report shall include the date and type of the
26 expenditure, a description of the persons invited to or attending
27 the event, the amount of the expenditure and the payee, if any;

28 (3) the total amount of salary or other compensation paid to or
29 otherwise earned by employee lobbyists for lobbying activity
30 during the previous quarter, including reimbursement for all
31 expenses incurred as a result of such activity, as calculated on a
32 pro-rata basis based on lobbying activity in accordance with the
33 rules and regulations promulgated therefor by the commission,
34 when such salary or compensation exceeds \$1,000 for that quarter;

35 (4) the total amount of fees, money or other compensation paid
36 to contract lobbyists for lobbying activity on behalf of or at the
37 request of the lobbyist organization during the previous quarter
38 when such fees, money or other compensation exceed \$1,000 for
39 that quarter;

40 (5) the total amount of expenditures made for the purpose of
41 preparing and transmitting a lobbying communication as defined
42 in paragraph (1) subsection f. of section 3 of P.L.1971, c.183
43 (C.52:13C-20) during the previous quarter when those
44 expenditures exceed \$1,000 for that quarter,

45 (e) the total amount of expenditures made for the purpose of
46 preparing and transmitting a lobbying communication as defined
47 in paragraph (2) of subsection f. of section 3 of P.L. 1971, c.183
48 (C.52:13C-20) during the previous quarter when those

1 expenditures exceeded \$1,000 for that quarter; and
2 (7) the total amount of any fees, money or other compensation
3 contributed or donated to the lobbyist organization for lobbying
4 activity during the previous quarter when such fees, money or
5 other compensation exceed \$1,000 for that quarter. The name
6 and mailing address of the person contributing or donating to the
7 lobbyist organization shall be disclosed when the contribution or
8 donation is more than \$100 per quarter. Where the contributor or
9 donor is an individual, his occupation and the name and mailing
10 address of his employer shall be included in the quarterly report.
11 b. Each lobbyist organization as defined in paragraph (2) of
12 subsection d. of section 3 of P.L.1971, c.183 (C.52:13C-20) shall
13 make and certify the correctness of a quarterly report and file it
14 with the commission not later than April 15, July 15, October 15
15 and January 15 of each calendar year for each quarter ending on
16 the last day of the previous month. The report shall contain the
17 following information:
18 (1) the total amount of expenditures made during the previous
19 quarter providing benefits to legislators or their staffs or the
20 Governor or his staff or to the members of the immediate family
21 of legislators or of the Governor. If the aggregate expenditures
22 on behalf of a legislator or his staff or the Governor or his staff
23 or a member of the immediate family of a legislator or of the
24 Governor exceed \$25 per day, they shall be detailed separately as
25 to the name of the legislator or his staff or the Governor or his
26 staff or the name of the member of the immediate family of the
27 legislator or the Governor, the full title of the legislator's or
28 Governor's staff person, the date and type of the expenditure,
29 the amount of the expenditure and the payee, if any. Where the
30 expenditures in the aggregate on behalf of any one legislator or
31 his staff or the Governor or his staff or a member of the
32 immediate family of a legislator or of the Governor exceed \$100
33 per quarter, the expenditures, together with the name of the
34 legislator or his staff or the Governor or his staff or the name of
35 the member of the immediate family of the legislator or the
36 Governor and the full title of the legislator's or Governor's staff
37 person, shall be stated in detail, including the type of each
38 expenditure, the amount of the expenditure and the payee, if
39 any. Where the expenditures in the aggregate with respect to any
40 specific event are in excess of \$100, the report shall include the
41 date and type of the expenditure, a description of the persons
42 invited to or attending the event, the amount of the expenditure
43 and the payee, if any, and
44 (2) the total amount of expenditures made during the previous
45 quarter providing benefits to the staffs of State agencies or the
46 heads of State agencies or to members of the immediate family
47 of the heads of State agencies. If the aggregate expenditures on
48 behalf of a member of the staff of a State agency or the head of

1 a State agency or a member of the immediate family of the head
2 of a State agency exceed \$25 per day, they shall be detailed
3 separately as to the name and full title of the member of the
4 staff of the State agency or the head of the State agency or the
5 name of the member of the immediate family of the head of the
6 State agency, the name of the State agency, the date and type of
7 the expenditure, the amount of the expenditure and the payee, if
8 any. Where the expenditures in the aggregate on behalf of any
9 one member of the staff of a State agency or the head of a State
10 agency or a member of the immediate family of the head of a
11 State agency exceed \$100 per quarter, the expenditures, together
12 with the name and full title of the member of the staff of the
13 State agency or the head of the State agency or the name of the
14 member of the immediate family of the head of the State agency
15 and the name of the State agency, shall be stated in detail,
16 including the type of each expenditure, the amount of the
17 expenditure and the payee, if any. Where the expenditures in the
18 aggregate with respect to any specific event are in excess of
19 \$100, the report shall include, the date and type of expenditure, a
20 description of the persons invited to or attending the event, the
21 amount of the expenditure and the payee, if any.

22 c. Each contract lobbyist shall make and certify the
23 correctness of a quarterly report and file it with the commission
24 not later than April 15, July 15, October 15 and January 15 of
25 each calendar year for each quarter ending on the last day of the
26 previous month. The report shall contain the following
27 information:

28 (1) the total amount of any fees, money or other compensation
29 paid by lobbyist organizations to the contract lobbyist for
30 lobbying activity on behalf of or at the request of the lobbyist
31 organizations during the previous quarter when such fees, money
32 or other compensation exceed \$1,000 for that quarter. The
33 contract lobbyist shall specify the identity of each lobbyist
34 organization that makes payments of more than \$1,000 for the
35 quarter to that contract lobbyist for lobbying activity;

36 (2) the total amount of expenditures made during the previous
37 quarter providing benefits to legislators or their staffs or the
38 Governor or his staff or to members of the immediate family of
39 legislators or of the Governor when those expenditures exceed
40 \$100 for that quarter. If the aggregate expenditures on behalf of
41 a legislator or his staff or the Governor or his staff or a member
42 of the immediate family of a legislator or of the Governor exceed
43 \$25 per day, they shall be detailed separately as to the name of
44 the legislator or his staff or the Governor or his staff or the name
45 of the member of the immediate family of the legislator or the
46 Governor, the full title of the legislator's or Governor's staff
47 person, the date and type of the expenditure, the amount of the
47 expenditure and the payee, if any. Where the expenditures in the

1 aggregate on behalf of any one legislator or his staff or the
2 Governor or his staff or the member of the immediate family of a
3 legislator or of the Governor exceed \$100 per quarter, the
4 expires together with the name of the legislator or his staff
5 or the Governor or his staff or the name of the member of the
6 immediate family of the legislator or the Governor and the full
7 title of the legislator's or Governor's staff person, shall be
8 stated in detail, including the type of each expenditure, the
9 amount of the expenditure and the payee, if any. Where the
10 expenditures in the aggregate with respect to any specific event
11 are in excess of \$100, the report shall include the date and type
12 of the expenditure, a description of the persons invited to or
13 attending the event, the amount of the expenditure and the
14 payee, if any;

15 (3) the total amount of expenditures made during the previous
16 quarter providing benefits to the staffs of State agencies or the
17 heads of State agencies or to members of the immediate family
18 of the heads of State agencies when those expenditures exceed
19 \$100 for that quarter. If the aggregate expenditures on behalf of
20 a member of the staff of a State agency or the head of a State
21 agency or a member of the immediate family of the head of a
22 State agency exceed \$25 per day, they shall be detailed
23 separately as to the name and full title of the member of the
24 staff of the State agency or of the head of the State agency or
25 the name of the member of the immediate family of the head of
26 the State agency, the name of the State agency, the date and
27 type of the expenditure, the amount of the expenditure and the
28 payee, if any. Where the expenditures in the aggregate on behalf
29 of any one member of the staff of a State agency or the head of a
30 State agency or a member of the immediate family of the head of
31 a State agency exceed \$100 per quarter, the expenditures,
32 together with the name and full title of the member of the staff
33 of the State agency or the head of the State agency or the name
34 of the member of the immediate family of the head of the State
35 agency and the name of the State agency, shall be stated in
36 detail, including the type of each expenditure, the amount of the
37 expenditure and the payee, if any. Where the expenditures in the
38 aggregate with respect to any specific event are in excess of
39 \$100, the report shall include the date and type of expenditure, a
40 description of the persons invited to or attending the event, the
41 amount of the expenditure and the payee, if any;

42 (4) the total amount of salary or other compensation paid to or
43 otherwise earned by employee lobbyists for lobbying activity
44 conducted during the previous quarter, including reimbursement,
45 for all expenses incurred as a result of such activity, as
46 calculated on a pro-rata basis based on lobbying activity in
47 accordance with the rules and regulations promulgated therefor
48 by the commission, when such salary or compensation exceeds

1 \$1,000 for that quarter;

2 (5) the total amount of fees, money or other compensation paid
3 to another contract lobbyist for lobbying activity on behalf of or
4 at the request of the contract lobbyist during the previous
5 quarter when such fees, money or other compensation exceed
6 \$1,000 for that quarter;

7 (6) the total amount of expenditures made for the purpose of
8 preparing and transmitting a lobbying communication as defined
9 in paragraph (1) of subsection f. of section 3 of P.L.1971. c.183
10 (C.52:13C-20) during the previous quarter when those
11 expenditures exceed \$1,000 for that quarter; and

12 (7) the total amount of expenditures made for the purpose of
13 preparing and transmitting a lobbying communication as defined
14 in paragraph (2) of subsection f. of section 3 of P.L.1971, c.183
15 (C.52:13C-20) during the previous quarter when those
16 expenditures exceed \$1,000 for that quarter.

17 d. Each employee lobbyist shall make and certify the
18 correctness of a quarterly report and file it with the commission
19 not later than April 15, July 15, October 15 and January 15 of
20 each calendar year for each quarter ending on the last day of the
21 previous month unless the report of the lobbyist organization or
22 contract lobbyist that employs the employee lobbyist contains all
23 of the information hereafter required to be reported by the
24 employee lobbyist and the employee lobbyist so certifies in that
25 report. The report shall contain the following information:

26 (1) the total amount of salary or other compensation paid by a
27 lobbyist organization or a contract lobbyist to the employee
28 lobbyist for lobbying activity on behalf of or at the request of the
29 lobbyist organization or the contract lobbyist during the previous
30 quarter, including reimbursement for all expenses incurred as a
31 result of such activity, as calculated on a pro-rata basis based on
32 lobbying activity in accordance with the rules and regulations
33 promulgated therefor by the commission, when such salary or
34 compensation exceeds \$1,000 for that quarter;

35 (2) the total amount of expenditures made during the previous
36 quarter providing benefits to legislators or their staff or the
37 Governor or his staff or to members of the immediate family of
38 legislators or of the Governor when those expenditures exceed
39 \$100 for that quarter. If the aggregate expenditures on behalf of
40 a legislator or his staff or the Governor or his staff or a member
41 of the immediate family of a legislator or of the Governor exceed
42 \$25 per day, they shall be detailed separately as to the name of
43 the legislator or his staff or the Governor or his staff or the name
44 of the member of the immediate family of the legislator or the
45 Governor, the full title of the legislator's or Governor's staff
46 person, the date and type of the expenditure, the amount of the
47 expenditure and the payee, if any. Where the expenditures in the
48 aggregate on behalf of any one legislator or his staff or the

1 Governor or his staff or a member of the immediate family of a
2 legislator or of the Governor exceed \$100 per quarter, the
3 expenditures, together with the name of the legislator or his staff
4 or the Governor or his staff or the name of the member of the
5 immediate family of the legislator or the Governor and the full
6 title of the legislator's or Governor's staff person, shall be
7 stated in detail, including the type of each expenditure, the
8 amount of the expenditure and the payee, if any. Where the
9 expenditures in the aggregate with respect to any specific event
10 are in excess of \$100, the report shall include the date and type
11 of the expenditure, a description of the persons invited to or
12 attending the event, the amount of the expenditure and the
13 payee, if any

14 (3) the total amount of expenditures made during the previous
15 quarter providing benefits to the staffs of State agencies or the
16 heads of State agencies or to members of the immediate family
17 of the heads of State agencies when those expenditures exceed
18 \$100 for that quarter. If the aggregate expenditures on behalf of
19 a member of the staff of a State agency or the head of a State
20 agency or a member of the immediate family of the head of a
21 State agency exceed \$25 per day, they shall be detailed
22 separately as to the name and full title of the member of the
23 staff of the State agency or of the head of the State agency or
24 the name of the member of the immediate family of the head of
25 the State agency, the name of the State agency, the date and
26 type of the expenditure, the amount of the expenditure and the
27 payee, if any. Where the expenditures in the aggregate on behalf
28 of any one member of the staff of a State agency or the head of a
29 State agency or a member of the immediate family of the head of
30 a State agency exceed \$100 per quarter, the expenditures,
31 together with the name and full title of the member of the staff
32 of the State agency or the head of the State agency or the name
33 of the member of the immediate family of the head of the State
34 agency and the name of the State agency, shall be stated in
35 detail including the type of each expenditure, the amount of the
36 expenditure and the payee, if any. Where the expenditures in the
37 aggregate with respect to any specific event are in excess of
38 \$100, the report shall include the date and type of expenditure, a
39 description of the persons invited to or attending the event, the
40 amount of the expenditure and the payee, if any;

41 (4) the total amount of expenditures made for the purpose of
42 preparing and transmitting a lobbying communication as defined
43 in paragraph (1) of subsection f. of section 3 of P.L.1971, c.183
44 (C.52:13C-201 during the previous quarter when those
45 expenditures exceed \$1,000 for that quarter; and

46 (5) the total amount of expenditures made for the purpose of
47 preparing and transmitting a lobbying communication as defined
48 in paragraph (2) of subsection f. of section 3 of P.L.1971, c.183

1 (C.52:13C-20) during the previous quarter when those
2 expenditures exceed \$1,000 for that quarter.

3 (cf: P.L. 1981, c.513, s-1)

4 11. Section 3 of P.L.1981, c-150 (C.52:13C-22.2) is amended to
5 read a follows:

6 3. Upon receiving evidence of any violation of this act the
7 Election Law Enforcement Commission shall have power to bring
8 complaint proceedings, to issue subpoenas for the production of
9 witnesses and documents, [and] to hold or to cause to be held by
10 the Office of Administrative Law, hearings upon such complaint
11 and to notify the Attorney General of any violations of this act
12 that may warrant further investigation and action. In addition to
13 any other penalty provided by law, any person who is found to
14 have violated this act shall be liable for civil penalty not in
15 excess of [~~\$1,000.00~~ \$3,000.00 for the first offense and \$6,000.00
16 for each subsequent offense plus three times the amount of the
17 expenditures not reported as required pursuant to section 2 of
18 P.L.1981, c.150 (C.52:13C-22.1), which penalty may be collected
19 in a summary proceeding pursuant to "the penalty enforcement
20 law" (N.J.S.2A:58-1 et seq.).

21 (cf: P.L.1981, c.150, s.3)

22 12. Section 6 of P.L.1971, c.183 (C.52:13C-23) is amended to
23 read as follows:

24 6. The [Attorney General] Election Law Enforcement
25 Commission shall:

26 a. permit public inspection of all statements filed pursuant to
27 this act;

28 b. compile and summarize information contained in statements
29 filed pursuant to this act, and report the same to the Legislature
30 and the Governor;

31 c. ascertain whether any persons have failed to file statements
32 as required by this act, or have filed incomplete or inaccurate
33 statements, and give notice to such persons to file such
34 statements as will conform to the requirements of this act;

35 d. investigate and prosecute violations of this act, and report
36 to the Legislature and the Governor thereon;

37 e. make such recommendations to the Legislature and the
38 Governor as will tend to further the objectives of this act and
39 take such other action as shall be necessary and proper to
40 effectuate the purposes of this act;

41 f. report to the Legislature and the Governor annually on the
42 administration of this act;

43 g. develop and prescribe methods and forms for statements
44 required to be filed by this act, and require the use of such forms
45 by persons subject to this act;

46 h. compile and publish quarterly a list of all [legislative
47 agents] contract lobbyists, employee lobbyists and lobbyist
48 organizations then registered, together with the information

1 contained in their notices of representation and last quarterly
2 report, which compilation shall be distributed to all members of
3 the Legislature and the Governor, and published in the New
4 Jersey Register;

5 i. prepare and publish a summary and explanation of the
6 registration and reporting requirements of this act for the use
7 and guidance of those persons who may be required to file
8 statements under this act;

9 j. in accordance with a fee schedule adopted by [him] it as a
10 rule or regulation establish and charge reasonable fees for the
11 filing of notices of representation and quarterly reports pursuant
12 to this act, provided that such fees shall not apply to the
13 organizations which qualify under section 9(b) of chapter 30 of
14 the laws of 1966, as amended (C.54:32B-9(b));

15 k. during periods when the Legislature is in session, report
16 monthly to the members of the Legislature and the Governor and
17 his staff all new notices of representation, notices of termination
18 and other notices filed pursuant to this act during the preceding
19 month.

20 (cf: P.L.1971, c.349, s.1)

21 13. Section 7 of P.L.1971, c.183 (C.52:13C-24) is amended to
22 read as follows:

23 7. Any person engaged in activity which makes him subject to
24 filing a statement under this act shall keep and preserve all
25 records of his receipts, disbursements and other financial
26 transactions in the course of and as a part of his activities as a
27 [legislative agent] contract lobbyist, employee lobbyist or
28 lobbyist organization. Such records shall be preserved for a
29 period of [3] three calendar years next succeeding the calendar
30 year in which they were made. [The provisions of this section
31 shall not apply to any legislative agent with respect to any
32 quarterly period within which the total of his compensation
33 including reimbursement of expenses is less than \$500.00.]

34 (cf: P.L.1971, c.183, s.7)

35 14. Section 8 of P.L.1971, c.183 (C.52:13C-25) is amended to
36 read as follows:

37 8. a. Every [legislative agent] contract lobbyist and employee
38 lobbyist shall file a notice of termination report within 30 days
39 after his activity shall cease, on such form as the [Attorney
40 General] Election Law Enforcement Commission shall prescribe,
41 and any person who engages a (legislative agent) contract lobbyist
42 may file a notice of termination after such [agent] contract
43 lobbyist ceases to represent such person.

44 b. A [legislative agent] contract lobbyist who receives or
45 agrees to receive compensation for acting as such from any
46 person not named in the notice of representation filed pursuant to
47 section 4 of this act or in any subsequent supplement or
48 amendment thereto shall, within 15 days of receiving or agreeing

1 to receive such compensation, file an appropriate notification
2 thereof in writing with the [Attorney General] commission.

3 c. A [legislative agent] contract lobbyist or employee lobbyist
4 shall notify the [Attorney General] commission in writing of any
5 material change in the information supplied by him in the notice
6 of representation filed pursuant to section 4 Of this act within 15
7 days of the effective date of such change.

8 (cf: P.L.1971, c.183, s.8)

9 15. Section 9 of P.L.1971, c.183 (C.52:13C-26) is amended to
10 read as follows:

11 9. The statements required by this act to be filed with the
12 [Attorney General] Election Law Enforcement Commission (a)
13 shall constitute part of the public records of [his] its office and
14 shall be available for public inspection; and (b) shall be preserved
15 by the [Attorney General] commission for a period of [5] five
16 years from the date of filing.

17 (cf: P.L.1971, c.183, s.9)

18 16. Section 10 of P.L.1971, c.183 (C.52:13C-27) is amended to
19 read as follows:

20 10. This act shall not apply to the following activities:

21 a. the publication or dissemination, in the ordinary course of
22 business, of news items, advertising, editorials or other comments
23 by a newspaper, book publisher, regularly published periodical
24 radio or television station including an owner, editor or employee
25 thereof;

26 b. acts of an officer or employee of the Government of this
27 State or any of its political subdivisions, including any
28 independent State or local authority, or of the Government of the
29 United States or of any other State or any territory [thereof] of
30 the United States or any of their political subdivisions, in
31 carrying out the duties of their public office or employment;

32 c. acts of bona fide religious groups acting solely for the
33 purpose of protecting the public right to practice the doctrines of
34 such religious groups;

35 d. acts of a duly organized national, State or local committee
36 of a political party;

37 e. acts of a person in testifying before a legislative committee
38 or commission, or at a public hearing duly called by the Governor
39 on legislative proposals or on legislation passed and pending his
40 approval in behalf of a nonprofit organization incorporated as
41 such in this State who receives no compensation therefor beyond
42 the reimbursement of necessary and actual expenses, and who
43 makes no other communication to [the Legislature] a legislator or
44 his staff or the Governor or his staff in connection with the
45 subject of his testimony; [and]

46 f. acts of a person in communicating with [the Legislature] a
47 legislator or his staff or the Governor or his staff if such
48 communication is undertaken by him as a personal expression and

1 not incident to his employment, even if it is upon a matter
2 relevant to the interests of a person by whom or which he is
3 employed, and if he receives no additional compensation or
4 reward, in money or otherwise, for or as a result of such
5 communication;

6 g. acts of a person testifying before a public hearing called
7 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
8 (C.52:14B-1 et seq.), in behalf of a nonprofit organization
9 incorporated as such in this State who receives no compensation
10 therefor beyond the reimbursement of necessary and actual
11 expenses, and who makes no other communication to the staff of
12 a State agency or the head of a State agency or the Governor or
13 his staff in connection with the subject of his testimony; and

14 h. acts of a person in communicating with the staff of a State
15 agency or the head of a State agency if such communication is
16 undertaken by him as a personal expression and not incident to his
17 employment, even if it is upon a matter relevant to the interests
18 of a person by whom he is employed, and if he receives no
19 additional compensation or reward, in money or otherwise, for or
20 as a result of such communication.

21 (cf: P.L.1971, c.183, s.10)

22 17. Section 11 of P.L.1971, c.183 (C.52:13C-28) is amended to
23 read as follows:

24 11. Every [legislative agent] contract lobbyist or employee
25 lobbyist who is in the State House or the offices of a State
26 agency or the office of the Governor for the purpose of
27 [influencing legislation] engaging in lobbying activity shall at all
28 times wear a descriptive name tag of a type prescribed by the
29 [Attorney General] Election Law Enforcement Commission.

30 (cf: P.L.1971, c.183, s.11)

31 18. Section 12 of P.L.1971, c.183 (C.52:13C-29) is amended to
32 read as follows:

33 12. a. All staff, assistants and employees of the Legislature
34 who receive for their services a stated salary or similar
35 compensation from the State of New Jersey are forbidden to act
36 as [legislative agents] contract lobbyists or employee lobbyists or
37 to seek, receive or agree to receive, directly or indirectly,
38 compensation, in money or any thing of value, for influencing or
39 purporting to influence regulation. Whoever violates this section
40 is guilty of a [misdemeanor] crime of the fourth degree.

41 b. All the staff of a State agency who receive for their
42 services a stated salary or similar compensation from the State
43 of New Jersey are forbidden to act as contract lobbyists or as
44 employee lobbyists or to seek, receive or, agree to receive,
45 directly or indirectly, compensation, in money
46 value, for influencing or purporting to influence the promulgation
47 of administrative rules or regulations or executive actions.
48 Whoever violates this section is guilty of a crime of the fourth

1 degree.

2 (cf: P.L.1971, c-183, s.12)

3 19. Section 14 of P.L.1971, c.183 (C-52:13C-31) is amended to
4 read as follows:

5 14. a. Any person who shall transmit, utter or publish to [the
6 Legislature] legislators or their staffs or the Governor or his staff
7 any communication relating to any legislation or be a party to the
8 preparation thereof, knowing such communication or any
9 signature thereto is false, forged, counterfeit, or fictitious [, shall
10 upon conviction, be] is guilty of a [misdemeanor] crime of the
11 fourth degree.

12 b. Any person who shall transmit, utter or publish to the staff
13 of a State agency or the head of a State agency or the Governor
14 or his staff any communication relating to any administrative
15 rule or regulation or other executive action or be a party to the
16 preparation thereof, knowing such communication or signature
17 thereto is false, forged, counterfeit, or fictitious, is guilty of a
18 crime of the fourth degree.

19 (cf: P.L.1971, c.183, s.14)

20 20. Section 15 of P.L.1971, c.183 (C.52:13C-32) is amended to
21 read as follows:

22 15. Upon the failure to comply with any provisions of this act
23 by any person subject thereto the Election Law Enforcement
24 Commission may recommend to the Attorney General [may] that
25 he institute a civil action to enjoin such person from engaging in
26 activity covered by this act until such time as he shall perform
27 any duty imposed thereby and to require him to file any
28 statement required by this act for the period he acted in violation
29 thereof, and the court may proceed in a summary manner.

30 (cf: P.L.1971, c-183, s.15)

31 21. Section 16 of P.L.1971, c.183 (C.52:13C-33) is amended to
32 read as follows:

33 16. Any [legislative agent] contract lobbyist, employee
34 lobbyist or lobbyist organization required to file a notice of
35 representation or report or maintain any record under this act
36 who fails to file such a notice or report or maintain such record
37 [shall, upon conviction, be] is guilty of a [misdemeanor] crime of
38 the fourth degree.

39 (cf: P.L.1971, c.183. s.16)

40 22. Section 18 of P. L. 1971, c.183 (C.52:13C-35) is amended to
41 read as follows:

42 18. The [Attorney General] Election Law Enforcement
43 Commission shall make provision to accept statements similar to
44 statements required by this act from persons or organizations
45 who are not required by law to file such statements but who
46 choose to make reports upon their lobbying activities [in
47 influencing legislation]. The [Attorney General] commission shall
48 have full discretion in prescribing the form and detail of such

1 voluntary statements, and [he] it may by general rules delimit
2 classes of voluntary filings which will or will not be accepted by
3 [him] it in order to further the purposes of this act and the
4 efficient administration thereof. The information contained in
5 such voluntary statements as are accepted by the [Attorney
6 General] commission shall be included in the periodic reports and
7 summaries required to be made by [him] it.

8 (cf: P.L.1971, c.183, s.18)

9 23. Section 19 of P.L.1971, c.183 (C.52:13C-36) is amended to
10 read as follows:

11 19. a. When it shall appear to the [Attorney General] Election
12 Law Enforcement Commission that a person or lobbyist
13 organization required to file any statement under this act has
14 failed to file such required statement, or has filed a statement
15 false, inaccurate or incomplete in any material matter, or has
16 otherwise violated the provisions of this act; or when the
17 [Attorney General] commission believes it to be in the public
18 interest that an investigation should be made to ascertain
19 whether a person has in fact violated any of the provisions of this
20 act, [he] it may apply to the Superior Court for an order or orders
21 directing[.]:

22 (1) That any such person or persons or lobbyist organization [to]
23 make available to [his] the commission's inspection, or to the
24 inspection of any of [his] its authorized deputies or agents, such
25 records as are required to be kept by that person or lobbyist
26 organization pursuant to section 7 of this act; or

27 (2) That any such person or lobbyist organization file a
28 statement or report in writing under oath concerning the facts
29 and circumstances upon which the [Attorney General's]
30 commission's belief in the necessity of an investigation is based;
31 or

32 (3) That any person or lobbyist organization submit to
33 examination under oath by the [Attorney General] commission in
34 connection with said circumstances, and produce any and all
35 records, books and other documents which may be specified by
36 order of the court; or

37 (4) That the [Attorney General] commission may impound any
38 record, book or other documents specified by order of the court.

39 b. Such application by the [Attorney General] commission shall
40 set forth all the facts and circumstances upon which [his] its
41 belief in the necessity of an investigation is based. The court
42 may proceed on such application in a summary manner; and if the
43 court determines that from the evidence submitted it appears
44 that a person or lobbyist organization required to file any
45 statement under this act has failed to file such statement, or has
46 filed a statement false, inaccurate or incomplete in any material
47 respect, or has otherwise violated any of the provisions of this
48 act, or that it is in the public interest that an investigation be

1 held to determine whether such violation has occurred, the court
2 shall issue such order pursuant to subsection a. of this section as
3 it may deem necessary and proper.

4 c. The [Attorney General] commission shall hold as
5 confidential all statements, books, records, testimony and other
6 information or sources of information coming into [his] its
7 possession or knowledge as a result of an investigation pursuant
8 to this section; and (he) it shall not disclose or divulge any such
9 materials or information to anyone except the court under whose
10 order such material or information comes into [his] its knowledge
11 or possession, unless the court shall order its disclosure to a grand
12 jury of this State or other appropriate authorities for the
13 purposes of enforcing the provisions of this act or any other law.

14 d. If any person or lobbyist organization shall refuse to testify
15 or produce any book, paper or other document in any proceeding
16 under this section as ordered by the court on the grounds that the
17 testimony or evidence, documentary or otherwise, which is
18 required of him or it may tend to incriminate him or it, convict
19 him or it of a crime, or subject him or it to a penalty or
20 forfeiture, and shall, notwithstanding, be directed to testify or to
21 produce such book, paper or document, he or it shall comply with
22 such direction. A person who or lobbyist organization which is
23 entitled by law to assert such privilege, and does so assert, and
24 thereafter complies With such direction, shall not thereafter be
25 prosecuted or subjected to any penalty or forfeiture in any
26 criminal proceeding which arises out of and relates to the subject
27 matter of the proceeding. No person or lobbyist organization so
28 testifying shall be exempt from prosecution or punishment for
29 perjury on false swearing committed by him or it in giving such
30 testimony.

31 e. In any action brought under this section, the court may
32 award to the State all costs of investigation and trial, including a
33 reasonable attorney's fee to be fixed by the court. If costs are
34 awarded in such an action brought against a [legislative agent]
35 contract lobbyist, employee lobbyist or lobbyist organization, the
36 judgment may be awarded against the [legislative agent, and the
37 legislative agent's employer or employers joined as] defendants,
38 jointly, severally, or both. If the defendant prevails, he shall be
39 awarded all costs of trial, and may be awarded a reasonable
40 attorney's fee to be fixed by the court and paid by the State of
41 New Jersey.

42 (cf: P.L.1977, c.451. s.1)

43 24. Section 5 of P L. 197 1, c. 183 (C.52:13C-22) is repealed.

44 25. There is appropriated from the General Fund to the
45 Election Law Enforcement Commission \$260,000 for the purposes
46 of this act.

47 26. Section 25 of this act shall take effect immediately and
48 the remainder of this act shall take effect on the 180th day

1 following enactment.

2

3

4

STATEMENT

5

6 The purposes of this bill are (1) to refine and strengthen
7 provisions in current law regarding the reporting requirements for
8 lobbying on legislation, and (2) to extend those reporting
9 requirements to lobbyists and lobbyist organizations which seek
10 to influence the promulgation of administrative rules and
11 regulations and other executive actions.

12 Specifically, the bill:

13 (1) eliminates the current exemption from the reporting
14 requirements of activities initiated by a lobbyist where "direct,
15 express and intentional communication with legislators
16 undertaken for the specific purpose of affecting legislation" does
17 not take place;

18 (2) requires lobbying activity directed toward State agencies
19 which is intended to influence the promulgation of administrative
20 rules and regulations and other executive actions to be subject to
21 disclosure;

22 (3) redefines wider the term "lobbying communication" the
23 kinds of communications covered by the reporting requirements;

24 (4) clarifies the reporting requirements relating to expenditures
25 providing a benefit to a recipient;

26 (5) replaces the term "legislative agent" with the terms
27 "contract lobbyist" and "employee lobbyist" and the term
28 "lobbyist" with the term "lobbyist organization" to reflect more
29 accurately the present functions of these persons and groups;

30 (6) requires contract lobbyists, employee lobbyists and lobbyist
31 organizations to file financial disclosure reports on a quarterly
32 rather than an annual basis; and

33 (7) changes the administration and supervision of lobbying
34 activities from dual jurisdiction by the Attorney General and the
35 Election Law Enforcement Commission (ELEC) to sole
36 jurisdiction by ELEC, with the Attorney General retaining the
37 authority to investigate and prosecute violators of the act when
38 notification of such violation is received from ELEC;

39 Many of the provisions of the bill are based on
40 recommendations contained in the report The New Jersey
41 Legislative Activities Disclosure Act: Analysis and
42 Recommendations for Amendment issued by ELEC and the
43 Attorney General in December, 1982.

44

45

STATE GOVERNMENT

46

47 Revises and broadens reporting requirements applicable to
48 lobbyists and lobbyist organizations; appropriates \$260,000.

LIST OF WHITE PAPERS

- Number One:** Contribution Limits and Prohibited Contributions (1988)
- Number Two:** Trends in Legislative Campaign Financing: 1977-1987 (1989)
- Number Three:** Legislative Public Financing (1989)
- Number Four:** Ideas for an Alternate Funding Source (1989)
- Number Five:** Lobbying Reform – Spring 1990
- Number Six:** PACs – Fall 1990
- Number Seven:** PFDs – Spring 1991
- Number Eight:** Review of ELEC Jurisdiction – Fall 1991
- Number Nine:** Electronic Reporting – Spring 1992
- Number Ten:** Surplus Funds – Fall 1992