

LOBBY ACT REFORM

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ISSUE DEFINITION

Fueled in part by abuses revealed during investigations into the Watergate scandal and dissatisfaction with present law, the controversy over how to achieve more effective accountability from lobbyists--groups and individuals who seek to influence the governmental decision-making process--was a major issue in the 96th Congress. Proposals included broadening present law to cover more fully those who lobby the Congress, to include for the first time those who lobby the executive branch, and to place authority for administration and enforcement in the General Accounting Office.

BACKGROUND AND POLICY ANALYSIS

Although the activities of pressure groups and individuals lobbying Congress have been the subject of sporadic investigations since 1913, not until the 1930s did Congress enact the first registration and reporting requirements for lobbyists. Within a period of 4 years, Congress passed three measures--the Utilities Holding Company Act, the Merchant Marine Act, and the Foreign Agents Registration Act-- requiring some form of registration and periodic reporting for persons seeking to influence Congress and certain agencies of the executive branch.

Further efforts to enact more comprehensive legislation on lobbying resulted in the Federal Regulation of Lobbying Act, passed as part of the Legislative Reorganization Act of 1946. This Act, presently the only Federal statute regarding lobbyists' activities on a broad scale, does not restrict lobbying activities, but requires that individuals and groups seeking to influence legislation in the Congress register with the Secretary of the Senate and the Clerk of the House, and file quarterly financial reports with the latter.

Critics of the Act have often faulted it for being ineffective. They point out that the law requires registration only by persons paid to lobby for someone else, and only by those whose principal purpose is lobbying. Accordingly, some organizations avoid registering by contending that lobbying is not their principal purpose. Moreover, a 1954 Supreme Court decision interpreted the Act to mean that lobbying efforts are not covered by the Act unless a lobbyist contacts a Member of Congress directly; thus, persons who generate "grass roots" pressure on Congress are not covered.

Critics also point out that the Act does not require the Secretary of the Senate and the Clerk of the House to examine lobby registrations and financial reports for their truthfulness, nor can they require individuals or groups to register as lobbyists. In addition, while the Justice Department can prosecute Lobby Act violators, it does not investigate reports for validity and completeness, and acts only when it receives a complaint. There have been only four prosecutions since 1946.

Also, the Act covers only those persons who lobby Congress; there are no registration or reporting requirements for persons who lobby the executive agencies.

An April, 1975, General Accounting Office (GAO) report concluded that the Act failed to provide accurate information on lobbyists and that the

definitional standards and the enforcement provisions were vague and difficult to administer. In its recommendations to the Senate Government Operations Committee, the unit requesting the study, GAO suggested three areas which the committee might wish to pursue: (1) the lack of investigative authority; (2) the right to inspect records; and (3) enforcement power to determine whether the Act should be strengthened.

Soon after its passage, the constitutionality of the 1946 Act was challenged on the grounds that it violated First Amendment guarantees of free speech, petition for redress of grievances, and freedom of assembly. In 1954, by a 5-3 decision, the Supreme Court in U.S. v. Harriss upheld the constitutionality of the Act but construed it so narrowly, critics argue, as to negate reporting and registration requirements of the law as an effective means of publicizing lobbying activities and preventing abuses.

Although there have been numerous congressional investigations of alleged lobbying abuses since 1954, it was not until 1971 that a committee, the House Committee on Standards of Official Conduct, reported out a comprehensive revision of the 1946 Act, the Legislative Activities Disclosure Act. However, no floor action on the bill occurred in the House.

Opponents of the bill stated that First Amendment rights would be jeopardized by its passage. At the 1971 hearings on the measure, the National Association of Manufacturers and the Chamber of Commerce, while criticizing the failure of the existing law, testified that the proposed bill was of dubious constitutionality, went "too far," and would require "needlessly detailed, burdensome, and overlapping" reporting requirements.

The so-called Watergate scandals, several aspects of which were associated with apparent abuses by Washington lobbyists, have been seen as the impetus for a renewed effort to reform the 1946 Act.

In December 1974, the Congress passed the Antitrust Penalties and Procedures Act (S. 782 and H.R. 17063), which contained a section requiring that a defendant filing for a proposed consent decree in an antitrust case provide the court with logs of pertinent oral communications with Government officials not directly involved in the judgment. The sponsors of the measure stated that it was directly aimed at preventing the type of abuses that allegedly occurred in relation to antitrust actions brought against the International Telephone and Telegraph Company (ITT). In 1973, while Elliot Richardson was Attorney General, the Justice Department issued an agency order which required the maintenance of meeting logs with persons outside the agency regarding pending cases. This measure, too, was stated to be aimed at preventing recurrences of the type of alleged abuses by lobbyists in the ITT antitrust cases.

In June 1974, California passed by initiative a wide-ranging election and lobbying reform law, known generally as Proposition Nine, which placed tight limitations on certain lobbyist activities. Critics say the law is unconstitutional, but the State has announced its intention to enforce the law while court tests are undertaken. Arizona, Minnesota, Kansas, and West Virginia also passed new laws or regulations for lobbying disclosure in 1974. Other States have proposals under consideration.

Also in 1974, the Justice Department announced its intention to bring suit against the National League of Cities, the National Association of Counties, and the United States Conference of Mayors, charging that these groups were lobbying organizations but had failed to register as such. In a declaratory

judgment issued in response to the associations' request for a preliminary injunction, the U.S. District Court for the District of Columbia upheld the associations' argument that its employees were acting "on the authorization of a public official acting in his official capacity," were compensated through public funds, and were therefore exempt from the 1946 Lobbying Act.

In the 94th Congress, the Senate Government Operations Committee held five days of hearings on lobby reform proposals, and in March 1976 reported a bill, S. 2477. On June 15, the Senate passed S. 2477 by a vote of 82 to 9. This marked the first time since the 1946 Act that the Senate had voted favorably on a lobby reform bill.

Under S. 2477, only an organization could become a lobbyist. The organization could become a lobbyist in any one of three ways: (1) if it retained a law firm or similar organization to lobby for it in Congress and pays that organization at least \$250 in a quarter; (2) if, on its own behalf, it engaged in 12 or more oral lobbying communications with Congress in a quarter; or (3) if it spent \$5,000 or more a quarter in direct expenses on lobbying solicitations, so-called "grass-roots" lobbying campaigns. The bill covered lobbying of the executive branch only insofar as an executive branch issue pertained to a measure before the Congress. Enforcement and administration was vested in the GAO, which was given certain rule-making and investigative powers; however, all litigation in Federal court to enforce the law was the responsibility of the Department of Justice.

In the House during the 94th Congress, most of the lobby bills were jointly referred to the Judiciary Committee and the Committee on Standards of Official Conduct. Under new rules of the House, both committees must agree on a bill before it goes to the floor for a final vote. In the first session of the 94th Congress, both committees held hearings, and on Aug. 25, 1976, the Judiciary reported a bill, H.R. 15. Under H.R. 15, only an organization could qualify as a lobbyist. Such an organization could qualify in one of two ways: (1) it makes an expenditure in excess of \$1,250 in any quarterly filing period for the retention of another person to make oral or written communications directed to a Federal officer, as defined in the bill, to influence legislation and certain executive agency decisions; and (2) the organization employs at least one individual who spends 20% of his time in a quarterly filing period engaged on behalf of that organization in lobbying activities. The bill covered executive agency lobbying, but only those officers in executive levels I through V, the highest ranking executive officers in the Government. Like S. 2477, the bill gave administrative and enforcement authority to the GAO. Congress was granted specific powers to disapprove regulations issued pursuant to the Act by the Comptroller General.

On Sept. 20, 1976, the House Committee on Standards of Official Conduct, acting under its jurisdiction granted by the joint referral of lobby bills in the House, adopted an amendment in the nature of a substitute to H.R. 15.

The Standards Committee substitute to H.R. 15 structurally resembled the Judiciary Committee's version, but contained some notable differences that gave the measure a somewhat broader application. The Standards Committee version contained, like S. 2477, a separate threshold for groups that only conduct so-called "grass-roots" lobbying efforts. The bill also eliminated the quarterly registration and reporting provision and substituted a half-yearly filing provision with a requirement that registrations be up-dated when necessary. Certain additional registration information was also required and a provision was adopted that would require the identification of certain officials of interest groups, whether paid or not,

who exerted a prominent role in the decision-making processes of the organization. The Standards bill also changed the 20% threshold test found in the Judiciary Committee's version with a threshold test that called for an organization to register as a lobbyist if it employed at least one individual who lobbied on all or part of six or more calendar days in a half-year filing period. Administration, enforcement, and civil and criminal sanctions were essentially similar to the Judiciary version of H.R. 15, as amended.

The full House took up the two lobby bills on Sept. 28, 1976. By a roll call vote of 291 to 74, the Standards Committee amendment in the nature of a substitute was defeated. Early in the morning of Sept. 29, after 14 hours of debate, the House passed the Judiciary Committee's version of H.R. 15, with additional amendments, by a roll call vote of 307 to 34.

The bill, H.R. 15, was then sent to the Senate where it was referred to the Committee on Government Operations. Because of the Senate's intention to shortly adjourn sine die, the parliamentary situation was such that the bill could be brought from the Committee to the floor for a vote only by unanimous consent of the Senate. Such unanimous consent was not forthcoming and Senator Abraham Ribicoff (D-Conn.), Chairman of the Committee, said the bill was "apparently dead for this year."

In the 95th Congress, hearings were held by the House Judiciary Subcommittee on Administrative Law and Governmental Relations, now chaired by Rep. George Danielson (D-Calif.), and the Senate Committee on Governmental Affairs. On Feb. 24, 1978, the House Judiciary Committee reported H.R. 8494. On Apr. 26, 1978, H.R. 8494 passed the House, as amended, by a vote of 259 to 140.

Testimony in the House focused on the 1976 House-passed bill, introduced this year as H.R. 1180 by Rep. Peter Rodino (D-N.J.); a somewhat modified version of H.R. 1180 introduced by Reps. Railsback and Kastenmeier, H.R. 5795; a measure introduced by Rep. Don Edwards (D-Calif.), H.R. 5578, that had received the backing of the American Civil Liberties Union (ACLU); and a proposal that would create separate registration and reporting criteria, one for smaller, less-active organizations, and another for larger lobbying groups. Appearing on behalf of the Carter Administration; Deputy Attorney General Peter F. Flaherty stated that the White House would support "the enactment of a lobbying bill which would be comprehensive, evenhanded, easily enforceable, and which would effectively open to the public significant instances in which the congressional process is influenced by the organized efforts of outside groups."

On July 20, 1977, after meeting 17 times to consider lobbying legislation, the House subcommittee ordered reported H.R. 1180, reintroduced on July 22 as H.R. 8494. Under this bill, organizations were required to register and make quarterly reports if they (1) spend \$2,500 in any quarterly period to retain persons or firms to make oral or written lobbying communications on their behalf or "for the express purpose of preparing and/or drafting" such communications; or (2) spend \$2,500 or more making lobbying communications and employ one or more individuals who (in the aggregate) make lobbying communications on 13 or more days per quarter. Certain activities were specifically excluded from the Act. The Comptroller General had responsibility for implementing the Act and the authority to promulgate rules and regulations, which were subject to congressional veto. Civil and criminal sanctions could be imposed for violations of the Act.

On Feb. 24, 1978, the House Judiciary Committee reported H.R. 8494. Two

major changes were made in the subcommittee bill: the section that called for disclosure of information relating to grassroots lobbying efforts was eliminated, and virtually all enforcement authority was placed with the Attorney General rather than the Comptroller General. The Comptroller General was left with certain administrative and rule-making functions.

On Apr. 26, 1978, the House, by a roll-call vote of 259 to 140, passed H.R. 8494. Three major changes were made through floor amendments: (1) an amendment offered by Rep. Flowers that restored the reporting requirements relating to solicitations and grass-roots lobbying efforts; (2) an amendment offered by Rep. Railsback that required a reporting organization to identify its chief executive, whether paid or unpaid, and the issues on which he lobbied; and (3) an amendment by Rep. Railsback that required any lobbying organization that spent more than 1% of its total budget on lobbying to report the names of organizations from which it received more than \$3,000 a year in dues or contributions.

On Feb. 7, 1978, the Senate completed three days of hearings on two major disclosure bills, S. 1785 and S. 2026.

On May 10 and 11, 1978, the Senate Governmental Affairs Committee met to mark-up S. 2971, a so-called compromise bill which, with several major modifications, closely resembled S. 1785. The committee's only action was adoption of an amendment to establish a completely new threshold, replacing the "two-tier" threshold found in both S. 1785 and S. 2971. The amendment provided that a group engaging in direct lobbying would have to register if it either (1) has one paid employee "making two oral communications a day on each of 10 days in a calendar quarter, or two paid employees making two oral communications on each of five days in a calendar quarter," or (2) spends "\$1,750 in a quarter retaining an outside lobbyist." Two exemptions were included in the direct lobbying threshold. The law would not apply to a group if: "all of its oral lobbying communications are made only during a period of six consecutive working days in a calendar year," or (2) "it is a locally oriented organization that has a total annual budget of less than \$75,000, and is not located in the Washington, D.C. SMSA Standard Metropolitan Statistical Area, and is not a controlled affiliate of any other organization."

On Aug. 17, 1978, the Committee approved two amendments, one that would exempt from coverage any organization composed of State, county or local officials, and one that would delete coverage of a lobbying organization's "grass-roots" activities. The Committee narrowly defeated an amendment to remove from the bill a provision requiring lobbying organizations to identify other groups making large financial contributions.

The Senate Governmental Affairs Committee failed to complete action on the bill before the end of the 95th Congress. Despite reports that supporters would try to attach a lobby reform measure to an unrelated bill set for Senate floor action, or request that the House-passed bill, H.R. 8494, be brought directly to the Senate floor, the Senate failed to pass a disclosure bill.

In the 96th Congress, the House Judiciary Subcommittee on Administrative Law and Governmental Relations held six days of hearings in February and March of 1979 and after meeting seven times in May 1979, reported a clean bill, H.R. 4395, in lieu of H.R. 81, a measure identical to the House-passed H.R. 8494 of the 95th Congress.

On Oct. 16, 1979, the Judiciary Committee reported H.R. 4395 in a more narrow version than the bill approved by the subcommittee. Under the Judiciary Committee's bill, organizations were required to register and make quarterly reports of their activities if (1) they make expenditures of \$5000 or more in a quarterly filing period to retain one or more individuals to conduct lobbying activities, or to prepare or draft lobbying communications; or (2) if the organization employs at least one individual who, on all or part of each of 13 days in a quarterly filing period, or two or more individuals each of whom, on all or any part of each of seven days or more, conducts lobbying activities on behalf of the organization, and if the organization spends more than \$5000 for such activities. Certain activities were specifically excluded from the bill. In contrast to other measures, H.R. 4395 did not call for either disclosure of significant contributions to the lobbying organization or disclosure of "grass-roots" lobbying activities. Unlike previous measures, administrative responsibility was placed with the Clerk of the House rather than the Comptroller General. The Justice Department was responsible for enforcing the measure.

In the Senate, the Governmental Affairs Committee held two days of hearings, Sept. 25 and 26, 1979, on S. 1564, introduced by Senator Lawton Chiles. Under S. 1564, an organization was required to register and file quarterly reports if it either (1) spends more than \$500 during a quarterly filing period either on retaining one or more outside agents to make lobbying communications, or for the benefit of a Federal officer or employee; or (2) employs one person who, on all or part of each of 13 days or more (or two or more persons each of whom on all or part of seven days or more) in a quarter, makes lobbying communications and spends more than \$500 during the quarter for lobbying purposes. Certain activities were specifically exempt from disclosure. The bill included both a contributor's disclosure and a "grass-roots" reporting provision. The Comptroller General was given administrative authority and the Attorney General was responsible for enforcement. The bill prescribed only civil penalties for violations.

LEGISLATION

N/A

HEARINGS

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- Lobbying -- efforts to influence governmental actions. Hearings, 94th Congress, 1st session, on H.R. 15 and related bills. Dec. 2-4, 1975. Washington, U.S. Govt. Print. Off., 1975. 278 p.
- Regulation of lobbying and management of campaign money. Hearings, 91st Congress, 2d session, on H.Res. 1031. Dec. 1, 8-9, 15, 1970. Washington, U.S. Govt. Print. Off., 1971. 209 p.
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- U.S. Congress. Senate. Committee on Government Operations. Hearings, 94th Congress, 1st session, on S. 774, S. 815, S. 2068, S. 2167, S. 2477. Apr. 22, May 14, 15, Nov. 4, 5, 6, 1975. Washington, U.S. Govt. Print. Off., 1975. 841 p.

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- U.S. Congress. House. Committee on the Judiciary. Antitrust Procedures and Penalties Act; report together with additional views to accompany H.R. 17063. Washington, U.S. Govt. Print. Off., Oct. 11, 1974. 22 p. (93d Congress, 2d session. House. Report no. 93-1463)
- Public Disclosure of Lobbying Act of 1978; report, together with additional and dissenting views, to accompany H.R. 8494, 95th Congress, 2d session. Mar. 24, 1978. Washington, U.S. Govt. Print. Off., 1978. 97 p. (95th Congress, 2d session. House. Report no. 95-1003)
- Public Disclosure of Lobbying Act of 1979; report to accompany H.R. 4395, 96th Congress, 1st session. Nov. 5, 1979. Washington, U.S. Govt. Print. Off., 1979. 78 p. (96th Congress, 1st session. House. Report no. 96-590)
- Regulating lobbying and related activities; report together with dissenting views to accompany H.R. 15, 94th Congress, 2d session. Washington, U.S. Govt. Print. Off. Sept. 2, 1976. 87 p. (94th Congress, 2d session. House. Report no. 94-1474, Part 1)
- U.S. Congress. House. Committee on Standards of Official Conduct. Legislative Activities Disclosure Act; report to accompany H.R. 11453, 92d Congress, 2d session. Washington, U.S. Govt. Print. Off., Dec. 10, 1971. 56 p. (92d Congress, 2d session. House. Report no. 92-741)
- U.S. Congress. Senate. Committee on Government Operations. Lobbying Disclosure Act of 1976; report to accompany S. 2477, 94th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1976. 71 p. (94th Congress, 2d session. Senate. Report no. 94-763)
- U.S. Congress. Senate. Committee on the Judiciary. Antitrust laws amendments; report to accompany S. 782, 93d Congress,

1st session. Washington, U.S. Govt. Print. Off., 1973.
13 p. (93d Congress, 2d session. Senate. Report no. 93-298)

U.S. General Accounting Office. The Federal Regulation of
Lobbying Act--Difficulties in enforcement and administration;
Report to the Committee on Government Operations, United States
Senate. Washington, 1975. (GGD-75-79, Apr. 2, 1975) 14 p.

CHRONOLOGY OF EVENTS

- 01/25/79 -- In his 1979 State of the Union message, President Carter called for a "sound" lobby disclosure law: "The American people have a right to know what significant influences affect their national legislature. The proliferation of well financed, organizational lobbying activities during recent years has demonstrated the need for reform of the outdated and ineffective lobby disclosure law now in effect. This year my Administration will continue to work with Congress to pass a sound lobby law reform bill -- one that respects the First Amendment right of all Americans and minimizes paperwork burdens, yet allows meaningful disclosures."
- 01/19/78 -- In his message accompanying the State of the Union address, President Carter stated that "The Administration will press for legislation requiring registration of lobbyists and thorough public disclosure of their lobbying activities. This long overdue legislation will help reestablish confidence and trust in Government."
- 01/11/77 -- Included in a package of major legislation that will be proposed by the Carter Administration is a lobby disclosure proposal requiring Federal officials to maintain a public log of their contacts with lobbyists.
- 04/02/75 -- General Accounting Office investigation revealed that a sample of reports and registrations filed in accordance with the 1946 Federal Regulation of Lobbying Act was incomplete, and that administration and enforcement provisions of the Act are inadequate in preventing abuses of the law.
- 03/10/75 -- The House Republican Task Force on Reform, chaired by Rep. William Frenzel of Minnesota, recommended strengthening of existing lobby disclosure requirements.
- 02/03/75 -- Common Cause was denied standing in its court suit to have the Federal lobby law enforced against the National Association of Manufacturers (NAM). Common Cause has appealed the court's decision.
- 12/21/74 -- The President signed into law S. 782, the Antitrust Penalties and Procedures Act (P.L. 93-528).
- 12/13/74 -- A declaratory judgment was issued in response to a request

by the National League of Cities, the National Association of Counties, and the United States Conference of Mayors for a preliminary injunction to halt further action by the Department of Justice. The United States District Court for the District of Columbia ruled that the associations were exempt from registration under the Federal Regulation of Lobbying Act because the associations' employees were acting "on the authorization of a public official acting in his official capacity" and were paid by public funds from the localities the association represented.

- 09/09/74 -- The National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors filed a countersuit against Attorney General William B. Saxbe, who had announced his intention to enforce the 1946 Regulation of Lobbying Act against these groups. The associations claimed that their Washington activities were essential to the governments of the localities they represented and that they acted as extensions of those local governments and were, therefore, exempt from the Act under the section that excludes "any public official acting in his official capacity."
- 07/27/74 -- Congressional Quarterly reported that in 1973 organizations reported spending \$9.7 million on congressional lobbying, the largest annual reported total since 1950.
- 07/26/74 -- Common Cause filed suit against the National Association of Manufacturers for failure to register as a lobbying organization.
- 05/22/74 -- Common Cause Chairman John Gardner called for more effective lobby disclosure laws in testimony before the Subcommittee on Reorganization, Research, and International Organizations of the Senate Government Operations Committee.
- 06/04/74 -- California voters approved Proposition Nine, a wide-ranging political reform initiative placed on the ballot by Common Cause and other citizens' groups. The measure, under challenge in the courts, prohibits lobbyists from contributing directly to political candidates and strengthens the State's lobbyist reporting and registration requirements.

ADDITIONAL REFERENCE SOURCES

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