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LOBBYING LAWS IN ILLINOIS: AN INCOMPLETE REFORM

*Lee Norrgard **

Although lobbying is deemed a protected right in our society, Mr. Norrgard contends that the Illinois statutes which govern the profession have failed to reveal adequately the undue influences exercised over state officials by various interest groups. In this Article, he analyzes the deficiencies in the present regulatory scheme and suggests stricter regulations requiring the disclosure of finances, personnel and activities in order to help rid the state of unethical lobbying practices.

"A landed interest, a manufacturing interest with many lesser interests, grow up of necessity in civilized nations. . . . [T]he regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government."¹ When James Madison wrote that statement, he was arguing that the federal structure of government is the best check on conflicting interests. Subsequent to the enactment of the federal Constitution, there developed a mechanism supplementary to the legislative process,² sometimes described as the "third house." This "third house" consists of representatives of interests who, by various means, seek to influence the public policy. These people commonly are known as lobbyists.

Although the impact of state public policy decisions on the individual may not be as far-reaching as those of the federal government, state decisions clearly are important to the over 400 interest groups represented in the Illinois legislative process. The state collects, appropriates, and spends enormous amounts of money. The economic impact of the spending of these monies is immense. One state representative has noted that "many of these special interest groups are

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1. THE FEDERALIST No. 10 (J. Madison) 54 (1904).

2. See Note, *The Poor and the Political Process: Equal Access to Lobbying*, 6 HARV. J. LEGIS. 369 (1969).

groups that do have a legitimate problem and legitimate concern, and they are all competing for the tax dollar—nine billion of them.”³ The state budget for fiscal year 1978 is \$10.3 billion.⁴

All of the fifty state governments⁵ and the federal government⁶ have decided that the checks and balances prescribed by the framers of the Constitution were insufficient in regulating the various interests. Consequently, legislation has been enacted establishing a system of lobbyist regulations. Some of these laws merely require the registration of lobbyists on a public docket.⁷ Others call for registration of lobbyists and lobbies as well as periodic disclosures of all funds expended in seeking to influence legislation, rate-making and rule-making.⁸

In the last twenty years, Illinois has enacted two statutes regulating lobbyists. The first, approved in 1957,⁹ only required the registration of lobbyists in a “Docket of Legislative Agents” with the Secretary of State.¹⁰ The second,¹¹ approved in 1969, continued the registration process for all persons seeking to promote or oppose legislation,¹² and added the requirement of periodic disclosures of certain expenditures.¹³ Many observers have criticized the 1969 Act as inadequate,¹⁴ and legislation was introduced¹⁵ to amend it significantly during the last session of the 80th General Assembly.

The purpose of this Article is to examine lobby registration and disclosure in Illinois. It will define and analyze lobbying in Illinois, review the history of lobby regulation laws in the various states and

3. See THE ILLINOIS GENERAL ASSEMBLY IN PROFILE, Project Poll 159, 161 (1975) (interview with State Representative Harry Yourell). On file with the author, COMMON CAUSE—ILLINOIS.

4. See generally Bureau of the Budget, *Illinois State Budget for Fiscal Year 1978* (1978).

5. See COMMON CAUSE, *Lobbying Law Reform*, (December, 1976). All states require at least the registration of lobbyists. Forty-three states and the federal government require some form of registration and disclosure.

6. See 2 U.S.C. §§ 261-270 (1970).

7. See, e.g., ILL. REV. STAT. ch. 63, §§ 110-113 (1959).

8. See, e.g., WASH. REV. CODE §§ 42.17.020-.030 (Supp. 1977).

9. See ILL. REV. STAT. ch. 63, §§ 110-113 (1959).

10. *Id.* § 111.

11. See ILL. REV. STAT. ch. 63, §§ 171-182 (1971).

12. *Id.* § 173.

13. *Id.* § 176.

14. See Statement by State Representative Michael S. Holewinski (April 24, 1977): “the law that is supposed to regulate lobbying activities is, in reality, nothing more than a series of loopholes and exceptions.” Transcript of news conference on file with the author, COMMON CAUSE—ILLINOIS.

15. See, e.g., S.B. 864, 80th Gen. Assembly (1977 Sess.); H.B. 1871, 80th Gen. Assembly (1977 Sess.); H.B. 1820, 80th Gen. Assembly (1977 Sess.); H.B. 3313, 3314, 3315, 3329, 80th Gen. Assembly (1978 Sess.).

in Illinois, and examine the arguments for and against lobby disclosure. Further, it will review the 1969 Act and the proposed reforms, and study the constitutional issues raised by lobby regulation.

LOBBYING IN ILLINOIS: AN OVERVIEW

Lobbying exists in every democracy where people seek to influence government.¹⁶ A generic definition of this activity is, "asserted, articulated, felt needs interjected into the governmental decision-making process."¹⁷ Lobbying is, in fact, "ubiquitous,"¹⁸ and essential to an understanding of the adoption and implementation of public policy.¹⁹

Both the United States and the Illinois Constitutions protect lobbying because of its importance to our governmental structure. The federal Constitution states that "Congress shall make no law . . . respecting . . . the right of the people to petition the government for a redress of grievances."²⁰ The Illinois Constitution of 1970 provides that "[t]he people have the right . . . to make known their opinions to their representatives and to apply for redress of grievances."²¹

Although lobbying is one of the most important constitutional rights of a free people, it has had a seamy side. It can consist of "[p]owerful interest groups desiring to obtain or avoid legislation . . . pouring vast sums into aggressive propaganda campaigns that at best present only one side of a case, and at worst involve outright prevarication. . . ." ²² Lobbying also can consist of the buying and selling of votes.²³

Clearly our institutions of government can be threatened by this protected right of petition. Congress has the power "[t]o preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or corruption."²⁴ However, any attempt to deter actual corruption or avoid the appear-

16. See E. LANE, *LOBBYING AND THE LAW* (1964) [hereinafter cited as *LOBBYING AND THE LAW*].

17. Smith, *Regulation of National State Legislative Lobbying*, 43 U. DET. L.J. 663, 664 (1966).

18. *Id.* at 667.

19. See *LOBBYING AND THE LAW*, *supra* note 16, at 3.

20. U.S. CONST. amend. I.

21. ILL. CONST. art. I, § 5 (1970).

22. Cooper, *The Tax Treatment of Business Grassroots Lobbying*, 68 COLUM. L. REV. 801 (1968).

23. See Shaffer, *Ready-Mix Trial: Tale of Intrigue, Bribery*, Chi. Daily News, May 28, 1976 at 10, col. 2. See also *United States v. Craig*, 528 F.2d 773 (7th Cir. 1976) *cert. denied*, 425 U.S. 973 (1977).

24. *Burroughs & Cannon v. United States*, 290 U.S. 534, 545 (1934).

ance of corruption must be very carefully drawn, "because First Amendment freedoms need breathing space to survive."²⁵ Regulation also must be limited to the means of lobbying and not the ends,²⁶ and cannot restrict all efforts to influence public opinion. A definition of prohibited lobbying must include the pressures directed towards a policy maker concerning a specific proposal.²⁷

Despite its title, the Illinois Lobbyist Registration Act of 1969 does not specifically define lobbying.²⁸ It does, however, require registration with the Secretary of State of "[a]ny person who, for compensation, or on behalf of any person other than himself"²⁹ and "any person any part of whose duties as an employee of another person"³⁰ who "undertakes to promote or oppose the passage of any legislation by the General Assembly . . . or the approval or veto thereof by the Governor. . . ." ³¹

Registered lobbyists³² may represent one³³ or many interests; some represent as many as seven different interests. Several ex-

25. *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963).

26. See *Eastern R.R. Pres. Conf. v. Noerr Motor Freight Inc.*, 365 U.S. 127, 139 (1961). In *Noerr* it was stated that "[t]he right of the people to inform their representatives in government of their desires cannot be made to depend on their intent in doing so. It is neither unusual nor illegal for people to seek action on laws in the hope that they might bring about an advantage to themselves and a disadvantage to their competitors." *Id.*

27. *United States v. Harris*, 347 U.S. 612 (1954). In their decision upholding the constitutionality of the Federal Regulation of Lobbying Act, the Supreme Court construed the language of this Act, defining lobbying to mean "lobbying in its commonly accepted sense—to direct communications with members of Congress on pending or proposed federal legislation. At the very least, Congress sought disclosures of such direct pressures exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign." *Id.* at 620. A constitutional definition, unlike a generic one, must limit itself to the means of lobbying. Further, this lobbying must be directed at the policy maker concerning a specific proposal.

28. ILL. REV. STAT. ch. 63, § 170 (1975).

29. *Id.* § 173(a).

30. *Id.* § 173(b).

31. *Id.* § 173(a), (b).

32. Over the years, the Index Division of the Office of the Secretary of State has compiled the COMPLETE LIST OF REGISTERED LOBBYISTS (hereinafter cited as the LOBBYIST LIST). See 76th Gen. Assembly, 2d Sess. (1970); 77th Gen. Assembly (Nov. 17, 1972); 78th Gen. Assembly, 1st Sess. (Dec. 31, 1973); 78th Gen. Assembly, 2d Sess. (Dec. 19, 1974); 79th Gen. Assembly, 1st Sess. (Dec. 5, 1975); 79th Gen. Assembly, 2d Sess. (Dec. 31, 1976); 80th Gen. Assembly, 1st Sess. (Oct. 17, 1977).

Year	1970	1971	1972	1973	1974	1975	1976
# of registered lobbyists	117	365	251	352	288	379	324

Generally, there are fewer registered lobbyists in the even numbered years because those sessions are limited to legislation concerning appropriations and revenue.

The figures should be considered as yardstick measurements, not as exact figures, for two reasons. First, the figures quoted are taken from the final list of registered lobbyists published

legislators work as lobbyists, and even a former governor has served in this capacity. Most work fulltime in Springfield while the legislature is in session, but some persons, as volunteer lobbyists, devote only what time they can spare from their normal activities.

According to a recent study, most lobbyists are middle-aged, white, Protestant, male and professional—holding a law degree or some other graduate degree.³⁴ Almost seventy per cent see themselves as carrying out the instructions of the interest they represent. They are “hired to provide tactical skills within the legislative arena,” not to develop policy.³⁵ There are slightly more Republican lobbyists, with the Republicans generally representing business and industry, trade associations and farm organizations. Democrats generally represent labor, occupational associations, civic organizations and veterans’ organizations.³⁶

Since the Act became effective in 1970, the number of registered lobbyists has risen consistently. As of October, 1977, there were 424 lobbyists, representing at least 400 different interests.³⁷ The interests represented were as follows:³⁸

<u>Category of Interest</u>	<u>Approximate Number of Interests Represented</u>
Agriculture	10
Counties, Municipalities and Townships	20
Education	20
Insurance	30
Labor	20
Manufacturing and Retail	60
Miscellaneous	50
Medical and Health	10
Occupational Associations	40
Public and Ideological	30
Trade Associations	80
Transportation	10
Public Utilities	20

for that year—generally in December—and may not include individuals who have registered and subsequently resigned prior to compilation of the list quoted here. Second, no agency is responsible for insuring that all those engaged in lobbying activities who probably should be registered are actually registered.

33. Two-thirds of the lobbyists represent only one interest. R. Maple, *Role Orientation of Registered Lobbyists 42 (1974)* (unpublished master’s degree thesis in Illinois State University Library).

34. *Id.* at 103.

35. *Id.* at 102.

36. *Id.* at 70, 104.

37. See LOBBY LIST, *supra* note 32, 80th Gen. Assembly, 1st Sess. (Oct. 17, 1977).

38. See LOBBY LIST, *supra* note 32, 1970-1971. In 1971, there were 365 lobbyists and

There are also many lobbies seeking to influence executive branch agency policy in the rate-making and rule-making areas. In some instances these interests utilize the same individuals.³⁹ Since the Illinois Act does not require the registration or disclosure of lobbyists seeking to influence executive branch agencies, little public information is available for study or comparison.

Obviously not all of the registered lobbyists or the interests they represent are equally effective in influencing public policy.⁴⁰ According to one observer, the key ingredients for effectiveness are: the ability to sustain an attack over long periods of time, active members, money, time, skills, patience, and dedication.⁴¹ The forms that these ingredients generally take can be described as direct and indirect (or grass roots) lobbying.⁴²

Direct lobbying is that which occurs directly between a lobbyist and a public official. One man, who in the last session represented the Urban Counties Council of Illinois, the Illinois Canner's Association, R.R. Donnelly & Sons Company and Mobil Oil Corporation, described his direct lobbying activities for one day as: screening bill introductions, screening committee postings, conferring with clients, appearing at legislative committee hearings, meeting with state agencies, possibly meeting with the Governor's office, contacting individual legislators, and having dinner with individual legislators.⁴³ One legislator responded to the question of how lobbyists work, saying, "Every group imaginable from farmers to medical societies to dental societies to business groups were having receptions with cocktails and perhaps dinner."⁴⁴ Unfortunately, direct lobbying has

approximately 380 interests represented, while in 1977 there were 439 lobbyists and approximately 400 interests.

39. Press release of the Association for Modern Banking in Illinois (November 18, 1977). On file with the author, COMMON CAUSE—ILLINOIS. The release, entitled *Olson Named Association for Modern Banking in Illinois Director of Government Relations*, disclosed that "Olson's new responsibilities will include promoting good relations between AMBI and the General Assembly, the Executive Branch, and the various regulatory agencies."

40. Haley & Kiss, *Large Stakes in Statehouse Lobbying*, 52 HARV. BUS. REV. 125, 128 (1974). The authors stated that "the fact is that between elections, the citizen, organization or corporation that is not part of a special interest group does not have . . . much to say about what happens."

41. *Id.* at 127.

42. See Cooper, *supra* note 22, at 801.

43. See Statement by Arthur Gottschalk before the Illinois State Senate Executive Committee Subcommittee, Springfield, Illinois (Sept. 24, 1977). On file with the author, COMMON CAUSE—CHICAGO, ILLINOIS.

44. See THE ILLINOIS GENERAL ASSEMBLY IN PROFILE, Project Poll, 123, 126 (1975) (interview with Representative Anne Willer, D-La Grange).

at times gone beyond representation and advocacy to criminal activity.⁴⁵

Indirect lobbying is an attempt to mold a favorable body of public opinion in order to influence public officials.⁴⁶ *The Christian Science Monitor* breaks this lobbying into four categories: bringing constituents to the capitol; packing hearings and stacking the official record; writing letters, telegrams and mailgrams; and carrying the battle to the home district.⁴⁷

Another facet of the lobbying system is the "pluralization of government" or the spreading of power in the decision-making process, particularly in regulatory agencies.⁴⁸ For instance, thirty years ago, an electrical utility was concerned mainly with the rule making and rate making of the Illinois Commerce Commission. Today, the same utility must concern itself with the Commerce Commission, the Environmental Protection Agency, the Illinois Pollution Control Board, and other agencies.

In the last two decades, Illinois news stories have contained charges of serious misconduct by legislators and lobbyists. In 1951, the truck lobby allegedly used a slush fund of \$25,000 to beat a tax increase, and in 1955 the chiropractors' association allegedly employed a war chest of \$143,500 to aid the passage of a licensing bill.⁴⁹ The Union Electric Company, a St. Louis, Missouri public utility, admitted in 1955 that it paid \$35,000 in lobbying expenses to push through a bill which saved the company from paying Illinois franchise taxes.⁵⁰

The most sensational revelation occurred in 1965 with the publication of a transcript of a conversation among David Maslowsky, the registered lobbyist for the Community Currency Exchange Association, Sam Kaplan, former president of the association, and then president Irving Gottlieb.⁵¹ These discussions involved the payments to

45. See notes 51-57 and accompanying text *infra*.

46. See Cooper, *supra* note 22, at 801.

47. See Stuart, *The New Lobbying: Whirring Computers, Floods of Mail*, *The Chris. Sci. Mon.* Oct. 9, 1975, at 14, col. 2.

48. See Haley & Kiss, *supra* note 40, at 127.

49. See Cleveland, *Illinois Lobbyists on the Job*, *Chi. Daily News*, Jan. 26, 1957, at 6, col. 1.

50. The \$35,000 eventually appeared in the "envelope account" of then-State Auditor Orville Hodge. The "envelope account" was an account which totaled some \$1.5 million of state funds, personally acquired by Orville Hodge. As a result of the discovery of this fund, he was later convicted.

51. Gottlieb subsequently became a lobbyist for the same association. See note 118 & accompanying text *infra*. Maslowsky, Kaplan and Gottlieb brought suit to stop an investigation by the Sangamon County State's Attorney which resulted from the publication of the transcript. They charged that the tapes were made in violation of the eavesdropping article of the Criminal

various legislators of some \$30,000 to kill a bill. Maslowsky was quoted as stating: "What you might as well get used to is that every time you have a legislative session, you come prepared with about \$50,000. . . ." ⁵²

The Community Currency Exchange Association was successful in killing the legislation in 1965, and continued in this success until 1977. In their White Paper of 1977 on currency exchanges, the Better Government Association said that "[t]he State Legislature has failed to enact a single substantive legislative reform in twenty-five years, despite detailed testimony on numerous abuses that directly result from the wording of the Currency Exchange Act." ⁵³ They quote Representative Lewis Caldwell as stating that Irving Gottlieb offered a currency exchange to him in return for his killing a bill to lower check cashing rates for welfare recipients. ⁵⁴

In 1976 and 1977, two cases involving alleged bribery of state legislators were tried and five legislators were convicted on charges of extortion and mail fraud. ⁵⁵ In the first case, the government charged that Northern Illinois Ready Mix and Materials Association created a \$50,000 slush fund to be used as payoffs for votes on a bill raising highway weight limits. ⁵⁶ The second case involved legislation requiring a notation on automobile titles showing whether used autos previously had been rental cars. This was, in the vernacular of Springfield, a "fetcher bill," designed to "fetch" a fee from the appropriate lobbyist to kill the bill. This particular bill "fetched" a \$1,500 fee, according to the alleged testimony of the former lobbyist of the Illinois Car and Truck Rental and Leasing Association. ⁵⁷

CHRONICLE OF LOBBYING REGULATIONS

Over the years, such corrupt practices led states and the federal government to realize that constitutional government alone was un-

Code. The Illinois Supreme Court found for the petitioners, but commented, "[W]e think there is a sufficient showing of identity of the three petitioners as three of the persons whose conversations were recorded." *People v. Maslowsky*, 34 Ill. 2d 456, 459 (1966).

52. Mabley, *Here's How the American Got Tapes*, Chi. Am., June 24, 1965, at 3, col. 1.

53. See The Better Government Association, *The State and Community Currency Exchanges*, White Paper, Jan. 1977. On file with the author, COMMON CAUSE—ILLINOIS.

54. *Id.* Irving Gottlieb allegedly asked Rep. Caldwell, "Senator Partee (former Senator Cecil Partee) has one (currency exchange), Jimmy Carter (former representative) has one, when do you want yours?" *Id.*

55. See, e.g., *United States v. Craig*, 74 CR Docket No. 879 (1974); *United States v. Craig*, 74 CR Docket No. 877 (1974).

56. See note 23 *supra*.

57. See Gilbreth & Schultz, *Fetcher Issue Defeats Bill*, Chi. Daily News, March 3, 1977, at 12, col. 1.

able to "maintain an optimum distance between private interests and public power."⁵⁸ Consequently, barriers to unrestricted political action by private interests were erected beginning in the late nineteenth century.⁵⁹

Georgia was the first state to formally regulate lobbying.⁶⁰ Its Constitution of 1877 provided that "lobbying is declared to be a crime and the General Assembly shall enforce this provision. . . ." ⁶¹ The Georgia legislature subsequently passed legislation defining lobbying as "any personal solicitation of a member of the General Assembly during the session thereof, by private interview, or other means not addressed solely to the judgment. . . ." ⁶²

Other states adopted similar constitutional prohibitions, but not until 1890 was a systematic lobbyist registration and disclosure law enacted in Massachusetts.⁶³ Like its counterparts in the other states, this Act came as a reaction to charges of improper influence.⁶⁴ The Massachusetts Act became the model, both in structure and language, for most subsequent state lobby laws, including Illinois'. Therefore, it is useful to examine the constituent parts of the Massachusetts Act, including registration, disclosure, administration, enforcement, penalties, prohibitions and exemptions.

Registration was required of every person, including corporations employing any person, to "promote or oppose in any manner directly or indirectly the passage . . . of any legislation affecting the pecuniary interests of an individual, association or corporation as distinct from that of the whole people. . . ." ⁶⁵ In addition to the employer's registration, lobbyists were required to register either as a legislative counsel—that is, one who testifies and/or presents bills only to committee hearings—or as a legislative agent—one who promotes or opposes legislation in ways additional to committee hearings.⁶⁶ Required registration information included name, residence, occupation,

58. See LOBBYING AND THE LAW, *supra* note 16, at 3.

59. *Id.*

60. *Id.* at 27.

61. GA. CODE § 2-205 (1975).

62. *Id.* § 47-1000.

63. See 1890 Mass. Acts ch. 456, §§ 1-8.

64. In this instance, a legislative investigating committee disclosed that a Boston streetcar company had employed thirty-five lobbyists and spent some \$33,000 to promote a bill before the legislature that would bring about the construction of an elevated streetcar line. See LOBBYING AND THE LAW, *supra* note 16, at 31.

65. 1890 Mass. Acts ch. 456, § 1. This language, delineating the individual pecuniary interests as distinct from the people as a whole, was subsequently deleted in 1891, but similar language was used later in the 1957 Illinois Act. See note 99 and accompanying text *infra*.

66. See 1890 Mass. Acts ch. 456, § 2.

date of employment, terms of employment and the special subjects of legislation with which the lobbyist intended to be concerned.⁶⁷ Thirty days after the close of each session, every employer, counsel and agent was to disclose all expenses paid or incurred in promoting or opposing any bill.⁶⁸

Violations of the Act could result in prosecution by the Attorney General and penalties including a prohibition from lobbying for up to three years, fines and imprisonment.⁶⁹ The Act was essentially permissive, except that it prohibited the payment of any fees contingent upon the passage or defeat of legislation.⁷⁰ There were no specific exemptions, but the terms of registration did not include those individuals who lobbied on their own behalf.

Within thirty years, some fifteen states had copied or accepted a modified version of this law.⁷¹ The majority of these statutes are not restrictive except for the standard prohibition of contingency fees.⁷² The states recognized that lobbyists must not be prevented from fulfilling a very important and integral role in the decision-making process.⁷³ This recognition went beyond the obvious necessity of protecting the First Amendment right to petition. Lobbyists provide the initiative for a large percentage of legislation. They help draw the lines of issue discussion, help to resolve conflicts in some issues, and provide invaluable information to the legislator.⁷⁴

Equally important, however, is the pressing danger to the public interest which results from unregulated lobbying. Lobbying can have an impact correlated not to the public interest but to the amount of money spent. An interest group which has the funds to employ a full-time, professional lobbyist may have a significant advantage over groups which must rely on non-professional members who volunteer time from their regular pursuits. In an article on volunteer lobbyists, two commentators argue that a professional, because of his knowl-

67. *Id.*

68. *Id.* § 6.

69. *Id.* § 7.

70. *Id.* § 3.

71. See LOBBYING AND THE LAW, *supra* note 16, at 34-39.

72. There are some exceptions. California, Idaho, Iowa, Nebraska, Nevada, Oregon and the District of Columbia restrict the level of expenditures made by lobbyists which benefit public officials. See LOBBYING REPORTS, Surge of Legislative Activity on Lobbying Reported in State by State (April 11, 1977). Lobbyists in Oklahoma and South Dakota are prohibited from engaging in any activities beyond presenting their arguments in a committee hearing. See OKLA. STAT. ANN. tit. 21, § 314 (West 1958); S. D. COMPILED LAWS ANN. 2-12-9 (1967).

73. See Smith, *supra* note 17, at 674.

74. See GOVE, CARLSON & CARLSON, THE ILLINOIS LEGISLATURE: STRUCTURE AND PROCESS (1976).

edge, experience, and availability of time, has an overwhelming advantage over the volunteer. They note that a professional can find sponsors for legislation quickly, can have research available in a shorter time, and has the time to attend interim study committee sessions.⁷⁵

Although the amount of money spent is not the sole criterion for determining legislation's passage or defeat, it can have a significant impact. When the stakes are high, lobbying can go beyond petition and advocacy and can lead to exorbitant spending directed toward acquiring influence, rather than presenting the merits of a position.

Lobby disclosure laws attempt to alleviate the above danger by fulfilling three primary needs. First, legislators must know the source and size of pressures to which they are subjected in order to compensate, in their own minds, on unequal access to the system.⁷⁶

Second, the state has a substantial interest in deterring actual corruption and avoiding the appearance of corruption. Lobby disclosure makes it easier for public officials to resist undue or unethical pressures, and provides the tools to investigate unethical practices. If lobbyists are subject to disclosure, both they and public officials will have to carefully consider their actions to avoid a negative appearance. While disclosure reports will probably not disclose expenditures made for bribery, they will provide tools to examine possible illegal activities. For instance, illegal campaign contributions are not reported pursuant to the Illinois campaign finance disclosure law,⁷⁷ yet the State Board of Elections in a recent order found "1) the laundering of contributions 2) with the purpose of influencing actions of the Illinois Department of Public Aid with respect to medical payments."⁷⁸ Furthermore, a Cook County Grand Jury recently indicted two individuals involved in the above actions.⁷⁹ The investi-

75. See Gale & Gale, *The Volunteer Lobbyist in the State Legislature*, 52 ORE. L. REV. 69, 80 (1972).

76. See Leonhardt, *The Channeling of Lobbying Into the Public Interest*, 49 CONN. BAR J. 475, 477-78 (1972). As the United States Supreme Court stated in *United States v. Harris*, 347 U.S. 612 (1954):

Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.

Id. at 625.

77. See ILL. REV. STAT. ch. 46, § 9 (1975).

78. See Order of the Illinois State Board of Elections, C-77-2-23-19 C.D. (Nov. 22, 1977).

79. See *People v. Allen Bahn*, No. 77-1-78501-01-010203040506; *People v. Abdulla Mieki*, No. 77-1-787502-01-010203040506.

gation which led to the Board Order and the indictments were based on public documents filed pursuant to the campaign financial disclosure act.⁸⁰

Finally, lobby disclosure can provide the electorate with a means of determining whose interests public officials are serving. As the Supreme Court of the State of Washington stated:

The electorate, we believe, has the right to know of the sources and magnitude of financial and persuasional influences upon government. The voting public should be able to evaluate the performance of their elected officials in terms of representation of the elector's interest in contradistinction to those interests represented by lobbyists. Public information and the disclosure required . . . of lobbyists and their employers may provide the electorate with a heretofore unavailable perspective regarding the role that money and special influence play in government decision making.⁸¹

An informed electorate and an informed legislature constitute the essence of a democratic society.

REGULATION OF LOBBYING IN ILLINOIS

Illinois has had two acts regulating lobbying in the last twenty years, both enacted as a response to allegations of improper influence on the part of special interests.

During the Union Electric Company investigation in 1955, legislation was introduced only hours after a federal grand jury had heard its last witness testify about the \$35,000 payment made by the St. Louis public utility for lobbying activities. The \$35,000 turned up in former State Auditor Orville Hodge's "envelope account."⁸² The bill,⁸³ introduced by Senator William Lynch, required any individual who "engages in influencing legislation" as the representative of an organization to register with the state, as did every organization that expended more than \$500 influencing legislation.⁸⁴ Both the individual and the organization were required to make monthly disclosure reports of the amounts of money spent for this purpose.⁸⁵ This bill

80. See Text of a letter from Richard Anderson, Administrator of the Public Disclosure Section, Illinois State Board of Election (March 29, 1978). On file with the author, COMMON CAUSE—ILLINOIS.

81. *Fritz v. Gorton*, 83 Wash. 2d 275, 309, 517 P.2d 911, 951 (1974).

82. See Hanson, *Asks State Probe of Lobbying*, Chi. Daily News, Jan. 10, 1957, at 6, col. 3.

83. See S.B. 7, 70th Gen. Assembly, 1st Sess. (1957).

84. *Id.* §§ 1,2,3.

85. *Id.* §§ 2,4.

passed the Senate Judiciary Committee but, under pressure from various lobbies,⁸⁶ was returned to committee where it died.

In place of the *Lynch* Bill, the Judiciary Committee sponsored a substitute, Senate Bill 629.⁸⁷ This compromise bill required registration of lobbyists, regular reports of expenditures, and provided for enforcement by State's Attorneys, with penalties of up to two years in jail, a \$15,000 fine, or both. Reporters, publishers, broadcasters, persons appearing before committees without compensation, and persons performing professional services such as drafting or rendering opinions were not required to register.⁸⁸ Those who registered were required to file monthly reports with the Secretary when the legislature was in session, and quarterly reports when it was not, of all "expenditures of money or other things of value" with the following exceptions: travel, personal sustenance, lodging, office expenses, stenographic and clerical expenses, and the cost of internal mailings.⁸⁹ Expenditures of less than \$10 could be reported in total amounts rather than in detail.⁹⁰ Contingency fees were prohibited⁹¹ and the Secretary of State was responsible for maintaining a register and for providing the appropriate forms.⁹² Violations could be prosecuted by the State's Attorney of the county where the violation occurred or by the Sangamon County State's Attorney.⁹³ Violations by individuals were classified as a felony punishable by up to two years in jail, a \$5,000 fine, or both. Any corporation found guilty was subject to a fine of \$5,000.⁹⁴

The Judiciary Committee proposal, however, was not adopted at this time. In its place, a bill sponsored by then-Representative Paul

86. See Dreiske, *Lobbyists Win Round Against Assembly Resignation Bill*, Chi. Sun Times, Feb. 28, 1957, at 22, col. 1. The lobbies allegedly exerting this pressure included the Illinois Federation of Retail Associations, Illinois Manufacturers Association, Illinois Bankers Association, Illinois State Chamber of Commerce, Chicago Association of Commerce and Industry, and others.

87. S.B. 629, 70th Gen. Assembly, 1st Sess. (1957).

88. *Id.* § 4.

89. *Id.* § 6.

90. *Id.*

91. *Id.* § 8. This prohibition was a principle existing in Illinois case law since 1898. The Illinois Supreme Court held in *Critchfield v. Bermudez Asphalt Paving co.*, 174 Ill. 466, 478 (1898) that "If the performance of the obligations imposed by the contract has an evil tendency or furnished a temptation to use improper means, the contract is illegal and 'contra bonas mores'."

92. See S.B. 629, § 7, 70th Gen. Assembly, 1st Sess. (1957).

93. *Id.* § 11.

94. *Id.* § 10. S.B.629 did pass the Senate, but it never left the House committee studying the legislation. It was not without importance, however, because it was reintroduced in several sessions after 1957 by Senator Egbert Groen. It became the model for the 1969 Act now in effect.

Powell passed both chambers and was signed into law.⁹⁵ The Act, labeled by the *Chicago Sun Times* as "Powell's Toothless Travesty,"⁹⁶ required registration with the Secretary of State of every person employed "to promote or oppose in any manner the passage by the legislature of any legislation affecting the interests of any individual, association or corporation as distinct from those of the whole people of the State" ⁹⁷ One observer wrote that "most astute lobbyists will soon be found representing only the interests of the 'whole people of the state,' and no one of lesser import, in pushing bills in which their clients are interested."⁹⁸ Therefore, almost seventy years after the Massachusetts Legislature had rejected the distinction between private and public legislation, Illinois adopted language identical to the first Massachusetts Act.⁹⁹

This Act was to be administered by the Secretary of State who would prepare and keep a legislative docket containing the names of all registered lobbyists and the name of each lobbyist's employer. The Secretary also published a bulletin containing the information from the docket and distributed this bulletin to the General Assembly, constitutional officers, and the press.¹⁰⁰ The Secretary of State, however, was not responsible for enforcing the act. The Act did not specify who was responsible.

Even apart from the major loophole regarding who must register, this Act never accomplished the purpose of making public the magnitude of special interest influence. Paul Powell's bill merely required registration. The disclosure of expenditures requirement was not added until 1969.

Although legislation to amend the 1957 act to include disclosure and to change the registration requirement was introduced regularly,

95. See ILL. REV. STAT. ch. 63, §§ 110-113 (1975).

96. See *Powell's Toothless Travesty*, Chi. Sun-Times May 20, 1957, at 21, col. 1. This editorial further commented that "[t]he Powell bill could not have been better if it had been drafted by a lobbyist—and it may well have been."

97. ILL. REV. STAT. ch. 63, § 110 (1975).

98. Packard, *The Illinois Lobbying Act, Fact or Phantom?* 47 ILL. B.J. 436, 440 (1959). Although this language was deleted in the 1969 Act, the Illinois Government Ethics Act, ILL. REV. STAT. ch. 127, § 601 (1975) states that a legislator may not engage in lobbying for compensation (§ 602-101). Lobbying is defined as "promoting or opposing . . . any legislative matter affecting the interests of any association or corporation as distinct from those of the people of the state as a whole."

There is, however, another provision in the Illinois statutes. Chap. 38, § 91, stating, "No member of the General Assembly shall accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence he may give or withhold"

99. See notes 65-68 and accompanying text *supra*.

100. See ILL. REV. STAT. ch. 63, § 111 (1959).

not until 1965 did the legislature again consider seriously the question of the relationship between private groups and public power. That year, then-State Representative Adlai Stevenson III introduced a bill requiring registration and disclosure by any person seeking to promote or oppose legislation.¹⁰¹ Stevenson's bill, House Bill 264, was almost identical to the Senate Judiciary Committee Bill of 1957.¹⁰² Although Stevenson introduced this legislation early in the 1965 session, it was presumed dead until shortly after the publication of the Community Currency Exchange Association officers' taped conversations. The bill was quickly revived and passed on to the Senate by a 134 to 14 vote.¹⁰³ The bill was killed there, however, by a parliamentary maneuver in the closing days of the session.

Lobbying legislation was subsequently introduced by the President Pro Tempore of the State Senate, W. Russell Arrington. He prefiled legislation¹⁰⁴ in November of 1966, saying that lobbying legislation "will protect the general public and the great majority of lobbyists from the abuses by the few scoundrels among them."¹⁰⁵ It did not pass in 1967, but was reintroduced in the 76th General Assembly (1969) and sponsored again by Senator Arrington as Senate Bill 105.¹⁰⁶ This time the bill was passed and signed into law.

DEFICIENCIES OF THE ILLINOIS LOBBYING ACT

Edgar Lane, the foremost historian of state lobbying laws, wrote that these laws are "narrow in origin and approach and they have for the most part been enacted in haste and allowed to atrophy in leisure—and all the while the little world they seek to capture goes

101. H.B. 264, 74th Gen. Assembly, 1st Sess. (1965).

102. Stevenson added two new items to the registration requirements of the 1957 bill. The legislation stated that a \$1,000 expenditure threshold must be reached before triggering registration and disclosure requirements and that a lobbyist, when registering, must disclose the amount of compensation received from each employer. *Id.* §§ 4, 5. Once registered, every lobbyist would be required to report in detail all expenditures made, for what purpose, to whom, and all compensation and payments for expenses received directly or indirectly. *Id.* § 6. Further, no expenditures were exempt from reporting, but personal office expenses, food, lodging, travel and expenditures of \$10 or less could be reported in the aggregate. *Id.* The penalties for violations were the same except for the addition of disbarment from lobbying for compensation for three years. *Id.* § 10. This section also included a presumption of lobbying for compensation if the person was discovered lobbying during the three year period of disbarment, unless rebutted with competent evidence.

103. See generally, *The Legislative Reference Bureau, Synopsis and Digest*, 74th Gen. Assembly (1965).

104. See S.B. 3, 75th Gen. Assembly 1st Sess. (1967).

105. Maier, *GOP Offers Ethics Law for Officials*, Chi. Daily News, Nov. 30, 1966, at 1, col. 2.

106. S.B. 105, 76th Gen. Assembly, 1st Sess. (1969).

right on changing."¹⁰⁷ Lane's assessment is appropriate to a discussion of the Illinois Act. An examination of the constituent parts of registration and reporting, exemptions and restrictions, and administration and enforcement will demonstrate that the Illinois Act is incomplete, loophole-ridden and unenforced.

In the section defining "Persons Required to Register,"¹⁰⁸ the 1969 Act broadened the registration requirements of previous bills¹⁰⁹ to include "any person . . . on behalf of any person other than himself . . ." ¹¹⁰ who promotes or opposes legislation. This means that there are three criteria for determining the requirement of registration of a person as a lobbyist. These are: (1) receiving compensation; (2) representing a person other than yourself; and (3) acting as an employee of another person.¹¹¹

As has been mentioned previously, Illinois had only 379 lobbyists in 1975 and 324 in 1976 registered pursuant to the above provisions. Exacting comparisons between the number and kinds of registered lobbyists in the various states are impossible to make because the political climate varies dramatically from state to state,¹¹² and because state lobbying laws vary.¹¹³ It is interesting to note, however, that in Maryland there were 361 registered lobbyists in 1975.¹¹⁴ Washington state had 650 lobbyists in 1975, and 488 in 1976.¹¹⁵ Indeed, it seems odd that Illinois has fewer registered lobbyists than states with smaller populations or lesser economies. This leads to the conclusion that the present regulatory provisions of the Act could fail to produce full registration.

107. LOBBYING AND THE LAW, *supra* note 16, at 11, 12.

108. ILL. REV. STAT. ch. 63, § 172 (1975).

109. See S.B. 629, 70th Gen. Assembly, 1st Sess. (1957); H.B. 264, 74th Gen. Assembly, 1st Sess. (1965).

110. ILL. REV. STAT. ch. 63, § 173(a) (1975).

111. *Id.* § 173.

112. See LOBBYING AND THE LAW, *supra* note 16, at 110.

113. For example, Maryland requires the registration of every "legislative agent" who is a person compensated by an employer to "promote, advocate, influence or oppose" any matter before the General Assembly. MD. ANN. CODE art. 40, § 5 (1957). Washington State requires the registration of any lobbyist, defined as any person who "shall lobby on his own behalf or another's." WASH. REV. CODE § 42.17.020 (Supp. 1976). Lobbying is attempting to influence the passage or defeat of any legislation or the adoption or rejection of any rule, standard or rate set by a state agency, *Id.* Those persons who restrict lobbying to no more than four days a quarter and spend less than \$15 for or on behalf of a public official are exempt from the Washington registration.

114. See COMMON CAUSE—MARYLAND, *Lobbying Activities in Maryland* (December 1975). On file with the author—COMMON CAUSE.

115. See *Annual Report to the Governor 1975*, Washington State Public Disclosure Commission (June 1975).

Further, there are lobbyists in Illinois who appear to come under the provisions of the Illinois Act, yet have never registered.¹¹⁶ Although former Community Currency Exchange Association president Irving Gottlieb lobbied in Springfield,¹¹⁷ he never registered. Gottlieb was quoted as stating that his activities were designed to “[m]ake friends and influence people—that’s what a lobbyist does—and explain bills.” Asked if he had ever read the 1969 Lobby Act, Gottlieb said, “I’ve never looked at the Act.”¹¹⁸ The Secretary of State has noted that it is not the responsibility of his office to enforce the Act,¹¹⁹ and neither the Attorney General nor any State’s Attorney has ever brought indictments for violation of the registration requirements.

Another aspect of registration deficiency is the absence of any non-individual “persons” as registrants. As used in this act, “[p]erson means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.”¹²⁰ The definition of “person,” however, does contemplate the registration of non-individuals because the Act exempts from disclosure the “cost of mailings to members . . .,”¹²¹ and a provides a specific fine of \$10,000 for any “corporation which violates this act”¹²² Apparently, no non-individual “person” has registered since the publication of the first list of registered lobbyists by the Secretary of State.¹²³

Moreover, the Secretary’s office has not sought the registration of any “persons” beyond individuals.¹²⁴ In a recent opinion,¹²⁵ the Attorney General stated that the registration requirements contained in Section 173 of the Act apply “to all entities enumerated under the

116. See Pound & Zekman, *How State Lobbyists Evade Law*, Chi. Sun-Times, April 24, 1977, at 3, col. 4.

117. Pound & Zekman, *How Currency Exchange Unit Slipped Cash to Poles*, Chi. Sun-Times, Dec. 9, 1976, at 1, col. 1.

118. *Id.*

119. See note 116 *supra*.

120. ILL. REV. STAT. ch. 63, § 172 (1975).

121. *Id.* § 176 (b).

122. *Id.* § 10.

123. See LOBBYIST LIST, *supra* note 32 (1971-1977).

124. The Secretary regularly mails registration and disclosure forms to registered lobbyists at the appropriate times. However, it is the author’s experience as a registered lobbyist for five years that the organizations he represented have not received a request for registration, nor a request for a disclosure report. The author, probably like most other lobbyists and lobbyist employers, assumed that the Secretary, in mailing only to individuals, was requesting all that the act required.

125. Op. Att’y. Gen. S-1319 (Dec. 12, 1977).

statutory definition of person" as contained in Section 172.¹²⁶ The Secretary of State mailed copies of the Attorney General's opinion to those registered under the Act, and revised both the registration and disclosure forms.¹²⁷ The registration form includes a new category for the person or persons employed or retained by the registrant. The General Instructions state that "[a]nyone who represents any entity must complete this form in his own behalf. Also the entity must file a separate form with the name of the entity wherever 'name' is required."¹²⁸ The Secretary's office has not, however, mailed the registration forms to "persons" not already registered,¹²⁹ nor has it stipulated whether it will require retroactive registration for 1977.¹³⁰

The implications of this interpretation are far-reaching. The registration of lobbies and lobbyists and their subsequent disclosure should produce a dramatic increase in amounts disclosed since indirect lobbying must now be reported. Normally, an individual lobbyist will not make or authorize all expenditures made during the course of a campaign. For instance, thousands of dollars could be expended purchasing advertisements urging the passage or defeat of legislation, but because an individual lobbyist did not make or authorize these expenditures,¹³¹ he is not required to report them. With the registration of lobbies, these expenditures will now be reported. Also, expenditures made by entities as compensation to lobbyists¹³² and as reimbursements made for a lobbyist's travel, lodging or personal sustenance¹³³ will now be required.

126. The Attorney General further stipulated in this opinion that an attorney working as a lobbyist for a client retaining the firm employing him must register, disclosing the client's name and that "the law firm would have to register under the act because it is within the Section 172(a) definition of 'person' and because it has undertaken to perform lobbying services for its client."

127. Letter from Donald D. Ed, Director of the Index Division, Office of Secretary of State, to all registered lobbyists (Dec. 30, 1977).

128. See Lobbyist Registration Statement, Index Division, Office of Secretary of State (Dec. 30, 1977).

129. The letter states, "The Lobbyist Registration Statement has also been revised and a copy is enclosed should you desire to register for the 1978 legislative session."

130. The Secretary cannot be presumed to know the identity of all persons who must register, but he does have available to him the names and addresses of persons employing or retaining 1977 registrants.

131. Section 176 of the Act provides that "[e]very person registering shall . . . file . . . a report under oath of all expenditures made by him" ILL. REV. STAT. ch. 73, § 176 (1975).

132. Compensation is an expenditure made for the purpose of promoting or opposing legislation. See ILL. REV. STAT. ch. 63 § 176 (1975).

133. The exemption from reporting these expenditures is for "the registrant" and "his personal sustenance, lodging and travel," not the expenditures made by an agent of the registrant. *Id.*

The Attorney General's inclusive interpretation still leaves a major loophole in the registration requirements of the Act. "Persons" attempting to influence the executive branch of government are not covered even though "political interest groups have treated statehouse and state office building as inseparable parts of the same political architecture."¹³⁴ One spokesperson testifying against a proposed Illinois law to ban non-returnable containers said, "We have been appearing off and on for three years before the Illinois Pollution Control Board . . ." The spokesperson further commented, "We have had thirteen days of hearings with just a total collective industry expense of almost in excess of a million dollars right now."¹³⁵ Since the 1969 Act does not include the registration of those persons seeking to influence executive branch agency decisions, no means is available to determine who is trying to influence these decisions or how much is being expended.

Once registered, every person must file at least three reports disclosing all expenditures made to promote or oppose legislation "showing in detail the person or legislator to whom or for whose benefit such expenditures were made . . . Expenditures of \$25 or less . . . may be reported in total amounts."¹³⁶ However, exemptions from the reporting requirements are provided for expenditures made by the registrant as a member of a study commission or committee. Also exempt are reasonable and bona fide expenditures for internal expenses, personal sustenance, lodging, travel, and expenditures to honor or promote the candidacy of a legislator.¹³⁷

Ninety-five percent of Illinois' registered lobbyists reported no expenditures in 1975, and the five per cent who did report disclosed a total of \$67,856.¹³⁸ Eighty-eight percent of those lobbyists registered

134. See LOBBYING AND THE LAW, *supra* note 16, at 10.

135. See *Hearing on H.B. 1838 Before the Illinois Committee on Environment, Energy and Natural Resources*, 79th Gen. Assembly (1975) (statement of Don Kinney, Vice-President of Coca-Cola Bottling Co.).

136. ILL. REV. STAT. ch. 63, § 176 (1975).

137. *Id.* Most of these exemptions were written into the direct predecessor of this act, S.B. 3, 75th Gen. Assembly, 1st Sess. (1977), and the 1969 Bill in the 76th General Assembly retained them. The clause, "for services rendered or to be rendered," was first added in 1967. Read apart from the context of a registered person making an expenditure (e.g., salary) as payment to an agent for services rendered, this clause seems to establish a *quid pro quo* definition of an expenditure made which would need be reported. Since this is illegal pursuant to ILL. REV. STAT. ch. 38, § 91 (1975) it is unlikely that this kind of expenditure would openly be reported. This definition is poorly constructed and is probably surplusage when considering the Act as a whole.

138. COMMON CAUSE—ILLINOIS AND THE BETTER GOVERNMENT ASS'N. Unpublished study based on the expenditure reports on file with the Secretary of State for 1975 and 1976 (February 1977). Two groups accounted for \$36,000 of the total expenditures. On file with the author, COMMON CAUSE—ILLINOIS AND BETTER GOVERNMENT ASS'N.

in 1976 reported no expenditures and the twelve per cent who did report disclosed \$70,970.¹³⁹ A breakdown of lobbying expenditures according to interests represented follows:¹⁴⁰

Interest Represented	Amount Disclosed	
	1975	1976
Agriculture	0	0
Banking and Finance	\$ 4,567	\$ 3,328
Counties, Townships and Municipalities	780	60
Education	142	0
Insurance	0	296
Labor	25,671	0
Manufacturing and Retail	3,018	3,871
Miscellaneous	768	1,690
Medical and Health	3,268	433
Occupational and Professional	620	400
Public and Ideological	18,624	51,095
Trade Association	3,983	6,739
Transportation	0	0
Utilities	5,373	2,507

During 1975, \$1,383,000 was reported by lobbyists in Maryland,¹⁴¹ and \$467,000 was disclosed by some 502 lobbyist employers in Connecticut.¹⁴² Expenditures of \$3 million were disclosed by lobbyists in the State of New York for 1977,¹⁴³ and in California, \$19,094,000 was reported by lobbyists in 1975, and \$20,925,000 in 1976.¹⁴⁴ Cer-

139. *Id.* Again, two groups accounted for over one-half the reported expenditures.

140. *Id.* Expenditure is defined as "a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure, for services rendered or to be rendered for promoting or opposing the passage of any legislation . . ." *Id.*

141. See Lobbying Activities in the State of Maryland—COMMON CAUSE—MARYLAND.

142. See Leonhardt, *The Channeling of Lobbying into the Public Interest*, 49 CONN. B.J. 475, 477 (1975).

143. See Press Release of Mario Cuomo, Secretary of State, New York (Nov. 3, 1977). On file with the author, COMMON CAUSE—ILLINOIS.

144. See Fair Political Practices Commission, State of California, *\$40 Million to Influence California Government, a Report on Lobbying* (August 1977). Proportional relationships between state disclosure data do not exist because the political climate of each state is unique and their lobby laws are different.

Maryland requires the legislative agents and their employers to jointly file an itemized account of all "salaries, fees, expenses or other compensation paid or to be paid . . ." MD. ANN. CODE art. 40, § 10 (1977).

Lobbyists, lobbyists' employers, and "[a]ny person who directly or indirectly makes payments to influence legislative or administrative action" should disclose "[t]he total amount of payments

tain interests have affiliates which are active in more than one state. A comparison of several of these interests for the same period indicates the following:¹⁴⁵

to influence legislative and administrative action . . . in California. CAL. GOV'T CODE §§ 86108, 86109 (1976).

Connecticut required in 1975 that "Each person, firm, corporation, or association . . . shall file . . . an itemized verified statement . . . [of] all items paid, incurred or promised, directly or indirectly, in connection with the legislation pending at the last previous session . . ." CONN. GEN. STAT. ANN. ch. 16, § 2-45 (1975). In 1976, the New York requirements were identical to those of Connecticut.

145. Because the issue of branch banking has been so divisive among bankers in Illinois, there are three trade associations for bankers in Springfield. Maryland and California each have only one banker's trade association.

All fifteen Illinois associations perform many functions apart from lobbying, but all fifteen have at least one registered lobbyist and most have two or more who spend a significant amount of time in lobbying efforts. If the above fifteen organizations devoted only 50 per cent of their budget to lobbying, they would spend \$2,629,846. If they devoted 20 per cent of their budget to lobbying, they would collectively expend \$1,753,230, or if they spent only five per cent of their collective budgets, \$438,308 would be spent.

These same associations reported to the Internal Revenue Service the following annual budget expenditures for one year of this two-year time period. (Note: The amounts are total budgets, *not* amounts listed as lobby expenditures.) Internal Rev. Comm., 990 Tax form on file Philadelphia, Penn.

Association	Total Expenditures	Time Period
Association for Modern Banking in Illinois	\$ 316,523	7/1/74- 6/30/74
Associated Beer Distributors of Illinois	103,777	12/1/75-11/30/76
Illinois Association of School Boards	912,685	10/1/75- 9/30/76
Illinois Education Association	4,289,000	7/1/75- 6/30/76
Illinois Hospital Association	1,447,382	1/1/75-12/31/75
Illinois Life Insurance Council	61,462	1/1/76-12/31/76
Illinois Life Insurance Underwriters Association	109,787	1/1/76-12/31/76
Illinois Municipal League	558,687	1/1/76-12/31/76
Illinois Association of Realtors	801,649	1/1/76-12/31/76
Illinois Retail Merchants Association	400,466	1/1/76-12/31/76
Illinois Savings and Loan League	560,505	10/1/75- 9/30/76
Illinois State Chamber of Commerce	1,347,367	1/1/76-12/31/76

State Affiliates of National Trade Assn.	Reported Illinois ¹⁴⁶ Expenditures		Reported California ¹⁴⁷ Expenditures		Reported Maryland ¹⁴⁸ Expenditures	
	1975	1976	1975	1976	1975	1976
Association for Modern Banking in Illinois	0	0			\$16,018	
Bankers Association	0	0	\$277,818	\$290,408		
Independent Community Bankers in Illinois	0	\$ 104				
Beer Distributors or Wholesalers	\$1,102	1,650	4,812	6,195	9,722	
School Boards Assn.	0	0	57,906	44,400	1,787	
Education Assn. (NEA)	0	0	165,880	210,410	20,377	
Hospital Assn.	0	0	90,064	139,714	89,482	
Life Insurance Council	0	0	158,496	92,886	0	
Life Insurance Underwriters Assn.	0	0	24,472	26,890	3,782	
Municipal League	700	500	168,335	234,514	12,230	
Realtors Association	735	112	132,790	199,225	7,404	
Retail Merchants Assn.	0	0	95,337	97,626	2,123	
Savings and Loan League	0	389	61,855	78,415	5,853	
State Chamber of Commerce	362	487	118,155	180,400	24,142	

146. See note 138 *supra*.147. See note 144 *supra*.148. See note 141 *supra*.

In comparison with the reported expenditures of lobbyists in other states, the \$70,000 reported by Illinois lobbyists is a meaningless measure of private interest influence in Springfield.

The reasons for this are similar to the registration situation: loopholes in the Act and an almost non-existent administration policy. The exemptions from reporting demonstrate major statutory deficiencies, including "internal expenses such as office expenses, stenographic and clerical assistance, cost of mailings to members, and ordinary mailing lists and cost of regular and routine research."¹⁴⁹ If "internal expenses" were purely supplementary to the activity of lobbying, perhaps they should be exempted. But, in this age of technical legislation, research, for example, is critical to resolution of such issues as the permissible level of sulfur dioxide emissions. It is also an integral part of much lobbying in a modern age. Another example is the cost of mailings. Mailings are part and parcel of grassroots lobbying and are used regularly. Public interest lobbies such as Common Cause remain effective lobbies because of regular mailings to their members on pending or proposed legislation. Other organizations also use this technique and some have charged that Illinois public utilities are using this technique in mailings to their subscribers.¹⁵⁰

Pursuant to the Attorney General's opinion of December 12, 1977,¹⁵¹ those "persons" newly interpreted as being required to register, should also begin to follow the disclosure requirements. This will close one of the past loopholes. The opinion also interprets the provision that "[e]xpenditures of \$25 or less . . . may be reported in total amounts rather than in detail,"¹⁵² to mean that "the exemption from

149. ILL. REV. STAT. ch. 63, § 176(b) (1975).

150. The Illinois Public Action Council charged in a complaint filed before the Illinois Commerce Commission that Illinois Power and Central Illinois Public Service Company sent a mailing to electrical service customers, "disseminating their views on matters of public controversy." The mailing, according to the Council, concerned specific legislation pending before the General Assembly. *Illinois Public Action Council v. All Illinois Electrical Public Utilities*, No. 77-0311 (May, 1977). Prior to the development of the disclosure forms adopted in December 1977, the Index Division of the Secretary of State's Office mailed disclosure reports that consisted of a copy of Section 6 (Reports) and Section 10 (Penalties) of the Act and an essentially blank form entitled "Lobbyist Expenditure Report for [and space for the appropriate month]." This form had a line at the top for the registrant's name and lines at the bottom for a signature and notarization. The new reporting form, similarly entitled "Lobbyist Expenditure Statement" is two pages in length with the first page requiring the name of the registrant, the date with blanks for the name and address of "any person . . . to whom, or for whose benefit expenditures in excess of \$25 were made," the date of the expenditure, and the amount of each expenditure. Presumably, "lobbyist" here is merely a reference to the title of the Act and is not a descriptive term. Page two has space for the name and address of any person for whom, or for whose benefit expenditures of \$25 or less were aggregated, and space for signature and notarization.

151. Op. Att'y Gen. S-1319 (Dec. 12, 1977).

152. ILL. REV. STAT. ch. 63, § 176 (1975).

reporting in detail expenditures under \$25 does not go beyond this limited aggregation, and the report must still show the person or legislator to whom or on whose benefit expenditures under \$25 were made."¹⁵³ However, the major problem in the interpretation of the reporting requirements has been the absence of interpretation.

The new "Lobbyist Expenditure Statement" introduced in 1977 makes the requirements clearer than the previous form, but provides no detailed instructions. Instead, the Secretary of State reproduces sections 6 and 10 of the Act, and quotes from the Attorney General's opinion. Every registrant can still interpret much of the Act as he wishes.¹⁵⁴

The Index Division of the Secretary of State does not follow up on faulty or incomplete disclosure reports.¹⁵⁵ This office maintains that the Secretary of State's role is purely administration, not enforcement nor interpretation. The Secretary of State does have the authority, however, to request opinions from the Attorney General.¹⁵⁶ Although not specifically required to do so, the Secretary could present information to the State's Attorney or the Attorney General regarding incomplete or allegedly inaccurate reports. The State's Attorney of Sangamon County and the Attorney General could also regularly review the registration and the reports on file with the Secretary. The root of the problem is that no one has specific obligations under the Act¹⁵⁷ and that, as a result, no one has taken on the responsibility of insuring compliance.

153. Op. Att'y Gen. S-1319 (Dec. 12, 1977). Lobbyists had been interpreting Section 176 as an exemption from reporting anything but a catch-all figure. For instance, one lobbyist disclosed in his July 1977 report "\$4,000, no expenditures in excess of \$25 per occasion," Gerald W. Shea, *Personal Lobbyist Disclosure Rep.* filed Sec. of State. and another lobbyist disclosed in his July report, \$217 in lunches at the Sangamo Club. Robert E. Cook *Personal Lobbyist Disclosure Rep.* filed Sec. of State.

154. In the past, some registrants have developed interpretations that challenge credulity. For instance, the Illinois State Medical Society held a dinner and reception attended by some society members and by members of the General Assembly at the same time that the legislature was considering malpractice legislation. The cost of the reception was \$12,000, according to the Better Government Association, yet it was never disclosed. Donald Udstuen, a lobbyist for the society, when asked why this cost was not disclosed, replied, according to the *Chicago Sun-Times*, "only those expenses incurred while talking to a legislator about a specific piece of legislation need be reported. The reception was a social event." Pound and Zekman, *How State Lobbyists Evade Law*, *Chi. Sun-Times*, April 24, 1977, at 3, col. 4.

155. See Oster & Watson, *Lobby-law Effectiveness Found to be Zero*, *Chi. Sun-Times*, June 6, 1973, at 5, col. 1.

156. Opinion No. S-1319 was requested in this case, however, by the chairman of the Senate Executive Committee, Senator Don Wooten.

157. While the United States District Attorney for the Northern District of Illinois has successfully prosecuted criminal activity involving state lobbying activities, *see* note 55 *supra*, state law enforcement authorities have not. There has been no litigation involving this act.

Another question which has arisen is exactly who is *not* required to register. The Act delineates seven categories of persons not required to register and subsequently disclose: (1) those who only testify as witnesses before committees without compensation; (2) persons owning or employed by a newspaper, periodical, radio or television station which disseminates news, comment or editorials on legislation; (3) those performing professional services such as rendering opinions or drafting legislation; (4) employees of state government who appear before committees;¹⁵⁸ (5) the General Assembly's staff; (6) persons who, although reimbursed by an employer, appear for a registrant at the written request of a legislator to present expert testimony; and (7) a full-time employee of a church or religious organization who represents only that organization in order to promote its doctrine.¹⁵⁹ The problem has arisen not from any of these specific exemptions but rather from a presumed exemption from registration for lawyer lobbyists, since this would require them to disclose their clients, an alleged violation of lawyer-client confidentiality. When asked why he never registered as a lobbyist, Irving Gottlieb was quoted as saying, "There was no reason to register. . . . I was on a legal retainer."¹⁶⁰ In this same *Sun-Times* article, Gottlieb argued that he was representing himself as the owner of a currency exchange. In testifying before legislative committees, however, he signed witness slips listing himself as the representative of the Community Currency Exchange Association, not himself.

There have been sound legal arguments to refute the lawyer-lobbyist exemption claimed by Gottlieb,¹⁶¹ and this issue was apparently resolved by the Attorney General's 1977 opinion stating that "when a law firm is retained as a lobbyist, the attorney or attorneys

158. Proponents of lobbyist disclosure reforms are especially critical of the continuation of this particular exemption in H.B. 1820. These critics argue that legislative liaisons of state government agencies should be required to register and disclose. A close reading, of § 174(d) however, would indicate that any legislative liaison is required to register if he does more than appear before a legislative committee to explain how legislation will affect his particular agency. This means that any legislative liaisons or any other state officials who promote or oppose the passage of any legislation are required to register. Most legislative liaisons, in the author's experience, are involved in all phases of legislative activity, including the promotion or opposition to legislation. According to the Secretary of State's lists of registered lobbyists, no legislative liaisons are registered. For more information on this subject, see McCahill, *Private Lobbyists Urge Same Rules for Public Lobbyists*, Chi. Sun-Times, September 23, 1977, at 46, col. 1.

159. ILL. REV. STAT. ch. 63, § 176 (1975).

160. See note 116 *supra*.

161. Selkur, *Attorney-Client Privilege as It Applies to Registration Under the Illinois Lobbying Statute*, Better Government Association Memo (March 23, 1977). On file with the author, COMMON CAUSE—ILLINOIS.

employed by the firm who actually carry on the lobbying activity should disclose the name of the entity for which lobbying is being done."¹⁶² This opinion and the revised forms drafted by the Secretary of State have considerably strengthened the 1969 Act. Major structural problems still exist; new legislation is still needed.

PROPOSED REFORMS OF THE ILLINOIS LOBBYING ACT

During the 1978 session of the General Assembly, some six bills amending the current Act are being considered. Five of these bills would strengthen lobby regulation significantly¹⁶³ and the sixth would cripple the new life given the Act by the Attorney General's opinion.¹⁶⁴ At the time of the writing of this Article the outcome of any of these proposals is uncertain. Consequently, it is more meaningful to discuss what reforms are essential.

First, section 172 of the Act, "Definition," should be amended. The language defining an expenditure should be changed to clarify or delete "the services rendered" clause. Also, lobbying should be defined broadly enough to include personal communication and the solicitation of others to communicate with an official to influence legislation or administrative action.¹⁶⁵ Lobbying in the quasi-legislative functions of state agencies such as rule making and rate making should also be included.

Second, the requirements for registration should be focused not merely on whether or not a person lobbies, but on how much is expended in seeking to influence legislation or administrative action. A threshold of \$1,000 seems a reasonable level of expenditures to trigger registration and disclosure.¹⁶⁶ With this threshold, significant lobbying activities would be disclosed while de minimus activities would not. This would mean the current threefold registration requirement would be supplanted by this expenditure minimum which would trigger the mechanism for registration. Also, registration should be required of those whose lobbying efforts are directed toward non-legislators such as: legislative staff, the Governor and his

162. Op. Att'y Gen. S-1319 (Dec. 12, 1977).

163. See note 15 and accompanying text *infra*.

164. S.B. 1605, 80th General Assembly (1978 Sess.).

165. The current Act's definition of lobbying as contained in the "Registration Requirements" of Section 173 does not include all lobbying situations. For example, a wealthy individual could spend many thousands of dollars on a direct or indirect lobbying campaign and never come under the registration requirements.

166. An expenditure level of \$1,000 is the threshold for political committees' disclosure law. ILL. REV. STAT. ch. 46, § 9.1 (1975).

staff, and agency officials. A good working relationship with such persons can be critical to legislation and to agency decisions.

The disclosed expenditures should be broken down into meaningful categories; such as advertising and publications, compensation, and those expenditures made to personally benefit a public official. To avoid undue paper work, expenditures below a certain level could be aggregated rather than reported in detail. An alternative might be a two-tiered disclosure structure. For example, those who expend between one thousand and five thousand dollars would be required to disclose general information. Those who spend more than five thousand would report in detail.

Finally, a clear delineation of responsibilities for administering and enforcing the Act must be drawn. Ideally, an independent commission, appointed by the Governor and subject to the advice and consent of the Senate, would have responsibilities similar to the Public Disclosure Commission of Washington State¹⁶⁷ or the Fair Political Practices Commission and the Franchise Tax Board of California.¹⁶⁸ A commission was originally proposed by H.B. 1820 but deleted in a compromise effort in House committee. House Bill 1871 gives the Secretary of State broader responsibilities including rule-making authority. An independent enforcement agency, with a citizen complaint procedure, is probably one of the most difficult reforms to achieve in Illinois. At the very least, there should be more clarity in this area.

Opponents of these lobbying reforms use several arguments.¹⁶⁹ They argue that detailed reporting would require significant new accounting costs that would hurt small and medium-sized organizations; that the disclosure reports will arrive after public policy issues have been resolved; that no disclosure will be made of bribery or other means of influence, such as referral of clients to a public official's law practice or the giving of campaign contributions through members of an organization; and that this legislation will create a "chilling effect" on the First Amendment rights of petitioners.

Under the Attorney General's recent opinion, a significant increase in reporting detail is now a fact. Just as before the opinion, however, the reporting requirements increase according to the amounts expended by the interest groups. Those groups with the funds to lobby

167. WASH. REV. CODE ANN. § 42.17.370 (West Supp. 1977).

168. CAL. GOV'T CODE §§ 83100, 9000 (West 1976).

169. See generally 10 Ill. Pol. Rep., *If You (Don't) Lobby, Read This* (Nov. 1977). On file with the author, COMMON CAUSE—ILLINOIS.

extensively are also the groups which have the capacity and resources for complete reporting. The two-tiered requirement of registration and disclosure suggested above offers a solution to possible burdensome reportings. Many groups are already maintaining such detailed records to comply with tax laws.¹⁷⁰

It is true that the legislature may have decided an issue before the disclosure reports are due, but most significant legislation needs several sessions to generate enough support to pass. The disclosure reports would be filed, in most cases, before the Governor takes action either to sign or veto.

Although registration and disclosure does provide a valuable tool for investigating possible criminal activity, lobby legislation should not be considered the only tool to reveal improper influence in government.¹⁷¹ Campaign finance disclosure is an important means to measure influence, as is personal financial disclosure. Illinois has statutes providing public access to records of interest group members' contributions to a campaign¹⁷² and the personal finances of a public official.¹⁷³

CONSTITUTIONAL ASPECTS OF LOBBYIST REGULATION

Functionally, a "chilling effect" on petitioning has been hard to discover.¹⁷⁴ Both federal and state courts, however, have held that the freedom of speech, association and petition are not absolute. When justified by a compelling governmental interest, incidental infringe-

170. Those entities and individuals who are taxpayers may deduct direct lobbying expenditures but not indirect lobbying expenditures. Records must be kept. See 26 U.S.C. § 112(e) (1970).

Non-taxpaying, tax deductible organizations also need to keep records of expenditures so that they do not expend more than they are permitted to retain their tax deductible status. See I.R.C. § 501(c) 3.

171. The Washington State Supreme Court stated that State's Initiative 276-lobby disclosure, campaign finance disclosure, and personal finance disclosure—are like a mosaic, "designed to reveal the flow of expenditures incurred in efforts to guide and direct government. The removal of any one element would conceivably leave a loophole area for exploitation by self-serving special interests." *Fritz v. Gorton*, 83 Wash. 2d 275, 310, 517 P.2d 911, 931 (1974).

172. The Illinois campaign finance disclosure act does not, however, require the identification of a contributor's occupation.

173. See ILL. REV. STAT. ch. 127, § 601-101 (1975); Exec. Order No. 3, Gov. James Thompson (Aug. 1977).

174. In Washington State, "many observers feel there is no discrimination either in the number of lobbyists or amount spent." Bone, *Washington's Open Government: A Look at Initiative 276*, *The Nat'l Civ. Rev.* (Oct. 1976). This kind of legislation is also extremely popular with the voters. These facts do not, of course, answer the constitutional issues raised by a "chilling effect" argument.

ments upon these rights may be permissible. The United States Supreme Court said in *Buckley v. Valeo*:¹⁷⁵

[C]ompelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. But . . . there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the free functioning of our institutions is involved."¹⁷⁶

Additionally, federal courts have had the opportunity to review the disclosure statutes dealing with money in politics and have found them to be constitutional.¹⁷⁷ These courts have held that states can "constitutionally require lobbyists to supply information required by the statute—an itemized verified statement . . . [of] all items paid, incurred, or promised in connection with the legislation . . . in order that assemblymen and the public can be made aware of the interests they represent. . . ." ¹⁷⁸ In denying a motion to dismiss in an action for violation of the Federal Regulation of Lobbying Act, the United States District Court for the District of Columbia stated:

The Section requiring registration does not abridge constitutionally guaranteed privileges (freedom of speech, press, assembly and petition) since it leaves everyone free to exercise those rights calling upon him only to say for whom he is speaking, who pays him, how much, and the scope in general of his activity with regard to legislation.¹⁷⁹

The Illinois Supreme Court has held that "the right of the people to assemble . . . to make known their opinions and to petition for a redress of their grievances, does not permit them to congregate at any time or place, or to communicate their viewpoint by whatever method they choose."¹⁸⁰ The state supreme court upheld, for example, the statutory ban on contributions by those who hold liquor licenses to candidates for public office. The court held that this ban "does not restrict the constitutional rights of liquor licenses to a greater degree than is necessary to further the state interests involved."¹⁸¹

175. 424 U.S. 1 (1976).

176. *Id.* at 60-61. See also *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Cox v. Louisiana*, 379 U.S. 559 (1965).

177. See generally *Buckley v. Valeo*, 424 U.S. 1 (1976); *United States v. Harris*, 347 U.S. 162 (1959); *Burroughs & Cannon v. United States*, 290 U.S. 534 (1934).

178. *Moffett v. Killian*, 360 F. Supp. 228, 232 (D. Conn. 1973). See also *Lewis v. Baxley*, 368 F. Supp. 768 (M.D. Ala. 1973).

179. *United States v. Slaughter*, 89 F. Supp. 205, 206 (D.C. 1950).

180. *People v. Barnett*, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1972).

181. *Schiller Park Colonial Inn, Inc. v. Berz*, 63 Ill. 2d 499, 349 N.E.2d 61 (1976).

While there has been no litigation of the 1969 Illinois Act, other state courts have upheld the constitutionality of state lobby disclosure laws.¹⁸² In the *Fritz v. Gorton*¹⁸³ decision, the Washington Supreme Court argued that, "[s]ince its ancestral beginnings as an obscure provision in the Magna Carta, the right to petition has been commonly understood to be a procedure of an open and public nature."¹⁸⁴ This court also held that by narrowing the scope of the original initiative to the influence of money upon governmental processes, the Washington Act avoided unconstitutional restrictions.¹⁸⁵ California's act has been held unconstitutional by a Los Angeles County Superior Court, but the decision dealt with specific provisions of the act rather than broader principles and has since been appealed.¹⁸⁶

CONCLUSION

Lobby disclosure legislation is "plainly within the area of congressional power and is designed to safeguard a vital national interest."¹⁸⁷ Moreover, disclosure is generally the least restrictive means of curbing corruption.¹⁸⁸ Neither the current Illinois Act, nor the proposed amendments go beyond the limits prescribed by the First Amendment to the Federal Constitution nor Article 1, Section 5, of the Illinois Constitution. "Compelled disclosure has the potential for creating a 'chilling effect' but there are overriding governmental interests to outweigh this effect."¹⁸⁹

As an active lobbyist, I defend the profession as an honorable one. It is vital to the functioning of the democratic system. Laws which regulate do not necessarily destroy a right and it seems clear that the right of a free people to petition their government must not be al-

182. See *Campbell v. Commonwealth*, 229 Ky. 264, 17 S.W.2d 227, 228 (1929); *Young Americans for Freedom, Inc. v. Gorton*, 83 Wash. 2d 728, 522 P.2d 189 (1974); *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974).

183. 83 Wash.2d 275, 517 P.2d 911 (1974).

184. *Id.* at 305.

185. *Id.* at 306.

186. See *Institute of Governmental Advocates v. Younger*, Los Angeles, Calif., Super. Ct., No. C-110052 (1977). In this case, the Court held the entire Political Reform Title which contains the lobbyist disclosure provisions unconstitutional because it embraces more than one subject matter. In addition, the prohibition on the making of campaign contributions by lobbyists and the \$10 monthly limit on gifts to officeholders were held to be violations of the equal protection clause.

187. *United States v. Harris*, 347 U.S. 612, 626 (1959).

188. See *Buckley v. Valeo*, 424 U.S. 1, 62 (1976).

189. *Id.* at 60-61.

lowed to degenerate into rule by special interests. There is admittedly, at times, a fine line between proper and improper influence in the decision-making process of government. Good laws, properly interpreted and enforced, are the only hedge against corruption and improper influence.

