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I. INTRODUCTION

Pressure groups or lobbies have traditionally had considerable impact on our form of government.[1] Although legislative, administrative, executive, and even judicial decisions[2] have been extensively influenced by lobbyists' pleas, most scholars agree that this is not necessarily an unhealthy situation. Indeed, they agree that lobbyists serve the useful purpose of informing decision makers of matters about which they have considerable expertise.[3] Nevertheless, lobbyists pose the serious threat that governmental decision makers will override the general public welfare in favor of a special interest group, and secondly, lobbyists can easily create the illusion of strong public sentiment for or against a certain measure when such sentiment does not really exist. In either case, the result is often an overrepresentation of private interest at public expense. Chief Justice Warren in *United States v. Harriss*[4] thus wrote: "full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate . . . 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."[5] Total prohibition of lobbying, however, is neither desireable nor possible, an implicit restraint in any such regulation being found in the first amendment which prohibits Congress from abridging freedom of speech or the right to petition the government for grievances.[6] The Federal Regulation of Lobbying Act[7] (FRLA), originally enacted in 1946, awkwardly and ineffectively attempts to identify the lobbyist in order to apprise legislators and the public of the nature and extent of the lobby interest by requiring him to register and file reports documenting his expenditures. The Act has failed to accomplish its avowed purpose because it does not clearly define lobbying, contains no provision for its enforcement, and has been subjected to an extremely narrow judicial interpretation. The concept of requiring disclosure, however, remains valid and should not be evaluated solely on the basis of a singularly unsuccessful piece of legislation. In fact, rehabilitation of the FRLA is entirely possible, as an examination of the proposals for its amendment, selected provisions from state lobbying laws, and the judicial history of the Act will reveal.

II. HISTORICAL DEVELOPMENT OF LOBBYING

The problems posed by lobbyists and private interest groups was foreseen by James Madison who described their regulation as "the principal task of mod-

1. See K. Schriftgiesser, The Lobbyists 4-5 (1951).
2. Lobbying in the judiciary is commonly accomplished by filing an amicus curiae brief.
3. D. Blaisdell, American Democracy Under Pressure 68 (1957).
4. 347 U.S. 612 (1954).
5. Id. at 625.
6. U.S. Const. amend. I.
7. 2 U.S.C. §§ 261-70 (1964).

ern legislation."[8] In the first half of the nineteenth century, lobbyists were most often members of the legislative body itself, which initially provided them with a forum and at least one vote on behalf of their cause.[9] Later in the same century it became a widespread practice for lobbyists to tender gifts to legislators.[10] They also sought employment as newspapermen, or posed as members of the press to gain access to the floor of the House.[11]

At the turn of the twentieth century, however, the technique of lobbying became more sophisticated. Faithful legislators were rewarded with substantial campaign contributions, and, in the case of their recalcitrant colleagues, the contribution would be given to their opponents.[12] Furthermore, lobbyists often enlisted the assistance of an important institution in the home state or district of a waivering senator or congressman.[13] Thus, a phone call from the local banker or factory president was found to be highly effective.[14]

With the creation in this century of myriad federal regulatory agencies, the lobbyists found an even more malleable array of targets.[15] They have sought to persuade these agencies to take favorable action through the use of pressure, influence, and by providing information and misinformation.[16]

8. The Federalist No. 10, at 65 (E. Bourne ed. 1942) (J. Madison).

9. Daniel Webster, in his famous retainer letter, wrote to banker Nicholas Biddle that "'[i]f it be wished that my relation to the bank should be continued, it may be well to send me the usual retainers.'" Rauh, Conflict of Interest in Congress, in Conference on Conflict of Interest 2 (1961).

10. The chief lobbyist for Samuel Colt distributed expensive pistols to deserving senators and congressmen when important patent legislation was pending. J. Deakin, The Lobbyists 58 (1966).

11. See Kennedy, Congressional Lobbies: A Chronic Problem Re-examined, 45 Geo. L.J. 535, 539-40 (1957). In 1852, James Buchanan complained to President Franklin Pierce: "The host of contractors, speculators, stockjobbers, and lobby members which haunt the halls of Congress, all desirous per fas aut nefas [sic] and on any and every pretext to get their arms into the public treasury are sufficient to alarm every friend of his country." K. Schriftgiesser, supra note 1, at 7 (emphasis deleted).

12. Bagdikian, Safari Into Washington's Netherworld, N.Y. Times, Jan. 19, 1964, § 6 (Magazine), at 12, 73. See D. Blaisdell, supra note 3, at 115.

13. The lobbyists who fought against the wages and hour legislation of the 1920's, for example, relied heavily upon the pressure applied by factory owners in the legislators' home districts. Although they lost the initial battle, they were ultimately victorious when they succeeded in having the appropriated funds diminished to render the legislation ineffective. K. Crawford, The Pressure Boys: The Inside Story of Lobbying in America 306-07 (1939).

14. See D. Blaisdell, supra note 3, at 104. See also J. Deakin, supra note 10, at 197.

15. The Federal Trade Commission, for example, has been found to be highly susceptible to the efforts of the automotive lobbies. E. Cox, R. Fellmeth & J. Schulz, "The Nader Report" on The Federal Trade Commission 78 (1969).

16. One member of The Food and Drug Administration refused to yield to an inordinate amount of pressure generated by the drug lobby to gain approval of the drug Thalidomide. His obstinacy minimized the harm wrought by this drug in the United States. J. Deakin, supra note 10, at 189-90. The labor lobbies have traditionally been successful in delaying the advent of mass transit facilities. F. Cleveland, Congress and Urban Problems 331-37 (1969).

One final tactic to be mentioned is the so-called "grass roots" lobbying which is essentially the generation through mass media of public sentiment for or against a governmental decision. Although its effectiveness was recognized by Abraham Lincoln,[17] it has not become widely implemented until recently—paralleling the use of mass media in the electoral system.[18]

III. Legislative History of Lobbying Statutes

A. *The Federal Government*

In order to protect its members from the onslaught of lobbyists employed as or posing as newspapermen, the House in 1852 provided that no one would be entitled to a seat on the House floor as a newspaperman "who shall be employed as an agent to prosecute any claim pending before Congress."[19] This measure was subsequently modified in 1867 to exclude from the floor former Congressmen employed as lobbyists.[20]

In 1876, the first requirement that lobbyists register was adopted. Registration consisted in identifying the lobbyist to the Clerk of the House and stating his authority.[21] The burden of registration in this instance fell upon the employer who engaged the lobbyist. However, the measure was in effect only for the duration of the 44th Congress and was not reenacted.

Various predatory practices of the lobbyists, such as bribery and large campaign contributions, were severely curtailed by other legislation. In 1853, the first anti-bribery statute prohibited anyone from offering something of value to a member of Congress with the intent to influence his vote or decision.[22] The Federal Corrupt Practices Act of 1925[23] required a legislator to divulge any campaign contributions in excess of $100, as well as the names and addresses of the contributors.[24] This Act is important in two respects. First, it requires disclosure, and secondly, it is the predecessor in form of the present FRLA.[25]

17. "Public sentiment is everything. With public sentiment nothing can fail. Without it nothing can succeed. Consequently, he who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible." A. Lincoln, in L. Milbrath, The Washington Lobbyists 250 (1963) (footnote omitted).

18. This strategy was successfully employed to defeat President Kennedy's proposal for withholding income tax on interest earned from savings accounts. The efforts resorted to included the suggestion that not just the interest was to be taxed but the principle as well. J. Deakin, supra note 10, at 194-98.

19. See Cong. Globe, 32d Cong., 2d Sess. 52 (1852).

20. See 5 A. Hinds, Precedents of the House of Representatives of the United States § 7283 (1907).

21. See 4 Cong. Rec. 3230 (1876).

22. Act of Feb. 26, 1853, ch. 81, § 6, 10 Stat. 171.

23. Ch. 368, tit. III, 43 Stat. 1070 (codified in scattered sections of 2, 18 U.S.C.).

24. 2 U.S.C. § 244(a)(1) (1964).

25. Futor, An Analysis of The Federal Lobbying Act, 10 Fed. Bar J. 366, 374 (1949). In United States v. Burroughs, 290 U.S. 534 (1934) the constitutionality of the Corrupt Practices Act was upheld. The Court stated that "Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." 290 U.S. at 545. See also Ex parte Yarbrough, 110 U.S. 651 (1884).

Since the Corrupt Practices Act places the burden of disclosure upon the legislators whose compliance is circumspect, it has been reasonably effective in eliciting disclosure, although other of its provisions[26] have been ineffective.

B. *The States*

Early efforts to regulate lobbying by the states were largely directed at what was essentially deemed to be corruption. In some cases the problems were considered to be of such magnitude that lobbying provisions were actually incorporated into state constitutions themselves. New Hampshire, for example, in 1792 prohibited legislators from accepting fees for the advocacy of any cause pending before the legislature.[27] Alabama in 1873 statutorily established the offense of "corrupt solicitation," but failed to provide a definition of the offense.[28] In 1877, Georgia became the first state to employ the term "lobbying." Paralleling the obscurity of Alabama, the relevant section of Georgia's constitution merely parroted that "lobbying is declared to be a crime."[29] The General Assembly, however, in the same year defined lobbying as "any personal solicitation of a member of the General Assembly, during a session thereof, by private interview, or letter, or message, or other means, not addressed solely to the judgment" to favor or oppose any legislation.[30] California in 1879 enacted the following provision: "Any person who seeks to influence the vote of a member of the legislature by bribery, promise of reward, intimidation, or any other dishonest means shall be guilty of lobbying, which is hereby declared a felony."[31]

The problem with these provisions is that they were strictly penal in nature. Furthermore, these statutes either failed to include the majority of lobbying practices, since they were primarily limited to bribery and graft, or included all types of lobbying and were therefore patently unconstitutional as an infringement on the constitutional right to petition the government.[32]

Massachusetts in 1890 enacted the first statute which required disclosure.[33] It required that anyone seeking the passage or defeat of pending legislation in the furtherance of private pecuniary interest register with the sergeant-at-arms of the legislature, identify his purpose, and submit the names of those he represented.[34] A year later the reference to pecuniary interest was abandoned and the law became applicable to any legislation.[35] A large number of states followed

26. The Corrupt Practices Act also forbids corporate contributions to politicians' campaign funds. This provision has not been widely observed. Lambert, Corporate Political Spending and Campaign Finance, 40 N.Y.U.L. Rev. 1033, 1041 (1965).

27. N.H. Const. § 53:5 (1909). Vermont and Rhode Island had similar provisions. E. Lane, Lobbying and The Law 26 (1964).

28. Ala. Const. at 1875, art. 4, § 40.

29. Ga. Const. art. I, § 2-205 (1945).

30. Ga. Code Ann. § 47-1001 (1965).

31. Cal. Const. art. IV, § 35 (1879).

32. See text accompanying notes 46-50 infra.

33. Acts and Resolves of Massachusetts, ch. 456, §§ 1-2 (1890).

34. Id.

35. The present Massachusetts law is identical. Mass. Ann. Laws ch. 3, §§ 39-50 (1966). See E. Lane, supra note 27, at 33.

one of these two Massachusetts versions. At present thirty states have statutes requiring various types of disclosure by lobbyists.[36]

The multitude of state registration laws has had minimum impact. "They operate, however, with little administrative support, and with few discernible consequences. . . . Whatever other values may accrue from the operation of the disclosure laws, they have not yet drifted into the mainstream of community opinion, nor have they been pushed."[37]

IV. The Federal Regulation of Lobbying Act

In 1935, Senator Hugo Black introduced a bill requiring lobbyists to register with the Clerk of the House and to disclose the source and amount of their expenditures.[38] This measure was ultimately defeated, but it was the precursor of the FRLA of 1946.[39]

A. *Scope*

The primary concept of the present Act is that of disclosure by purporting to regulate the solicitation or receipt of money, the "principal purpose" of which is to accomplish any one of the following purposes: "(a) The passage or defeat of any legislation by the Congress of the United States. (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."[40]

Lobbyists covered by the Act are required to register with both the Clerk of the House and the Secretary of the Senate.[41] They are also required to furnish in writing the names and addresses of themselves, their employers, and of anyone in whose interest they appear.[42] In addition, at the time of such registration, they must set forth the duration of employment, salary, and those foreseeable expenses for which they will be reimbursed.[43] Those who register have a duty to file reports on a quarterly basis with the same officials with whom they initially registered.[44] Included in their reports must be an accounting of all money received, the explicit purposes of all expenditures, and the legislation supported or opposed.[45]

B. *Constitutional and Judicial Limitations*

The primary limitation on any measure designed to regulate attempts to influence public officials is the first amendment which prohibits Congress from

36. E.g., Cal. Gov't Code §§ 9900-11 (West 1966), as amended, §§ 9906, 9909 (West Supp. 1969); Mich. Comp. Laws Ann. §§ 4.401-.410 (1967); N.Y. Legis. Law § 66 (1952); Ohio Rev. Code Ann. §§ 101.71-.99 (Page 1969); Wis. Stat. Ann. §§ 13.60-.75 (Supp. 1969).

37. Lane, supra note 27, at 178.

38. S. 2512, 74th Cong., 1st Sess. (1935).

39. Compare the terminology and definitions of S. 2512 and 2 U.S.C. §§ 261-70 (1964).

40. 2 U.S.C. § 266 (1964).

41. Id. § 267.

42. Id.

43. Id.

44. Id.

45. Id.

abridging the right of citizens to petition the government for grievances.[46] Not only would the first amendment prohibit legislation banning such activity, but it would also forbid legislation that is so vague or overbroad that it would result in a "chilling effect" on the exercise of this right.[47]

One avenue of approach in legitimitizing a disclosure requirement is to balance the interests of lobbyists against those of the public in preserving the legislative process. The Supreme Court has been willing to accept such a formula where a valid purpose is being pursued, and the infringement on the protected freedom is slight.[48] In *United States v. Slaughter*,[49] the court specifically stated that the section of the Act requiring registration and reporting "does not abridge constitutionally guaranteed privileges (freedom of speech, press, petition, etc.) 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. This, the Congress should and, in the court's opinion, does have the right to demand."[50]

The most severe limitations placed on the Act, nevertheless, have been judicially imposed. In *United States v. U.S. Savings & Loan League*,[51] the defendants were indicted for failure to make their quarterly reports. They were *not* indicted for failure to register. The Court pointed out that since the duty to report arises only upon registration, no offense was charged since the defendants had not registered.[52]

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46. In United States v. Cruikshank, 92 U.S. 542 (1876), the Court stated: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." Id. at 552.

47. The concept of "chilling effect" has been most often applied in the area of criminal procedure where there existed the possibility that a penalty would result from the exercise of a constitutional right. In United States v. Jackson, 390 U.S. 570 (1968), the Supreme Court held the death penalty provision of the Federal Kidnapping Act, 18 U.S.C. § 1201(a) (1964), to be unconstitutional. According to that provision, a jury alone could inflict the death penalty. The defendant, however, could avoid the possibility of its infliction by waiving his right to a trial by jury. The Court found this to be "an impermissible burden upon the exercise of a constitutional right." 390 U.S. at 572. See also Seadlund v. United States, 97 F.2d 742 (7th Cir. 1938). In another instance, where public officials were required to waive their right not to testify before a grand jury under threat of discharge, the Court held that "the mandate of the great privilege against self-incrimination does not tolerate the attempt, regardless of its ultimate effectiveness, to coerce a waiver of the immunity it confers on penalty of the loss of employment." Gardner v. Broderick, 392 U.S. 273, 279 (1968). See also Garrity v. New Jersey, 385 U.S. 493 (1967); Spevack v. Klein, 385 U.S. 511 (1967).

48. Wilkinson v. United States, 365 U.S. 399 (1961); Barenblatt v. United States, 360 U.S. 109 (1959). But cf. Shelton v. Tucker, 364 U.S. 479 (1960), where interference with associational freedom was held to be beyond legitimate state interest.

49. 89 F. Supp. 205 (D.D.C. 1950).

50. Id. at 206.

51. 9 F.R.D. 450 (D.D.C. 1949).

52. Id. at 453.

In *United States v. Rumely*,[53] the Supreme Court narrowly defined " 'lobbying activities' " as " 'representations made directly to the Congress, its members, or its committees' "[54] and furthermore, the Court stated that this did not include "attempts 'to saturate the thinking of the community.' "[55] The effect of this definition was to exclude "grass roots" lobbies from the activities regulated by the Act. In *National Association of Manufacturers v. McGrath*,[56] furthermore, a federal district court held that "[t]he clause, 'to influence, directly or indirectly, the passage or defeat of any legislation by the Congress' is manifestly too indefinite and vague to constitute an ascertainable standard of guilt."[57] It likewise held the term "principal purpose" to be indefinite. The court found that the provision prohibiting one convicted of violating the Act from lobbying for three years also unconstitutional. "A person convicted of a crime may not for that reason be stripped of his constitutional privileges."[58] Nevertheless, the judgment was vacated by the Supreme Court as moot.[59]

The most significant decision interpreting the FRLA was *United States v. Harriss*,[60] which involved prosecutions for failure to report solicitation and receipt of contributions. In addition, it involved prosecutions for failure to report expenditures for both direct and indirect "grass roots" communication with members of Congress. Contrary to the reasoning of *National Association of Manufacturers*, the Supreme Court held that the same sections held in that case to be unconstitutional were not so vague as to violate due process or abridge first amendment freedoms.[61] The Court held, in addition, that a person need only report his expenditures if he has actually solicited or received contributions.[62] Thus, one who spends his own money is not required to report. Furthermore, it reapplied its definition of lobbying set forth in *Rumely* and thus ex-

53. 345 U.S. 41 (1953) (power of Congress to investigate lobbying activities).

54. Id. at 47 (citations omitted).

55. Id.

56. 103 F. Supp. 510 (D.D.C.), vacated as moot, 344 U.S. 804 (1952).

57. Id. at 514.

58. Id.

59. National Ass'n of Mfrs. v. McGrath, 344 U.S. 804 (1952).

60. 347 U.S. 612 (1954).

61. By restricting the coverage of the Act to direct lobbying activities, the Court concluded that the Act was not subject to attack on the grounds of vagueness. Id. at 620-24. The Court went on to compare this statute with others whose validity it had upheld. See Boyce Motor Lines, Inc. v. United States, 342 U.S. 337 (1952); Dennis v. United States, 341 U.S. 494 (1951). In view of later decisions concerning first amendment freedoms in similar situations, such as Communist Party v. SACB, 367 U.S. 1 (1961), Konigsberg v. State Bar, 366 U.S. 36 (1961), and In re Sawyer, 360 U.S. 622 (1959), the decision in the principal case has not been eroded.

62. 347 U.S. at 619. "[T]here are three prerequisites to coverage . . . (1) the 'person' must have solicited, collected, or received contributions; (2) one of the main purposes of such 'person,' or one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress; (3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress." Id. at 623.

cluded from coverage indirect or "grass roots" lobbying—an attempt to generate a public sentiment for or against certain legislation.[63] It did not hold however, that such activities could not be regulated, but only that the present law did not include them.[64]

C. *Defects*

Nowhere in the Act is there a provision specifically charging any governmental agency with its enforcement or administration. The Clerk of the House is charged with the ministerial duty of registering, compiling the information, and causing it to be published quarterly.[65] But if a registrant files false information or ignores the requirement altogether, the Clerk has no power to request information or initiate prosecution. The Department of Justice had undertaken the enforcement of the Act, but abandoned it in 1953.[66] Only six cases have been brought for violations of the Act since its enactment,[67] and only one conviction has been obtained, and in that case the defendants pleaded guilty.[68] The result has been an almost total disregard of the Act. In the eighteen years following the passage of the Act, in only one year did the total amount reportedly spent by all lobbyists surpass ten million dollars.[69] Since lobbying has been conservatively estimated to be a billion dollar business,[70] it can be easily concluded that only a fraction of total lobbying expenditures are reported.

Federal regulatory agencies have been subjected to intense lobbying pressures.[71] Those who lobby before them are not covered by the Act, however, since only those who seek to secure the passage or defeat of *legislation* are obliged to register and disclose expenditures.[72] Failure to include those who seek to influence their decisions is an important defect in the FRLA Act. Another problem with the Act is that its terms are so vague and ambiguous that it is not readily ascertainable who must comply with its requirements. Since the "principal

63. Id. at 620-21.

64. Id.

65. 2 U.S.C. § 267(b) (1964).

66. J. Deakin, supra note 10, at 239.

67. In addition to the cases discussed previously, see note 68 infra.

68. United States v. Neff, Crim. No. 768-56 (D.D.C. 1956). Defendants gave a substantial contribution to the campaign of a U.S. Senator. They pleaded guilty to a violation of the Act for failing to register as lobbyists. Each was fined and given a suspended sentence.

69. See tables set forth in J. Deakin, supra note 10, at 240; H. Mahood, Pressure Groups in American Politics 299 (1967). Deakin concludes that while the cost of living rose 20% between 1950 and 1960, the total amount spent to influence Congress supposedly decreased by six and one-half million dollars.

70. See, e.g., K. Schriftgiesser, supra note 1, at 146-68.

71. See text accompanying notes 15 & 16 supra.

72. 2 U.S.C. § 266 (1964). There are two laws requiring disclosure of agency lobbying. The Public Utility Holding Company Act of 1935 makes it illegal for any person employed by a registered holding company to promote or oppose any related matter before Congress, the SEC, or the FPC, unless that person registers with the SEC and furnishes the particular nature of his employment. 15 U.S.C. § 791(i) (1964). The Merchant Marine Act of 1936 has a similar requirement. 46 U.S.C. § 1225 (1964).

purpose" for which the lobbyists paid must be to influence or attempt to influence the passage or defeat of legislation, if the lobbyist is an attorney on retainer or a corporate executive, he can easily avoid compliance.[73]

There is also the question of who should file the financial data required by the Act—the individual lobbyist, the employing organization, or both. The Act is not clear on this point. Also, as a result of the *Harriss* decision, those who spend money for lobbying purposes but do not solicit or receive money for such purposes are not required to register.[74] Finally, the publicity mandated by the Act is too limited—quarterly publication in the Congressional Record is not sufficient to accomplish the dissemination necessary to make disclosure truly effective.

V. Proposed Changes In The Lobbying Act

A. *The Lessons of State Lobbying Laws*

Various state statutes provide a plethora of possible definitions of lobbying. Alabama, for example, defines lobbying as a form of corruption:

> Any person who for, or without a fee or reward of any kind, gift, gratuity, or thing of value, or the promise or hope thereof, corruptly solicits, persuades, or influences or attempts to influence any senator or representative in the legislature of this state to cast his vote . . . is guilty of a felony. . . .[75]

The recurring theme of such definitions is corrupt solicitation of the individual legislator. It is to be emphasized, however, that this type of definition is only of retrospective interest, since this type of law relates to bribery and not lobbying.

Another definition shared by a few states is exemplified by Washington, whose statute makes it a criminal offense to solicit money claiming to be capable of and willing to secure governmental action.[76] Thus, it is the claim of influence in this case which is called "lobbying." This definition is equally undesirable, however, because most lobbyists merely set out to influence governmental action without making such representations.

New York and several other states define lobbying as direct or indirect promotion or opposition of legislation.[77] This definition is much closer to a workable one because it is not penal in nature, does not refer to illegal or unethical activity, and would seemingly cover the "grass roots lobbying" which was held to be outside the purview of the FRLA.[78] The difficulty with such a definition is that it would presumably include the concerned citizen who merely writes his Congressman, while excluding agency lobbies.

A total of thirty states have enacted registration requirements,[79] in most

73. See J. Deakin, supra note 10, at 20-24.

74. See note 62 supra.

75. Ala. Code tit. 14, § 352 (1958).

76. Wash. Rev. Code § 9.18.110 (1956).

77. N.Y. Legis. Laws § 66 (1952).

78. See note 62 supra.

79. See note 36 supra.

cases, with the secretary of state,[80] or with the attorney general.[81] Since the latter branch of the state government is also concerned with criminal matters, an undue stigma to the profession and practice of lobbying is thereby attached.

Publication requirements in the states nevertheless do not provide for prompt and adequate dissemination of the information—none does any more than require publication in the appropriate legislative journal. The goal of publicity is twofold: to put the decision makers on guard, and to serve the public's right to know the ingredients of the legislative process. The cooperation of the free press is indispensable in the second instance, but the information must be tabulated frequently and made available to the press.

B. *Proposals for Amendment of the FRLA*

1. Past Efforts

Two years after the enactment of the federal Act, a proposal was presented for its amendment which would have required persons and organizations registered as lobbyists to file weekly reports with the Clerk of the House of Representatives regarding the amount of money expended and subject matter discussed.[82] Weekly reports would be too tedious and cumbersome, however, and the states' prompt registration and reporting systems seem to be preferable.

In the same year another measure was introduced which would have exempted individuals from coverage by limiting the applicability of the Act to organizations.[83] Apparently designed to facilitate communication by individuals to their legislators, this measure contained a gaping loophole since it would have permitted corporate representatives to avoid registration. Nevertheless another provision in this same bill sought to apply the reporting and registering requirements to "influencing legislation" which was defined as "influencing, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."[84] The definition is sufficiently broad to include "grass roots lobbying," but would not include regulatory agency lobbyists.

The problem of lobbying before federal agencies was the target of a measure introduced in the House in 1953.[85] This measure would have required lobbyists representing groups regulated by the large regulatory agencies to file with the respective agencies complete disclosure of expenditures and contributions made to influence federal legislation. The individual agencies, however, are clearly not equipped to enforce and administer such a law.

The most comprehensive proposal for reform, dealing with the problems of enforcement, administration, definition, and information required to be filed, was introduced in the Senate in 1957.[86] It would have imposed criminal sanc-

80. E.g., Ill. Ann. Stat. ch. 63, §§ 171-82 (Smith-Hurd Supp. 1969).

81. E.g., Ky. Rev. Stat. Ann. § 6.290 (1962).

82. S.J. Res. 237, 80th Cong., 2d Sess. (1949).

83. H.R. 6807, 80th Cong., 2d Sess. § 1 (1948).

84. Id. § 5.

85. H.R. 6513, 83d Cong., 1st Sess. (1953).

86. S. 2191, 85th Cong., 1st Sess. § 302(h) (1967). For a detailed discussion of this proposal see Note, 26 Geo. Wash. L. Rev. 391 (1958).

tions for all violations arising out of direct lobbying activities. In addition, it would have made the Comptroller General of the United States responsible for administering the Act. It required persons who were deemed "legislative agents" to file notices of representation, identifying themselves and their principals, and to state the terms of their representation. A legislative agent was defined as "any person who, for any consideration, is employed or retained . . . to influence legislation, in person or through any other person, by means of direct communication [to Congress]. . . ."[87] This definition would seem to exclude indirect or "grass roots" lobbying, however, in the ensuing paragraph, it was proposed that any person who requested or procured another to communicate directly with Congress to influence legislation, if the request is either made in writing and addressed to one thousand or more persons, or if the lobbyists pay the expense of the communication and more than twenty-five persons are solicited, must file a report setting forth receipts and expenditures.[88] This would have included letter-writing campaigns, but not the subtle techniques whereby the decision to communicate with his congressman is left to the individual. A three hundred dollar quarterly minimum expenditure was also proposed which would have eliminated the "de minimis" problem present in the law today.[89] It can only be deduced that the concerted efforts of the lobby groups caused the demise of the measure which would have given the original act a modicum of effectiveness.

In 1962 an interesting lobbying measure was introduced which would have prohibited professional organizations from using compulsory dues and fees for lobbying purposes.[90] An equal protection problem, however, is present in a law which prohibits some groups from lobbying while allowing others to do so.[91]

2. Current Proposals

More than twenty proposals concerning lobbying have been submitted to the ninety-first Congress. A common provision in most, and certainly a tribute to the perspicacity of their sponsors, deals with administration and enforcement of the existing Act. Two administrators are suggested: the Comptroller General of the United States,[92] who was also suggested in the 1957 proposal,[93] or the Attorney General.[94] Since the Comptroller is essentially concerned with finan-

87. S. 2191, 85th Cong., 1st Sess. § 302(g) (1957).

88. Id. § 306(d).

89. In the present law, the amount upon the expenditure of which the obligation arises is $10. 2 U.S.C. § 264 (1964).

90. H.R. 11884, 87th Cong., 2d Sess. (1962).

91. Although the equal protection clause of the fourteenth amendment is a curb only upon the regulatory powers of the states, and not the federal government, it has been held that the fifth amendment's due process clause implicitly contains the sanction afforded against state regulation found in the equal protection clause. See Bolling v. Sharpe, 347 U.S. 497 (1954).

92. E.g., H.R. 11475, 91st Cong., 1st Sess. § 501 (1969).

93. See note 86 supra.

94. E.g., H.R. 2713, 91st Cong., 1st Sess. (1969).

cial matters, he would be equipped to deal with the financial aspects of administration. Furthermore, requiring lobbyists to register with the Attorney General would attach undue criminal implication to a constitutionally protected activity. As proponents of such measures have suggested, the Comptroller can easily refer violations to the Attorney General.[95]

Another popular provision in the proposed bills is to either replace or redefine the ambiguous term "principal purpose" with the term "substantial purpose," thus bringing more activities and expenditures within the purview of the law.[96] One commentator has suggested, however, that a broad definition is necessary because of the varied and ever-changing lobbying techniques. His proposed definition that "lobbying means men acting to influence governmental decisions"[97] is preferable to the substantial or principal purpose tests which do not constitute a definition. This definition would include the agency as well as the legislative lobbies and eliminate loopholes present in the principal purpose test.[98] A minimum amount spent could be attached to such a definition to effectively exclude the concerned taxpayer who communicates individually with his congressman. Additional exemptions could be made at the direction of the administering agency.

As to publicity given to the facts reported under the Act, several bills contain a cursory reference. The common phrase used in these instances is that the Comptroller General shall "make available for public inspection all reports and statements filed pursuant to this title."[99] Another and more acceptable phrase found in one bill requires him "to retain . . . and . . . make . . . such reports and statements, . . . available as public records open to public inspection"[100] which would at least make some affirmative action necessary.

As to the information which must be recorded under the Act, several changes have been proposed. One bill proposed to raise the maximum expenditure allowable, without incurring the obligation of retaining receipts or particulars, from the present $10 to $50.[101] This measure is unclear, however, as to what information must be disclosed. For disclosure to be effective, at least the total amount spent quarterly, and specific measures or decisions sought to be influenced, should be reported.

Concerning the other points mentioned earlier, the present proposals are silent. No change is proposed as to the time within which one must register. The two week state requirement should be adopted. No clarification is offered as to whether principal or agent should file the report of expenditures and

95. H.R. 6278, 91st Cong., 1st Sess. § 505 (1969) [hereinafter cited as H.R. 6278]; H.R. 10426, 91st Cong., 1st Sess. § 506 (1969) [hereinafter cited as H.R. 10426].

96. H.R. 6278; H.R. 11475; H.R. 10426 (all three bills propose this exemption at § 504(2)).

97. E. Lane, supra note 27, at 5.

98. See note 73 supra.

99. H.R. 6278 § 506(b).

100. H.R. 4242, 91st Cong., 1st Sess. § 7(b)(6) (1969).

101. H.R. 2188, tit. I, 91st Cong., 1st Sess. § 104(c) (1969).

receipts. Again, the states' practice of requiring both parties to file seems desirable.

VI. Conclusion

The interest of the public and private sectors obviously do not often coincide. The problem with lobbying is that the private interests are well spoken for and have more incentive than the occasional "public lobbyist." With the arrival of new and complex problems such as water and air pollution, food additives and wonder drugs, it is increasingly important that this imbalance be rectified. The lobbyists perform a service for the legislators and their constituents, and they have a constitutional right to do so. The public, however, must have the opportunity to evaluate their government, and to do so they must be informed about the different ingredients which are part of the legislative process. A disclosure requirement does not infringe on the rights of the lobbyist, and effectively vindicates the right of the public and the legislators. If the Act is to be effectively implemented, the legislator as well as the public must be made fully aware of the sources of the pressures to which he is constantly subjected. Not only will disclosure aid the legislator in his decision making function, but the public will likewise be afforded the means to decide whether its officials respond to the public or private needs.

The present law is demonstratively inadequate and should be amended to include a broad definition of lobbying. This should include "anyone seeking to influence governmental decisions." But a minimum expenditure should be attached to such a definition to exclude the occasional and non-occupational communication of the concerned citizen. The Act should be administered by the Comptroller General and enforced by the Attorney General. Provisions should be made to give adequate publicity to the information compiled under the Act. Only through such reforms can the present law be made effective and the rights of those who make governmental decisions and of those affected by them be implemented.