New Mexico
COMMON CAUSE
Holding Power Accountable

Lobbying in the Land of Enchantment: Special Interests and their Hired Guns
A "Connect the Dots" Report Published by Common Cause New Mexico

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Recommendations

- **Transparency**
- **Website improvement**
- **Enforcement**
- **Limits on ex-legislators and relatives lobbying**
- **Lobbyists and Fundraising**

Our recommendations fall into two categories—increased transparency and the enactment of laws to remove the disproportionate influence of selected lobbyists.

Transparency: Although New Mexico's Lobbyist Regulation Act—and the more recent requirement that lobbyist reports be filed online—provides for a degree of transparency, there are improvements that could shine more sunlight on the activities and expenditures of lobbyists in New Mexico and assure accountability for lobbyists who have such easy access to policy makers.

The Secretary of State's office is currently the agency which collects and posts lobbyist reports three times a year on its web site. The reports are often spotty, with detailed information about the purpose and the target of expenditures missing. The current law requires expenses to be itemized only if they are over $75 per legislator. Most reports combine expenditures and indicate the purpose as "goodwill" or "for meals" for "various" legislators. Often, no purpose or issue is identified. We never saw a specific bill mentioned by number in any of the reports. Since the most important feature of lobbying is the *contact* between the lobbyist and the legislator, we find the current system inadequate as it does not shed enough light on the exact contacts and purposes of lobbyists as they pursue their clients' interests.

Lobbyists sometimes list each other as clients, further confusing to the public as to whom they are lobbying for. A clear identification of who is lobbying for whom is necessary for legislators, staff, and members of the public. Immediate registration of new lobbyists hired during the heat of a legislative campaign should be enforced. Photos of lobbyists could be posted on the SOS website or lobbyist name badges, listing their clients, required during the session. Rep. Jeff Steinborn suggested this idea in a bill in 2009, but it was not well-received by lobbyists. Badges, however, are required in 13 states, and are automatically provided (though not required) by others.

Thirty-two other states require that lobbyists disclose the amount that they are paid to lobby the legislature. In New Mexico, this information is not public. It would require lobbyists who have many clients to disclose contract terms for each one—something that might be viewed as an infringement on proprietary information, and would certainly increase competition among lobbyists. For public entities, however, this would be entirely justified. Several years ago, Think New Mexico recommended against public agencies hiring private lobbyists. ALEC, the conservative think tank, has a model bill which would ban public agencies from lobbying at all on the theory that the lobbying only serves to increase the size and cost of government. We do not recommend either of these approaches.

But we do recommend that votes in all legislative committees on bills tabled or held in committee should be public information, and not hidden from view. The absence of full committee reports makes connecting the dots between the financial interests and legislators' votes difficult. The legislature should make this easy, not difficult, for their public.

Website improvement: A public disclosure database is only as good as its usability—and the Secretary of State's Campaign Finance Information System's (CFIS) electronic records system is in need of improvement. Our research into lobbyist expenditures and contributions has been difficult. Records older than two years have been difficult to obtain, or in obsolete formats, since electronic filing was not required prior to 2011. Detecting trends has been difficult for this reason. In fact, the law does not require the Secretary of State—or the lobbyists themselves—to maintain records older than two years—a period that should be extended for historical and research purposes. In addition, basic website functions such as the "find" function do not work well, and the speed of the system is very slow.

The system is not compatible with all office and personal computers' operating systems, a situation that creates inconvenience for both filers of lobbying reports and users of the information. Users of lobbying reports, such as journalists and researchers, should not have to re-key the information they download from these public records in order to use it. In addition, Secretary of State employees should not have to make custom reports for various users. In effect, the failure to keep an up-to-date CFIS system imposes unnecessary economic burdens on interested citizens who should not have to bear those costs. If the commitment to transparency is real, then standardized, user-friendly software at the level already in use at other government agencies should be available for the lobbyist and candidate reports.

Enforcement: To allow for some measure of lobbyist accountability, the Secretary of State should ensure compliance with existing law through more spot checks or audits of lobbyist registration and reports. Currently, Secretary of State employees rely on complaints (typically made by legislators or the media) to find out whether a lobbyist has not registered for each client, a haphazard and uncertain process. The Secretary of State does not have the funding to investigate thoroughly, or the reports to cross check lobbyist client and lobbyist reports.

If they are discovered, knowing and willful violations of the Lobbyist Regulation Act can carry fines of $50 per day up to a maximum of $5,000 and revocation of the lobbyist's registration. Both the Secretary of State and the Attorney General are charged with enforcement of the Act, with the Secretary of State to regularly educate lobbyists and the Attorney General issuing advisory opinions when requested in writing. To date, there have been three opinions issued from the Attorney General's office, clarifying rules for lobbyists.

The Secretary of State has the power to apply fines. However, fines are rare, with only one given in the last half dozen years to the Hispanic Cultural Center. The Center did not register to lobby, so they were fined $5,000, required to come into compliance with registration requirements and to register for the five years they had been actively lobbying.

According to their office, the Secretary of State relies on the lobbyists themselves to accurately describe what their expenses were occurred for, as well as to accurately report the expenditure and beneficiary – both required fields on the reporting form. When asked how much additional funding would be required to upgrade the web site and enforce the lobbyist registration process more vigorously, the Secretary of State's office estimated the cost to be $100,000.

How might we pay for more adequate enforcement? One suggestion is increasing the registration fee. The $25 registration fee currently charged lobbyists for each client is lower than in other states. Increasing the fees could garner more funds for enforcement and approval of basic administration of the program.

Limits on ex-legislators and relatives lobbying: Approximately 13 former senators and 13 former representatives currently lobby the legislature, with the number increasing every session. These lobbyists are

well-known to their former colleagues, and their experience and knowledge of the process makes them more influential than the average constituent or citizen lobbyist. Acknowledging the advantages provided by prior service in the legislature, the federal government, and 28 other states provide for a hiatus or a pause between when a senator or representative leaves the legislature and when he or she can lobby former colleagues. In some states the cooling off period is two years, in others it is one. This proposal has come before the New Mexico Senate at least three times but it has never made it out of the Senate Rules Committee. It should be enacted.

In New Mexico, the practice of lobbying by close relatives of legislators is common. Although there are prohibitions on the hiring of relatives as staff members, here there is no problem with spouses, brothers, sons, daughters and other relatives getting paid to lobby their close relatives. The unfair advantage demeans the system and puts legislators themselves in a conflicted position. It should be adjusted.

Lobbyists and Fundraising: As our research has indicated, lobbyists are a major source of campaign cash for legislators. Often lobbyists deliver checks—large and small—from their clients to appreciative candidates. In a relatively new (2005) "bundling" requirement, they must indicate on their reports the source of the funds that they bundle together to give to candidates if they total $500 or more. However, lobbyists are not required to report the many fundraisers they arrange for candidates, inviting other lobbyists to contribute and attend. The "credit" that they receive from the successful candidates is even more opaque, but it is there, fostering the public's perception that votes are linked to contributions from special interests and lobbyists with an inside track.

The New Mexico Legislature has acknowledged the connection by prohibiting lobbyists from acting as campaign chairpersons. State law also prohibits fundraising by legislators during each regular and special legislative session, and bans contributions to the governor until the end of the period that the governor has to veto or sign bills passed by the legislature.

Two other state legislatures, in Connecticut and North Carolina, banned all contributions from lobbyists. The laws, which combined a ban on lobbyist contributions with contractor contributions, were challenged in court on the basis of the First Amendment with varied results. Legal scholars believe that limitations, rather than outright bans, are more likely to withstand scrutiny.

One control measure, recommended by a task force convened by the American Bar Association's Section of Administrative Law and Regulator Practice, concerns lobbyists as event hosts and fundraisers for federal candidates. The task force proposed that an individual lobbyist should be prohibited from conducting certain fundraising activities to support the campaign of any member of or candidate for Congress, with whom that lobbyist has made a "lobbying contact" within the past two years. Conversely an individual lobbyist would be prohibited from making a "lobbying contact" with a member of Congress (including the member's staff), or a candidate for Congress, if that lobbyist has conducted any covered fundraising activity for that person within the past two years. For this purpose, covered "fundraising" activity would include hosting or organizing fundraising events, serving on a campaign fundraising committee, sending communications (phone, print, email) soliciting contributions for the member's campaign, or participating in the "bundling" of campaign contributions for the member's campaign. The same requirement could be adapted for state campaigns.

Another proposal, made by the same group, is to cap the cumulative amount of any one lobbyist's contributions in the same way that an individual's contributions are capped at the federal level. At present the amounts are capped at $45,600 per election cycle for contributions to all candidates and $69,900 for contributions to all PACs and parties.[i] The cap on contributions would prevent disproportionate political influence that could come from a lobbyist contributing up to the legal limit for each candidate and his or her political PAC, which individual citizens rarely do. The task force suggests that the cap be half of the amounts allowed to other citizens by the federal statutory framework per election cycle.

Fundraising for an organization that intends to spend independently, rather than to funnel the funds to the

member's own campaign, is not covered by this recommendation (due to First Amendment concerns), but consultation by the lobbyist with the legislator or the legislator's or campaign staff about such fundraising should trigger a ban on lobbying the legislator.

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[i] *See* Trevor Potter & Matthew T. Sanderson, *Federal Campaign-Finance Law: A Primer for the Lobbyist,* Chapter 21, THE LOBBYING MANUAL, *supra* note 1, at 431-32. 93 *Id.* At 432. 94 For a survey of cases in this area, which have been largely, though not entirely, supportive of state-law restrictions on lobbyists' participation in campaign finance, *see* Joseph E. Sandler, *Lobbyists and Election Law: The New Challenge,* Chapter 36, THE LOBBYING MANUAL, *supra* note 1, at 751, 756-57 (2009).