



Lobbying in the Land of Enchantment: Special Interests and their Hired Guns



*A "Connect the Dots" Report
Published by Common Cause New Mexico*

October 2013

Table of Contents

I. Introduction and Background	page 3
II. Lobbyists and their Toolboxes	page 5
<i>Who are they and whom do they represent?</i>	
<i>Out-of-Staters and Super Lobbyists</i>	
<i>The Revolving Door and Blood Ties</i>	
<i>The Lobbyist's Toolbox: The Expense Account and the Campaign Connection</i>	
III. Connecting the Dots	page 12
<i>What do the lobbyists get for their investment?</i>	
IV. The Influence of the New Mexico Oil and Gas Lobby	page 14
<i>Campaign Contributions made by the Oil and Gas Industry</i>	
<i>Legislative Contributions</i>	
<i>The Oil and Gas Lobbying Corps</i>	
<i>Oil Lobbyists Use a Variety of Tools to Make Friends and Influence Votes</i>	
<i>Do the Industry's Contributions and Expenditures Get Results?</i>	
V. The Agricultural Industry's Influence & Senate Bill 18	page 27
<i>A Confusing Process, but a Creative Way to Kill a Bill</i>	
<i>The Vote on SB 18 and Potential Influence by the Agricultural Industry</i>	
VI. Beyond Roll Call Votes	page 31
<i>Committee Action is Key Factor in Life or Death of Bills</i>	
VII. Bankers' Lobby Resists Fair Foreclosure Bill	page 33
VIII. New Mexico Trial Lawyers vs. Virgin Galactic: Experienced Lobbyists Face Off in Strategic Showdown	page 37
<i>Campaign Contributions made by the NM Trial Lawyers</i>	
<i>Strategic contributions to legislative decision makers</i>	
<i>Outcomes: Did the Contributions Make a Difference?</i>	
<i>Lobbyist Activities, Negotiations and Compromise</i>	
IX. Recommendations	page 45
X. Conclusion	page 51

I. Introduction and Background

Lobbying, or attempting to influence political decisions by one means or another, is as old as government itself. In the Land of Enchantment, its distinctive characteristics grow out of the nature of the western traditions of a small state with a citizen legislature that is unpaid, part time, and generally unstaffed. Business and commerce in New Mexico has long relied on personal and family relationships, and that tendency is nowhere more evident than in the Roundhouse.

Under New Mexico's Lobbyist Regulation Act, a lobbyist “means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis.” For this report we are focusing on the first definition, “any individual who is compensated for the specific purpose of lobbying.” The toolkit of such professional lobbyists, who often represent one or more clients, includes information, campaign contributions, favors, gifts, charm, and personal relationships. To be clear, the statutory definition does not include citizens who visit Santa Fe on a day off to talk with legislators about issues which they are passionate, nor does it include technical experts employed by the state or its political subdivisions (e.g. municipalities and counties). This report covers professional lobbyists and their interactions and relationships with New Mexico's legislators.

The state regularly scores low on indexes tracking ethics practices and laws. The Center for Public Integrity's 2011 State Integrity Investigation gave New Mexico a D- and ranked it 39th for corruption risk. While this was an improvement on the F grade and 41st ranking in the UCLA School of Law's Campaign Disclosure Project in 2008, it is still very concerning.ⁱ In 2009, both the *Wall Street Journal* and the *New York Times* called us the “Wild West” when it came to money and politics.ⁱⁱ

Just how much sway do lobbyists have on lawmakers and the laws they craft in the New Mexico Legislature? Are the hired guns in Santa Fe exerting undue influence by virtue of their omnipresence and their clients' deep pockets? Or do they simply provide information for unpaid legislators with no salary, no permanent staff and little time and expertise in technical issues? And does the influence of well-known lobbyists allow the special interests to crowd out the voices of ordinary citizens? It is important to note that New Mexico is the only state in the country where legislators are not paid—they receive a per diem while in session, but no salary.

One of New Mexico's most renowned lobbyists knew the answer. “I own the legislature,” Frank “Pancho” Padilla told former Senator Fabian Chavez, Jr. and others gathered at La Fonda for the 100th bill party in 1963. Padilla, who represented the liquor industry, was celebrating the defeat of a bill on the Senate floor the day before which Chavez sponsored to regulate the industry. Padilla had been drinking a little too much and the former South Valley Representative-turned lobbyist repeated his claim, in both English and Spanish, telling Chavez that he “had bought him a thousand times.”ⁱⁱⁱ Padilla, who was the conduit for contributions from liquor wholesalers like George Maloof, was barred from the floor of the legislature, and later apologized. But he continued to lobby for liquor interests and was a fixture in the gallery at the Roundhouse for many years after.

Since the free-flowing days of Pancho Padilla the number of checks on lobbyists has grown. Lobbyists must register (\$25 fee per client) with the Secretary of State at the start of each session and

report contributions and expenditures made to influence legislators. They cannot make political contributions during regular and special sessions and, as of 2007, gifts are now limited. Lobbyists and others who are interested in legislative decisions may not give individual gifts to legislators worth more than \$250. Total gifts to one legislator from a lobbyist may not exceed \$1,000 each year. Still, many argue that New Mexico lags behind other states and federal law in terms of regulating money in politics.

For the most part, lobbyists are now complying with the new laws, even as they find new ways to pay for lavish parties and dinners to keep the lawmakers supplied with the food, drink, and entertainment to which they had become accustomed for decades. But with little enforcement from the Secretary of State (SOS) and Attorney General, questions remain about lobbyist accountability, favoritism, and transparency.

This report takes a snapshot of the lobbyist corps in Santa Fe and asks, like Butch Cassidy and the Sundance Kid, “who are these guys?” We look at the tools they use to influence legislation, campaign contributions, food, entertainment and other amenities. Further, we use several case studies to examine what they get for their efforts, and to see if there is a correlation between gifts, contributions and outcomes. Sources of information for this report are the Secretary of State’s Office, the New Mexico Legislature’s website and the National Institute on Money in State Politics’ website.

The basic assumption used here is that lobbying—in and of itself—is not unethical and can actually be quite useful to our unpaid citizen legislators. In fact, lobbying can and often does play a crucial role in our democracy by amplifying voices that would otherwise remain unheard. Common Cause, for example, has a very active lobbying operation and works to ensure our mission of “restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process” is carried out, in part, by lobbying in New Mexico. Likewise, campaign contributions are not—in and of themselves—bribes. In fact, these activities are protected by the First Amendment. Here we simply ask how much access and influence they generate and if the largess coming from special interests is out of proportion to the input of ordinary citizens and constituents. Is this the proper balance between special interests, represented by their paid lobbyists, and public interests when policies are made in the Roundhouse? If indeed the balance is out of whack, it affects more than just public confidence in the legislature. It also affects ordinary citizens’ willingness to participate, to vote and to voice their opinions, activities that are the bedrock of our democratic system.

The backdrop for this study is the New Mexico Legislature. Data collected here focuses on contributions made to legislators and money spent on them in the form of meals, gifts and entertainment. Although lobbyists also work to influence decisions made by boards and commissions, departments and the executive branch, we have confined this study to the legislature. The 42 Senators and 70 Representatives meet one month in Santa Fe in even numbered years and two months in odd numbered years. The limited time to consider legislation, as well as other features of the legislature—including the power and longevity of its leadership and committee chairs—all affect the success or failure of the thousands of bills introduced each year, most of which never reach the floor for debate. Much of the action of the body takes place in committees or in party caucus where the fates of many measures are determined. Citizens have extraordinary access to their legislators in Santa Fe as most legislators have open-door policies and both committee and floor sessions are open to the public. However, it is often the professionals who know best how and where to apply pressure to either pass or “kill” any given measure.

II. Lobbyists and their Toolboxes:

Who are they and whom do they represent?

In 2013, there were 673 lobbyists registered as required with the Secretary of State's office. Among them were ordinary citizens who do not receive salaries, directors of non-profit organizations, university presidents, administration officials, and paid lobbyists, some of whom have dozens of clients. Some of these registered "lobbyists," like citizens and government employees, were legally not required to register so long as they were not compensated for lobbying, they were not designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying, nor in the course of their employment are they engaged in lobbying on a substantial or regular basis. Still, that is six lobbyists for every legislator. According to statistics from the NM Secretary of State's office and Followthemoney.org, governmental, tribal and educational agencies had the largest number of lobbyists on the ground in 2013 with 250 total lobbyists representing this sector. The other sectors with the most lobbyists in 2013 were: business (249); ideological and single issue groups (213); health care and pharmaceuticals (200); oil, gas, and other energy-related companies (149) and finance, insurance and real estate companies (130).

The year before, in 2012, there were 744 lobbyists registered and the groups with the largest number of lobbyists on the ground were: ideological and single issue groups (167); businesses (155); health care and pharmaceuticals (150); local and tribal governments (150); education (142) and oil, gas, mining and other energy-related companies (105). The categories, defined by the Institute of Money in State Politics, are not airtight. There are lots of different groups within each category, often working on opposing sides of an issue.

Year	# Registered Lobbyists	# Lobbyists Clients	Total Lobbyist Expenditures	Total Lobbyist Contributions
2008	397	906	\$ 488,296	NA
2009	394	932	NA	NA
2010	442	796	NA	NA
2011	709	859	\$ 297,025	\$ 520,111
2012	744	681	\$ 387,316	\$ 1,123,183
2013	673	858	\$ 365,478	\$ 20,800 *

Table 1: Strength in Numbers: lobbyists, employers, and their financial tools. Data sources include www.followthemoney.org and the New Mexico Secretary of State.

*Represents contributions made between March 18, 2013, and May 5, 2013.

Out-of-Staters and Super Lobbyists

Although out-of-state lobbyists appear in Santa Fe each year to weigh in on bills important to their industry, most lobbyists are homegrown. In 2013, there were 82 lobbyists registering out-of-state addresses including lobbyists for oil, pharmaceutical and finance companies, among others. Of those, 35 filed lobbyist reports indicating that they had—or were contemplating—spending money for contributions, food, or entertainment for the legislators. However, many of the professional lobbyists have out-of-state clients among their accounts.

Some of Santa Fe’s most powerful lobbyists have multiple clients, while others represent one big client, like a university or a large trade or industry association.

Lobbyist	# of Clients
Scott Scanland	24
James Bullington	23
Drew Setter	21
Brent Moore	20
Lawrence Horan	20
Natasha Ning	20
David Kimble	18
Linda Siegle	18
Nancy M King	18
Dan Weaks	17
Daniel A. Najjar	17
Richard Romero	17
Domonic Silva	16
Jennifer Chavez	16
Luke Otero	16
Marla Shoats	16
Sue Griffith	16
Thomas Horan	16
Authur Hull II	15
Anthony (T.J.) Trujillo	14
Joseph M. Thompson	14
Kimberly Moss-Legant	14
Mark Duran	14
Matejka Santillanes	14
Thomas Rutherford	14
Mickey Barnett	13
Jeremy Rutherford	13
John Anderson	11
Clinton Harden	11
Joseph (Jay) Santillanes	11
Raymond Sanchez	11
Roman Maes III	11
Timothy 'Ty' Trujillo	11
Dan Weaks	10
Fred Ocheskey	10
Lucca Cirolia	10
Minda McGonagle	10
Randy Traynor	10

These “super lobbyists” are sometimes represented among the biggest contributors and biggest spenders, but not always. Figure 1 shows the top spenders during the 2013 legislative session; Figure 2 shows the top lobbyist donors to legislators in the 2012 election. Most of their contributions were made on behalf of their clients.

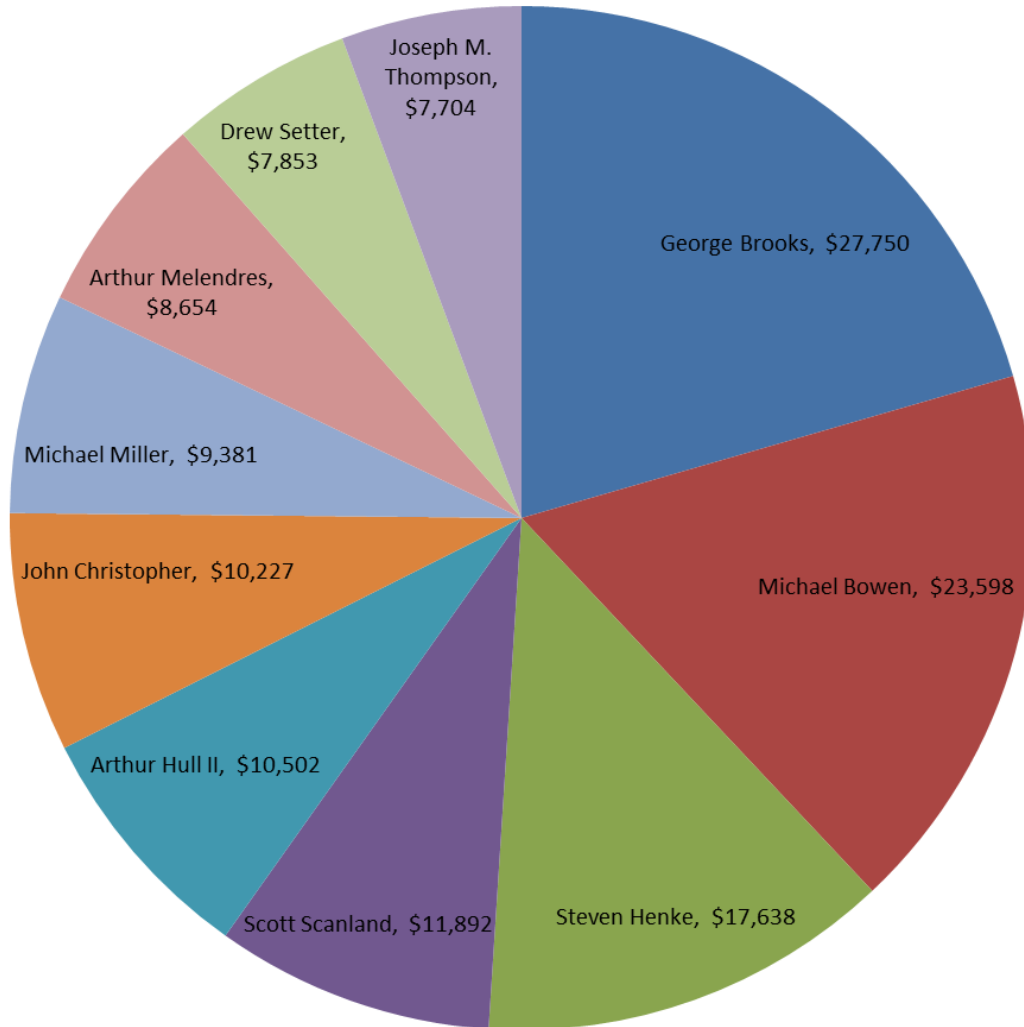


Figure 1: Top Lobbyist Spenders during the 2013 Legislative Session. Spending includes food, wine, gifts and special events. Data from New Mexico Secretary of State 2013 lobbyist reports.

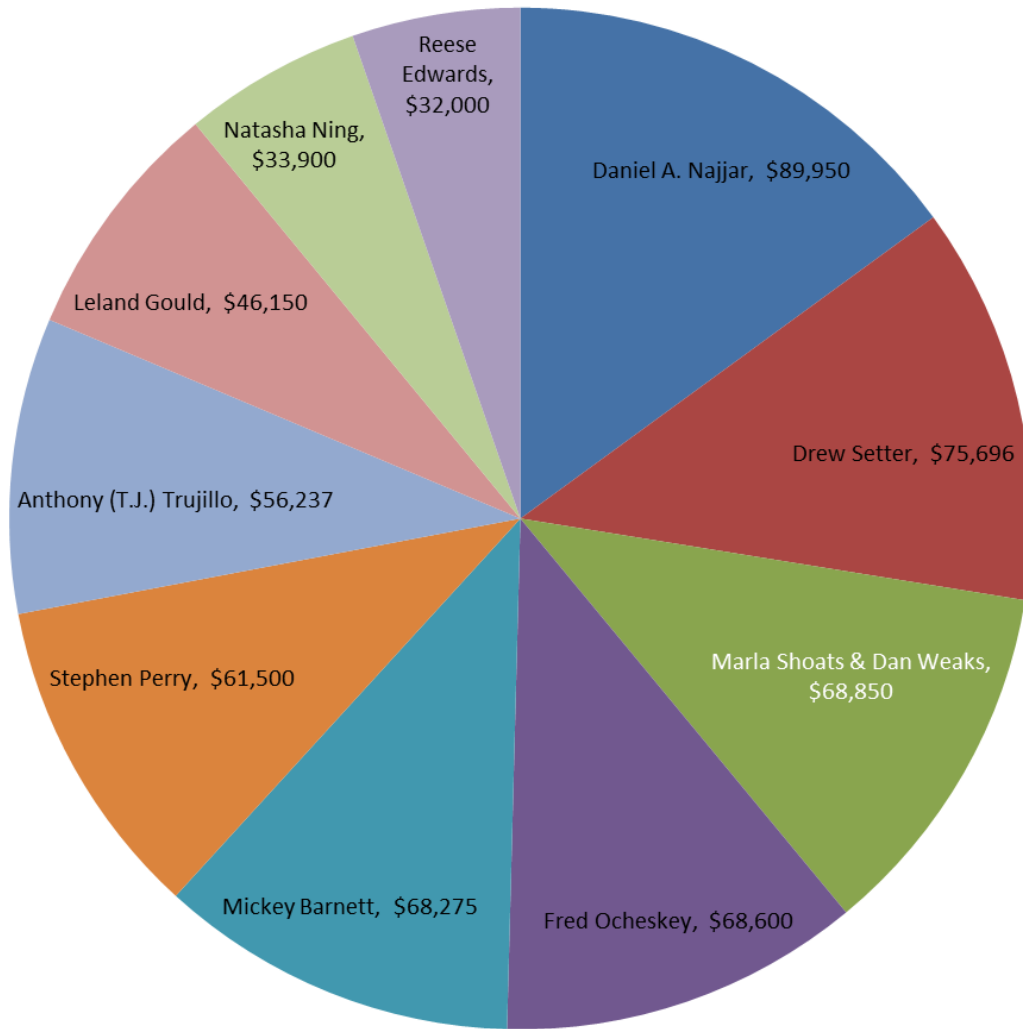


Figure 2: Top Lobbyist Contributors to Legislators in the 2012 election year. Contributions are for campaigns. Data from New Mexico Secretary of State May 2012 and January 2013 lobbyist reports.

The Revolving Door and Blood Ties

Many lobbyists are former legislators or are related to current or former lawmakers. In 2013, there were at least 13 former senators and 13 former representatives, many of them former leaders, among the lobbyist corps. The senator-lobbyists included former President Pro Tempore Richard Romero, former Majority Leaders Tito Chavez and Tom Rutherford, and former committee chairs Roman Maes and Otis Echols, who died this year. Former senators Bobby McBride (also deceased), Walter Bradley, Arthur Rodarte, Diane Snyder, Kent Cravens, Christine Donisthorpe, Les Houston, Mickey Barnett, Maurice Hobson and Clint Harden also lobby for various clients. Former representatives now lobbying include Speaker Raymond Sanchez, Tom Horan, John Lee Thompson, Hoyt Pattison, Andrew Barreras, Joe Nestor Chavez, Michael Olguin, Dan Silva, Joe Thompson, Dick Minzner, John Underwood, Al Park and Andy Nunez. And the ranks of former legislators who become lobbyists swell after each election.

Legislative experience gives these lobbyists a leg up not just in terms of their personal relationship with their former colleagues, but also because they know the legislative history of an issue, e.g. who was opposed to it ten years ago, whether it was vetoed and why, or whether a measure is even constitutional.

If the fact that some of the top lobbyists in Santa Fe are former legislators seems a little incestuous, it is only part of the family atmosphere that exists in the Roundhouse. A good number of lobbyists are related to legislators. Mark Saavedra, the chief lobbyist for the University of New Mexico, is the son of House Appropriations Chairman Kiki Saavedra, as is Randy Saavedra who lobbies for New Mexico Tech. Allison Smith, lobbyist for the Restaurant Association, is the daughter of Sen. President Pro Tem Mary Kay Papen, of Las Cruces. Vanessa Alarid, who lobbies for a number of clients, is married to House Majority Whip Antonio “Mo” Maestas. The most well-known example is former Speaker Raymond Sanchez, the brother of Senate Majority Leader Michael Sanchez. During most sessions the former speaker (who is the older brother) is camped out in the majority leader’s office.

Lobbying as a family business also makes sense. When you have a big roster of clients, you need help. Who better than your son, daughter or sibling to help you monitor the activities of various committees, write reports back to your clients, or socialize with the people with whom they grew up? Former Representative Tom Horan, whose father was a legislator and then a lobbyist for the City of Albuquerque, now works with his son Larry and hopes to bring another son into the business soon. Tom Rutherford, whose father was also both a legislator and then a lobbyist, now works with his son Jeremy. Long-time lobbyist from Silver City, Tony Trujillo, introduced his sons Ty and T. J. to the business. Both now have multiple clients. Dan Weeks, a former legislative and gubernatorial staffer, lobbies with his wife Marla Shoats, and more recently his son Jason. Sam Ray, longtime utility lobbyist introduced his daughter Matejka to the business. She now has a number of clients. Siblings Randy and Mark Saavedra each have their own clients as do Adela and Mark Duran. Although these lobbyists have their own clients and most technically operate independently, they help each other when needed.

The family atmosphere at the Roundhouse is a friendly one, most comforting to those in the in-crowd, which, during each session, expands to include other family members as attendants, analysts, or staffers. This is, after all, New Mexico, a small state where everyone knows each other and is somehow related.

But personal relationships are not everything. Legislators also respect technical expertise from lobbyists, particularly in medical and scientific fields. Here the past experience of a lobbyist in hydrology or epidemiology may have some effect. There are a number of former administration officials lobbying. Dick Minzner and Jim O’Neill bring expertise in taxation policy. Others, like Brent Moore, know about insurance issues. Others are experts on health or water issues by virtue of their backgrounds.

It should be noted that many, if not most, of the full-time lobbyists in Santa Fe are lawyers, who are familiar with NM statutes and case law. They pride themselves on telling the truth—and it is rare indeed for a lobbyist to tell an outright lie. Since they return to the legislature year after year, their credibility is at stake.

The Lobbyist's Toolbox: The Expense Account and the Campaign Connection

In addition to personal and familial relationships, lobbyists and their clients utilize a toolbox of

campaign contributions, meals at fancy restaurants, and special events in Santa Fe and out-of-state cities where legislators gather for national conferences. Contributions and expenditures of both lobbyists and their clients can be tracked through the SOS website.

One thing that cannot be tracked is how much the lobbyists are paid by their clients. Some are on a retainer for an entire year, charged with monitoring interim committees and issues legislation. Others have smaller contracts for a legislative session, some just for a particular bill or for capital outlay purposes only. Thirty-two states require reporting of salaries by the lobbyist, the client or both.^{iv} Unlike these states, New Mexico does not require lobbyists to reveal how much they are paid to influence a public body or the conditions of their contracts.

Over the past year and a half, lobbyists in NM have spent \$752,793 feeding, entertaining, and giving gifts to candidates for state office, according to expense reports filed with the Secretary of State covering the January 2012 session through May 2013. During the same time-frame (which included the 2012 election) they contributed \$1,141,483 to candidates, sometimes on behalf of their clients, sometimes on behalf of themselves.^v Their clients contribute much more to candidates directly and to Political Action Committees and other independent committees that use the money to influence voters, often in negative advertisements.

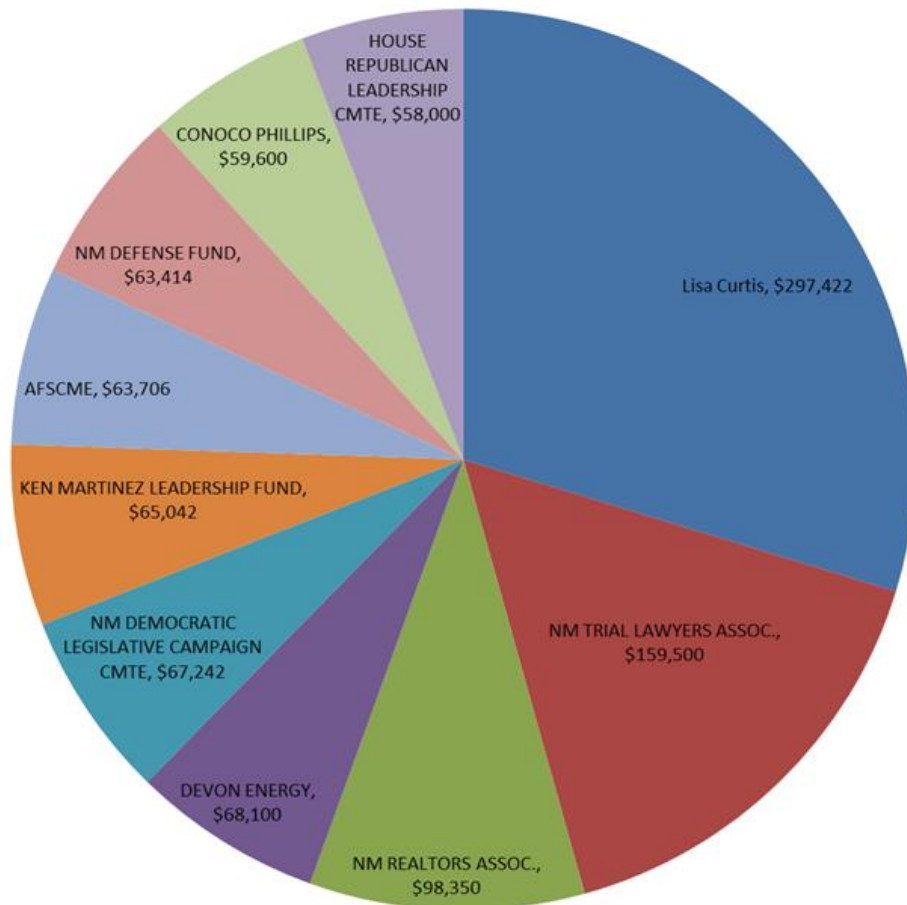


Figure 3: Top Contributors to the NM Legislature during the 2012 Cycle. Data from www.followthemoney.org.

Each year the costs of campaigns rise. Figure 4 tracks the total contributions to legislators from 1992-2012, compared to inflation over these years. The costs of campaigns is skyrocketing—and so is the role of special interests in them. In the most recent election cycle, special interests contributed \$6,272,661 out of a total of \$9,946,279, or 63% of the total contributions. This is more than any other segment, including candidate and party contributions, public subsidies and un-coded and un-itemized contributions. This raises the question of whether the candidates now disproportionately depend on special interest cash.^{vi}

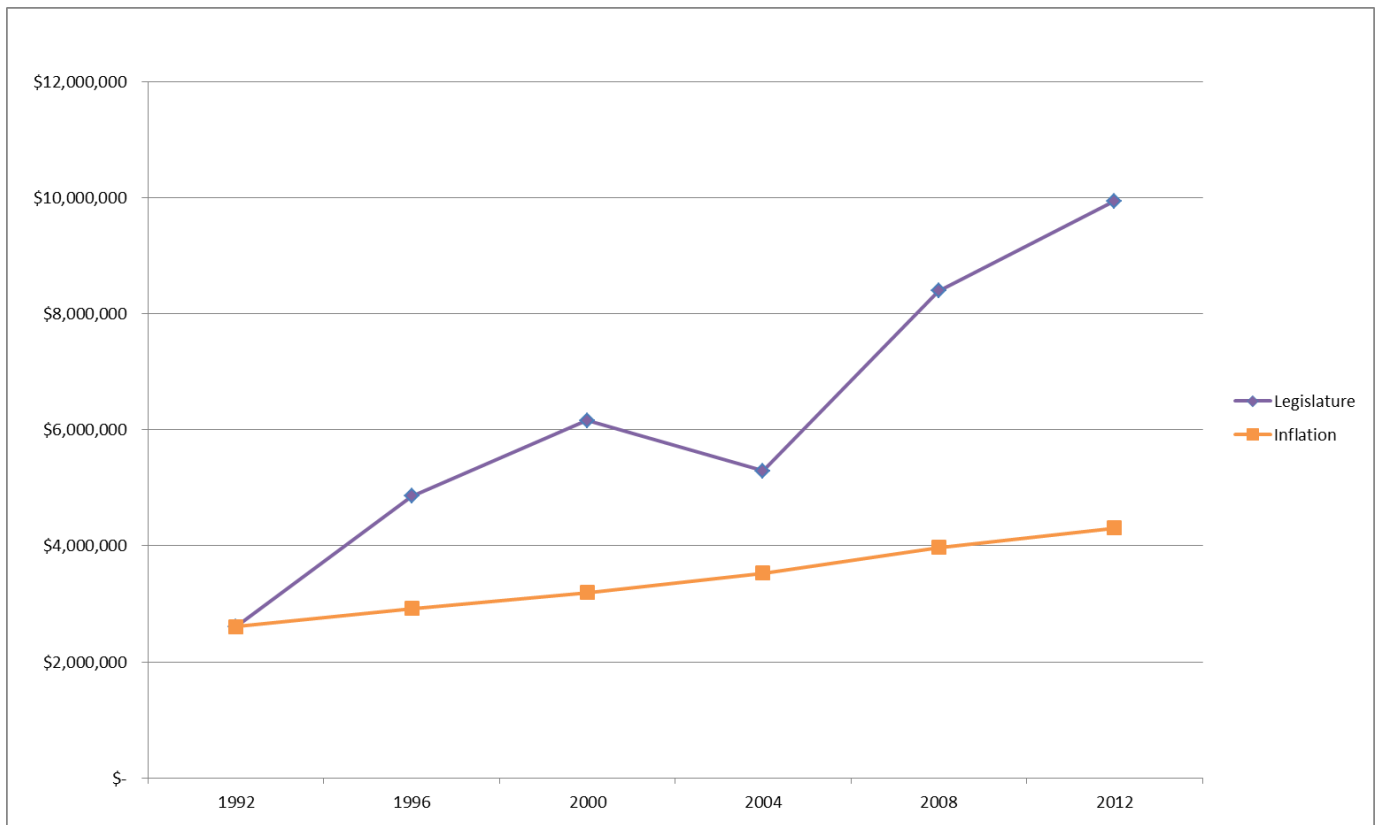


Figure 4: Upping the Ante: Total contributions to NM State Legislature vs. Inflation Rate since 1992. Source of legislative contributions from www.followthemoney.org and average annual inflation rates compounded from the U.S. Dept. of Labor Bureau of Labor Statistic’s Consumer Price Index.

III. Connecting the Dots

What do the lobbyists get for their investment?

Public officials often deny that campaign cash and gifts from lobbyists have any effect on their actual voting behavior, which is also influenced by their constituents, personal beliefs and experiences, their party, their leadership, and their friends and colleagues. And this is certainly true for many officials. But lobbyists and their clients who spend three-quarters of a million dollars on entertainment and meals, and over a million dollars in campaign contributions in one cycle do not do it for no reason. One would expect they are looking for some kind of return on their investment, including access and an openness to the lobbyist's case. Sometimes it is even more—help with the passage of friendly legislation, or the blockage or blunting of unfriendly reforms through amendments, delayed enactments, sunsets, and other surprises. While this is not “corruption” in the pure *quid pro quo* sense, there is a theory known as “dependence corruption” which posits that all parties involved have come to depend on the culture of lobbyists and their clients providing candidates with campaign contributions. The thought is that a two-way dependency develops because the arrangement provides benefits for all involved - for lobbyists and their clients by increasing their access to legislators, and for politicians by providing much needed campaign funds.^{vii}

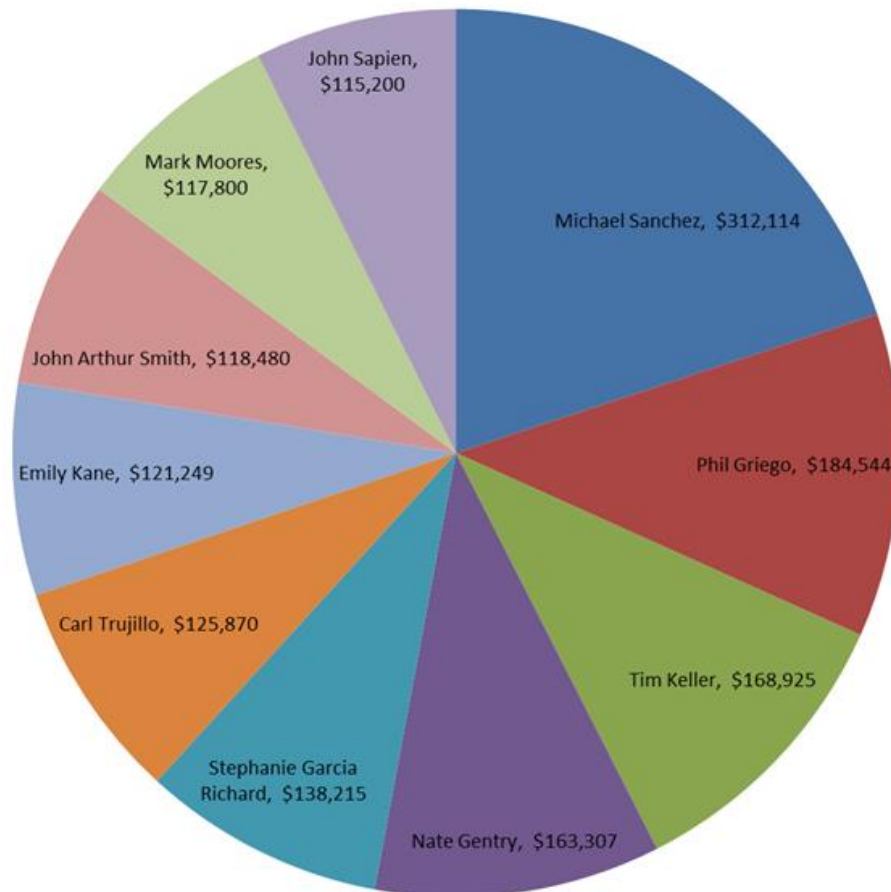


Figure 5: Top NM Legislative Recipients of Industry Contributions during the 2012 Cycle. Data from www.followthemoney.org.

This report examines several cases in which lobbyists and their clients were involved in the outcome of legislation in 2011, 2012, and 2013—with a concentration on the most recent session. These cases include:

- The oil and gas lobby and its effort to block a bill (HB 286) to update fines and requirements for the industry in 2013;
- Agricultural interests and their effort to block a bill to require the identification of genetically engineered crops (SB 18) in 2013;
- The banking industry's efforts to block a foreclosure bill (SB 1) in 2013;
- And the trial lawyers' efforts to block two bills providing legal immunity for Spaceport America (SB 3 and HB 239) in 2012 and the passage of a measure in 2013 pushed by lobbyists representing Virgin Galactic, the spaceport's major tenant.

Our report highlights the campaign contributions and other lobbying techniques used by these industries and analyzes whether they were successful in getting their preferred policy outcome. The case studies are, of course, only part of the story. They are simply a few skirmishes in a much longer history of special interests in the New Mexico Legislature.

IV. The Influence of the New Mexico Oil and Gas Lobby

Oil and gas production has been an important economic force in New Mexico for over one hundred years. The state regularly ranks around 7th in natural gas production and 8th in crude oil production, with activity clustered in the San Juan basin in northwestern New Mexico and the Permian basin in the southeast. The industry employed 29,177 people in 2011, accounting for 1.58% of the state's labor force. But while that number may seem proportionately small, the revenues generated by the industry are large.

As legislators from the oil patch are pleased to point out, the direct recurring tax revenues from the industry (projected to be \$887.7 million in 2012) account for approximately 16% of the state's general fund. In addition, interest earnings from the state's two permanent funds, the land grant permanent fund and the severance tax permanent fund, provide additional revenue each year accounting for another 11% of general fund revenue. Established years ago, these two funds were seeded with rents and royalties from drilling and exploration on state lands. Revenue from the largest of these funds goes to public schools, universities and hospitals around the state.^{viii}

While legislators and candidates universally hail the industry's contribution to the state economy, there have been major difficulties. One problem is the volatility of natural gas and crude oil prices, which are often dependent on factors outside of New Mexico. Prices took a dip in the 2009-2011 periods, and natural gas is still declining—with oil prices up in 2013. The volatility factor makes annual budgeting difficult, and then there are the environmental issues associated with oil and gas extraction including water contamination, the production of toxic substances, noise pollution, spills, explosions, and greenhouse gas emissions.

Issues related to oil and gas production have dominated the policy agenda of the New Mexico legislature in the past several years as environmentalists and the industry spar over the proper regulation of industry activities by the state. One recurring issue has been the New Mexico Oil and Gas Act, which sets fines and penalties, but which has not been updated since its enactment in 1935.

Campaign Contributions made by the Oil and Gas Industry

The oil and gas industry^{ix} is consistently one of the largest contributors to New Mexico's candidates and political committees, giving a combined total of over \$7.6 million directly to candidates in state races since 2004. The industry has never fallen below third place among the top contributors to candidates. The other top positions rotate between lawyers and lobbyists, candidates self-financing, and real estate.

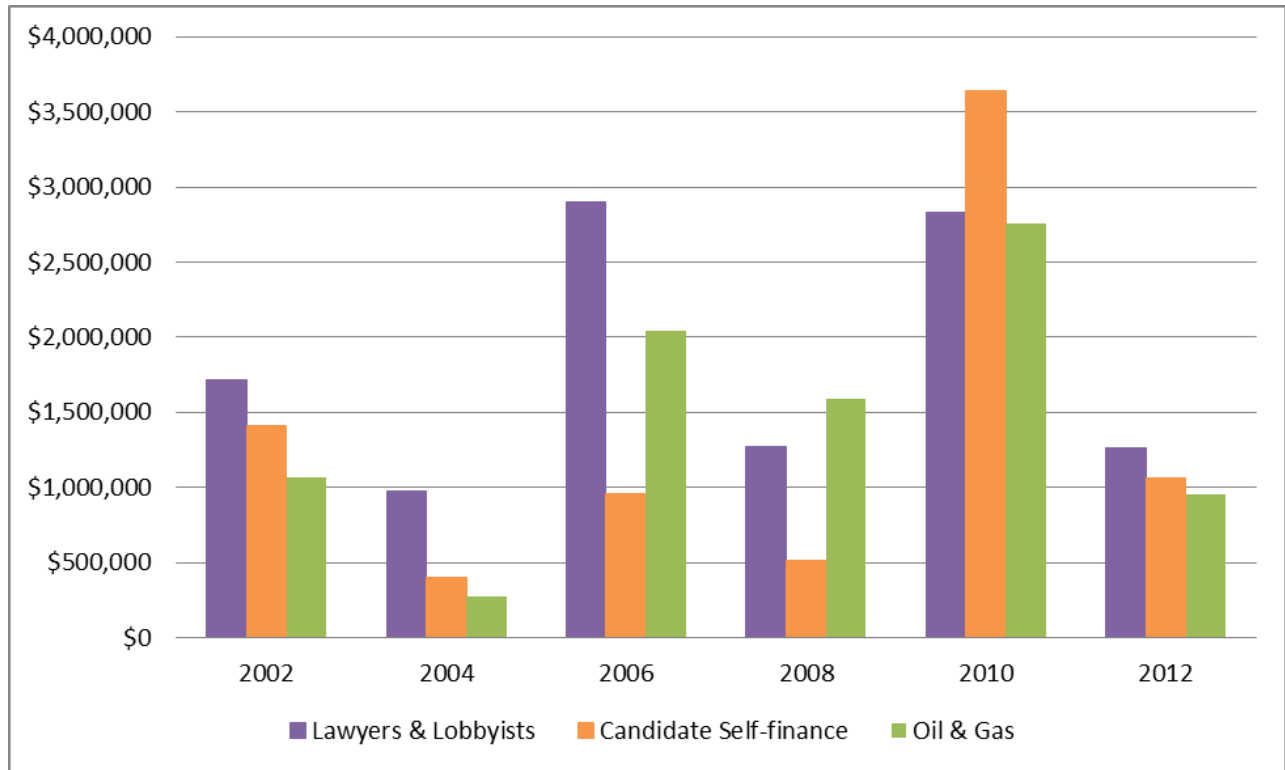


Figure 6: Selected Industry Contributions by Election Cycle. Data from www.followthemoney.org.

Oil and gas campaign contributions do not always follow party lines. In 2002 and 2006, when Democrats Bill Richardson and Diane Denish ran for governor and lieutenant governor, the industry gave more to Democrats than to Republicans. In all other years it gave more—in 2010 much more—to Republicans. Oilman Harvey Yates, Jr., served as Chairman of the New Mexico Republican Party from 2009-2010, leading the party to capture the Governor’s mansion in 2010. During the off-year after that election, the industry made no contributions to Democrats, but 18 companies and one individual associated with the industry gave \$46,400 to the New Mexico Republican Party. Five oil companies—Chase Oil, Jalapeno Corp., Me-Tex Oil & Gas Inc., Merrion Oil & Gas, and Veteto Oil—gave \$5,000 each.^x

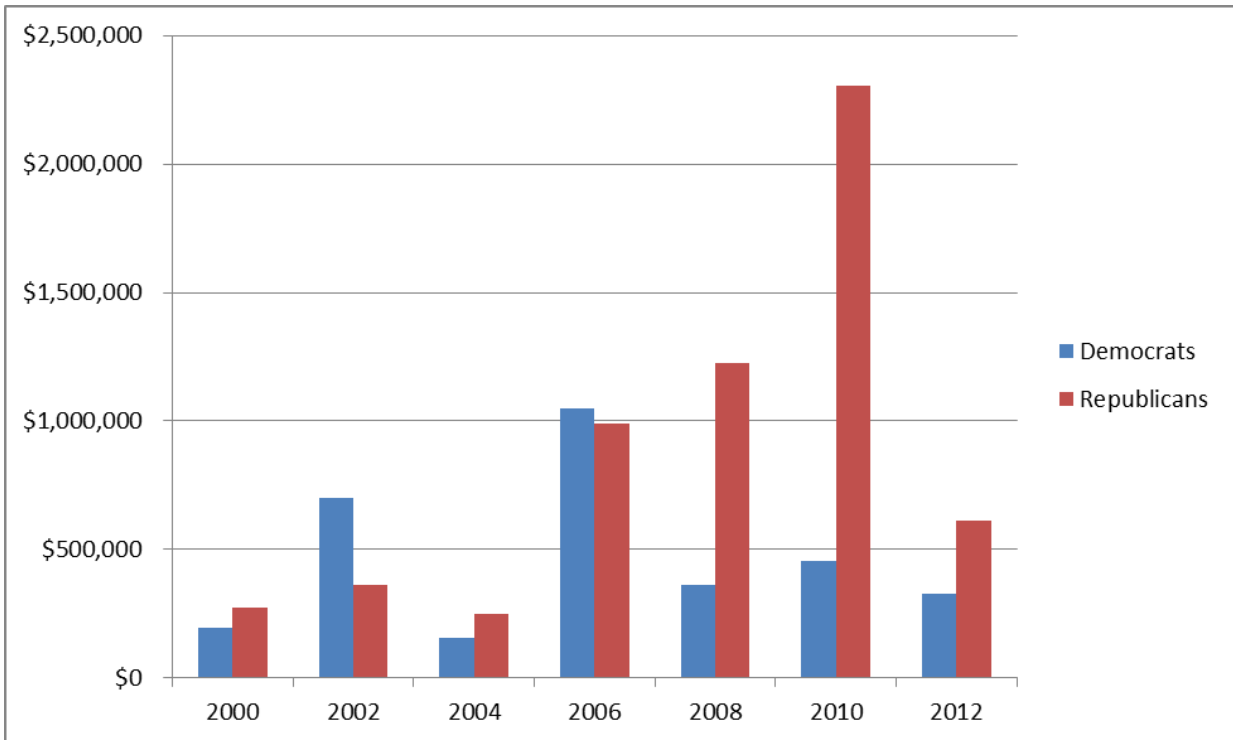


Figure 7: Oil & Gas Contributions to All Candidates and Committees by Party Affiliation in New Mexico. Data from www.followthemoney.org.

Although there are many New Mexico oil and gas companies who contribute to candidates, a large number of oil and gas contributions come from out of state.

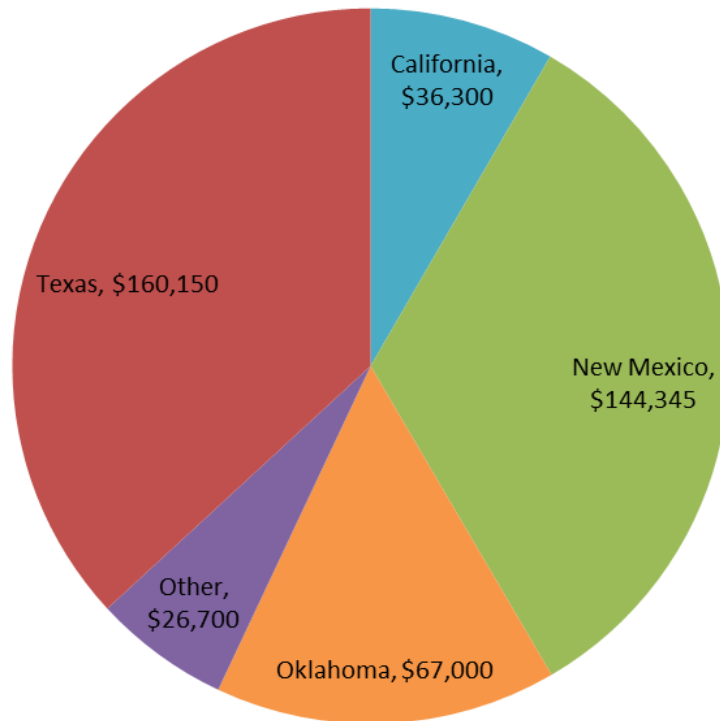


Figure 8: Where Oil & Gas Contributions to NM Legislature Originated during the 2012 Cycle. Data from www.followthemoney.org.

Legislative Contributions

Legislative candidates have especially benefited from oil and gas industry contributions. An analysis of legislative contributions completed by the Secretary of State for *Albuquerque Journal* columnist Thomas Cole in 2008 and 2012 placed oil and gas contributions in the top twenty both years.

In 2008 Mark Murphy and his related oil and gas companies and PACs ranked first among the big donors, giving \$435,318. The Yates family oil and gas companies were second, giving \$132,040. Conoco Phillips gave \$68,550 to rank it ninth, with Chevron and its \$40,350 ranking 17th.^{xi}

In 2012 Devon Energy was sixth with \$73,600 in contributions; Conoco Phillips, with \$64,600, in contributions was 10th; Chevron's \$60,250 ranked 14th; Occidental Petroleum and its affiliates contributed \$54,050 and ranked 18th; and Enterprise Products (natural gas pipelines) ranked 28th, giving \$44,150.^{xii}

It should also be noted that Conservation Voters New Mexico, the state's largest environmental organization, donated \$111,886 to legislators in 2008, ranking it fifth on the top donor list. In 2012 Conservation Voters did not place among the top 30 donors to the legislature.

During the 2012 election cycle, and in the wake of the Supreme Court's *Citizens United* ruling and new state limits on contributions, direct contributions to candidates from industries and ideological groups became less frequent, with a larger number of political action committees (PACs) on both the

right and left making contributions to candidates. Some of these were independent PACs organized specifically to influence legislative races in 2012. The growth of these “superpacs” makes it more difficult to follow the money. A number of western states, including neighboring Texas, Oklahoma, and Colorado, have passed additional disclosure requirements in the wake of the *Citizens United* ruling, but New Mexico has not passed anything meaningful in regards to updating our disclosure laws. Nevertheless, many of these “superpacs” reported expenditures and contributions in the last election year. We noted that the oil industry in New Mexico made many large contributions to several PACs organized by Republican Governor Susana Martinez. For example, Susana PAC, aimed at gaining Republican control of the legislature, received \$5,000 from Permian Basin oil producer Apache Corporation in 2012. Trevor Rees-Jones, a Dallas oil and gas magnate, also contributed \$10,000 to Susana PAC in 2012.^{xiii}

The Oil and Gas Lobbying Corps

The oil and gas industry has one of the most well-resourced and impressive lobbying operations in Santa Fe. Led by the New Mexico Oil and Gas Association (NMOGA), there were 36 registered lobbyists hired by the industry on the ground in Santa Fe during the 2013 session. These lobbyists represented 23 companies and five trade associations.

Company	Lobbyist 1	Lobbyist 2	Lobbyist 3	Lobbyist 4	Lobbyist 5
Basin Disposal	Allison Smith				
BP America	T.J. Trujillo				
Chevron	Luke Otero	Steve Perry	Julie Williams		
Concho Resources	Carol Leach	Stan Casey	Debbie Seligman		
Conoco Phillips	Nancy King	Brent Moore	Tom Sellers		
DCP Midstream	Luke Otero				
Devon Energy	Art Hull				
Energen	Karin Foster				
Energy Transfer Partners	R.E. Thompson				
Enterprise Products	Delbert Fore	Dick Minzner			
Exxon Mobil	Nancy King	Brent Moore	Craig Knoeller	Lisa Winn	
Holly Energy Partners	Joel Carson	James Townsend			
Holly Frontier	Joel Carson	Debbie Seligman	James Townsend		
Kit Carson Energy	Adela Duran				
Navajo Refinery	Joel Carson	Debbie Seligman	James Townsend		
Occidental Petroleum	T.J. Trujillo	Julie Moore			
Shell Oil	Karin Foster				
Sundance Services	Marla Shoats				
Targa Midstream	Marla Shoats	Dan Weeks			
Valero Energy	Scott Hall				
Western Refining	Nancy King	Brent Moore	Leland Gould		
Williams Corp	Fred O'Chesky				
Yates Petroleum	Jerry Fanning	Debbie Seligman			
Independent Petroleum Assoc. of NIM	Karin Foster				
NM Petroleum Marketers	Rueben Baca				
NM Propane Assoc.	Scott Scanland				
Permian Basin Petroleum Assoc.	Mike Miller				
The NM Oil & Gas Assoc.	Kent Cravens	Marie Gutierrez y Alarid	Walter Dragmeister	Louis Rose	Steve Henke

Table 2: Oil & Gas Companies, Associations, and their Lobbyists in 2013.

While ideological, environmental, union, and retiree groups can muster large numbers of citizens to lobby the legislature, these are professional lobbyists representing a handful of special interests. Some are technical experts or specialized lobbyists who were hired to represent one specific company full-time. Others are all-purpose lobbyists who represent multiple clients from different industries year-round and are familiar faces in the halls of the Roundhouse. The chief lobbyist for NMOGA is former Senator Kent Cravens who, in a controversial move, stepped down from his Albuquerque senate seat in 2011 to become government affairs director for the trade association. His new post brings him into frequent contact with old colleagues. Lobbyists for the other trade associations are also well known to legislators, as they attend interim committee meetings around the state and often host dinners and parties for lawmakers traveling in New Mexico and to out-of-state conferences held by organizations like the Energy Council, the Council of State Governments, and the National Conference of State Legislatures. Many are experienced hands who are familiar with the committee system, know how to write and amend legislation, craft compromises, or stall for enough time to let a bill die.

Oil Lobbyists Use a Variety of Tools to Make Friends and Influence Votes

Expenditures for Special Events, Meals and Drinks ...

January's annual legislative session in Santa Fe is the scene of more than floor sessions and committee hearings. It is also a time for receptions, cocktail parties, breakfasts, and dinners hosted by lobbyists and special interest associations. The unpaid legislators, trying to subsist on their per diem, often welcome these events. Santa Fe's fabled style doesn't hurt, either. In addition to being the state's capital, the "City Different" is also a tourist town with high-end hotels, stylish restaurants, and cozy bars which provide the perfect setting for conversations between legislators, who are often far from home, and lobbyists, who typically take up residence in Santa Fe for the duration of the session.

Lobbyist spending on meals, beverages, and special events must be reported to the Secretary of State in January and May of each year, and within 48 hours if the expenditure exceeds \$500. Lobbyist reporting is spotty, particularly when it comes to the exact beneficiaries of the spending, but records from the Secretary of State show oil and gas lobbyists to be some of Santa Fe's most generous hosts.

Steve Henke, lobbyist for NMOG hosted a \$17,638 dinner for legislators at the Bull Ring, a popular restaurant just off Santa Fe's historic plaza. The dinner made him the third biggest spender among lobbyists during the 2013 session. Three other lobbyists who represent oil and gas clients, Scott Scanland (who spent \$11,892), Art Hull (who spent \$10,502) and Mike Miller (who spent \$9,381), placed in the top eight (see figure 3).

Overall, oil and gas lobbyists spent \$82,269.88 feeding and entertaining legislators, sometimes at special events for the whole legislature and sometimes at smaller gatherings for individuals or committees. In addition to the top spenders mentioned above, big spenders included T.J. Trujillo (\$5,631), Dan Weaks (\$5,589), Marla Shoats (\$3,786), Luke Otero (\$3,030), Nancy King (\$3,019), Tom Sellers (\$2,468), Dick Minzner (\$1,772), and Allison Smith (\$1,097).

Here are some examples of the types of expenditures made by the lobbyists, who may act on behalf of a number of their clients simultaneously and sometimes share the cost of a large dinner or special event.

- Scott Scanland, lobbyist for the New Mexico Propane Association and others, bought \$7,308 worth of meals and beverages for various unidentified legislators and staff. None of the beneficiaries received more than a \$75 expenditure, the legal limit for disclosure. Scanland also spent \$439 for a dinner at the Bull Ring (a restaurant and bar in Santa Fe frequented by both lobbyists and Legislators during the session) for Senate Republicans, staff, and guests, and \$323 for dinner at La Osteria for the House Appropriations and Finance Committee, staff, spouses, and guests.
- Luke Otero, lobbyist for Chevron and DCP Midstream, spent \$472 at the Bull Ring for a dinner with Senators Payne, Pirtle, and Sharer.
- Art Hull, lobbyist for Devon Energy, spent \$4,082 “to inform and discuss concerns with elected officials” over a meal or beverages, but he did not identify the concerns or the beneficiaries in his report, except to indicate that none was over the \$75 threshold requiring such specification.
- T.J. Trujillo, lobbyist for Occidental Petroleum and BP (formerly British Petroleum), spent \$200 for Senator Richard Martinez’s birthday party at the STATS Sports Bar.
- During the 2012 session, Karin Foster, lobbyist for the Independent Petroleum Association of NM, reported spending \$1,765 for a cocktail party and movie screening at the Inn at Loretto.
- Kent Cravens, the former state senator now lobbying for NMOGA, spent \$1,297 at the La Fonda Hotel for a breakfast in 2012 “to educate [lobbyists] on oil and gas drilling in northern New Mexico.”
- Tom Sellers, lobbyist for Conoco Phillips, spent \$836 for a dinner at the Compound during the 2012 session for five Republican legislators and their spouses from southeastern New Mexico.

...and Contributions

If campaign contributions are the mother’s milk of politics, the oil and gas industry is a cash cow for legislators. For the 2012 election cycle, when the entire legislature was up for election, the industry gave \$367,405 to House candidates and \$409,045 to Senate candidates for a total of \$776,450.^{xiv} Other industry contributions went to PACs and political parties who either spent money independently to benefit legislative candidates or contributed it to the individual candidates themselves. Lobbyists often guide their client company’s decisions of which candidates to support. The lobbyists know the importance of contributing to legislative leaders and committee chairs, and, with long histories in the legislature, they know who are likely supporters and opponents. Often the lobbyists even deliver the

checks on behalf of their clients, using the opportunity for an introduction or a re-acquaintance. Other times the checks just come in the mail. Acting as a conduit for a variety of special interest contributions adds tremendously to a lobbyist's clout when presenting his or her case to the legislative recipient.

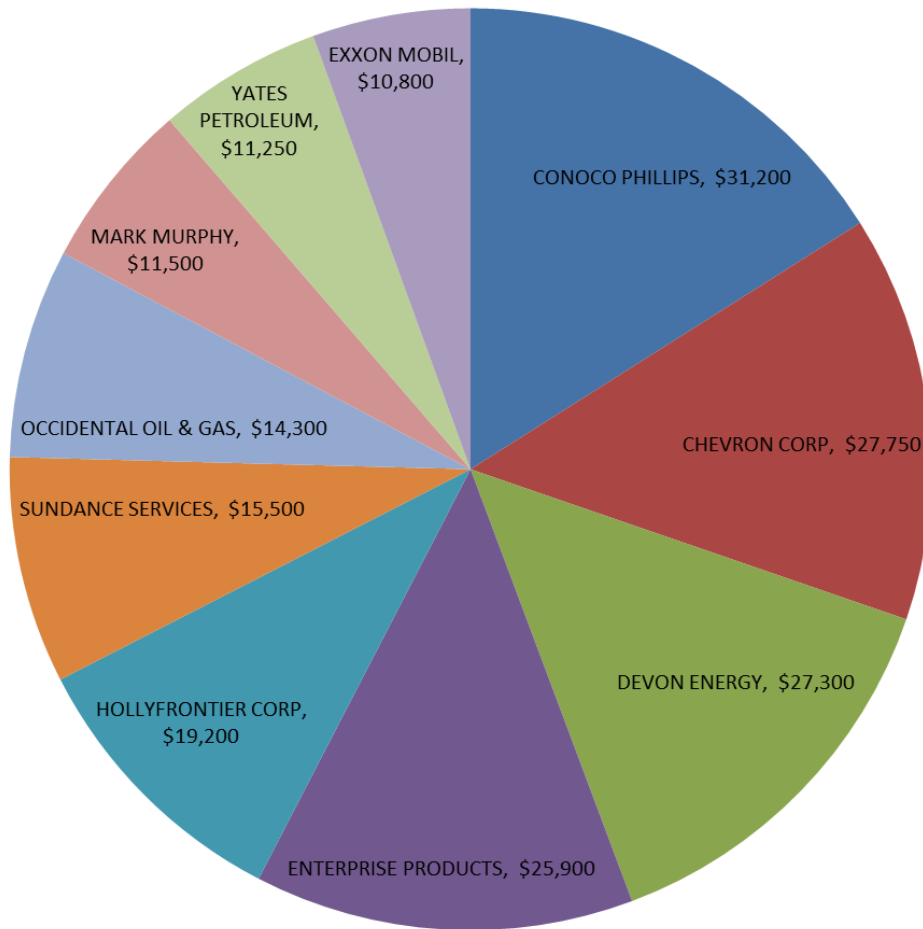


Figure 9: Top Oil & Gas Contributors to Winning House Candidates in the 2012 Election Cycle. Data from www.followthemoney.org.

Do the Industry's Contributions and Expenditures Get Results?

To determine whether the contributions and expenditures made on behalf of the industry and its lobbyists were worthwhile during the 2013 session, we attempted to connect the dots between contributions made by the industry and its lobbyists to floor votes cast by House members on a high profile piece of legislation during the 2012 session, House Bill 286 (HB286).

The correlation between votes and contributions is always tricky. Contributions are given for a variety of reasons—partisan preference, hometown loyalty, leadership status, or personal friendship. And contributions, both solicited and unsolicited, are viewed by candidates in various ways. Nevertheless, the correlation between industry contributions and votes is revealing.

HB286, sponsored in 2013 by Rep. Gail Chasey, an Albuquerque Democrat, would have updated

the 1935 Oil and Gas Act, which set bonding requirements, fines and penalties for violations of the act and conditions for bringing suits against the violators. Proponents of the bill, which included environmentalists and the Attorney General's office, contended that the current penalties were thousands of dollars lower than penalties in neighboring states like Texas and Arizona. They are also much lower than penalties for air and water contamination levied by other New Mexico laws, including the Mining Act, the Hazardous Waste Act, and the Water Quality Act, administered by other state departments. In keeping with other state laws, the bill removed the "knowing and willful" standard for proving civil violations, and allowed suits to be filed where the regulating state agency resided (i.e. Santa Fe) rather than just in the county where the defendant resided or where the violation occurred.

The oil and gas lobby bitterly opposed the bill, as it had a similar bill sponsored by Senator Peter Wirth in 2009. Attempting to compromise with the industry, Representative Chasey allowed both the House Energy and Natural Resources Committee and the House Judiciary Committee to amend the bill, reducing a bonding requirement that the industry claimed would hurt "mom and pop" operators and providing opportunities for public hearings on penalty assessments and consideration of good faith efforts to comply. The bill passed both committees on party line votes and came to the House floor on March 6, 2013. There it was defeated by a vote of 36 to 32. Representative Chasey voted "no" only in order to allow the bill to be reconsidered at a later time, which never happened. Without Chasey's procedural vote, the count would have been 35 to 33, with all of the chamber's Republicans voting "no" as well as Democrats Kiki Saavedra, Donna Irwin, and Sandra Jeff. Representative Mary Helen Garcia, a Democrat, was absent from the vote and George Dodge, also a Democrat, was excused.

"The fact that the New Mexico Oil and Gas Act has not been updated in more than 75 years is an atrocity," Leanne Leith, political director of Conservation Voters New Mexico, told the *Albuquerque Journal* in the wake of the close vote.^{xv} "It is troubling that even in a time of severe drought, our elected officials won't take reasonable steps to protect our water." Opponents of the bill said it would open producers to liability and impose a burden on the industry.

Figure 10 shows House votes on HB 286 and the corresponding 2012 oil and gas industry contributions. Representatives voting against the bill (the industry position) received an average of \$5,810, nearly three and one-half times more than those who voted for the bill, who received an average of \$1,670. The swing voters were Democratic Representatives Donna Irwin, Sandra Jeff, and Kiki Saavedra. Irwin received \$10,900 in oil and gas contributions, the 8th highest of all 70 House members; Saavedra received \$3,750, ranking him 24th, and Jeff received \$3,500, the 26th highest. Representative George Dodge, who was excused, received \$2,250, and Mary Helen Garcia, who was absent from the vote, received \$750.

But industry contributions are only part of the picture. Industry lobbyists were also donors to House members as shown in Figure 11. Representatives voting for the industry position, i.e., "no", received an average of \$3,734 from industry lobbyists; those voting against the industry received an average of \$2,053. On average, opponents of the bill received nearly twice (1.8 times more) as many lobbyist contributions as those who supported it. Rep. Irwin ranked fourth in lobbyist contributions, receiving \$7,818; Jeff was 17th, receiving \$4,150; and Saavedra 24th, receiving \$3,350.

It is important to note that, in reporting contributions, lobbyists may—or may not—record that they are made on behalf of specific clients. In almost all cases, the amount of lobbyists' contributions

reported here represents more than just that given on behalf of oil and gas clients. But do the legislators make the distinction? Determining who the contribution is from when a lobbyist has numerous clients isn't an easy task for legislators or others to figure out unless the lobbyist tells them specifically who is making the contribution.

In evaluating the two figures (Fig, 10 and Fig, 11) on industry and lobbyist contributions to House members, it is evident that there is not as pronounced a correlation between lobbyist contributions and House votes on HB 286 as there is for industry contributions to House members. Perhaps this can be explained by the fact, mentioned above, that lobbyists are contributing to a broader spectrum of legislators on behalf of many clients.

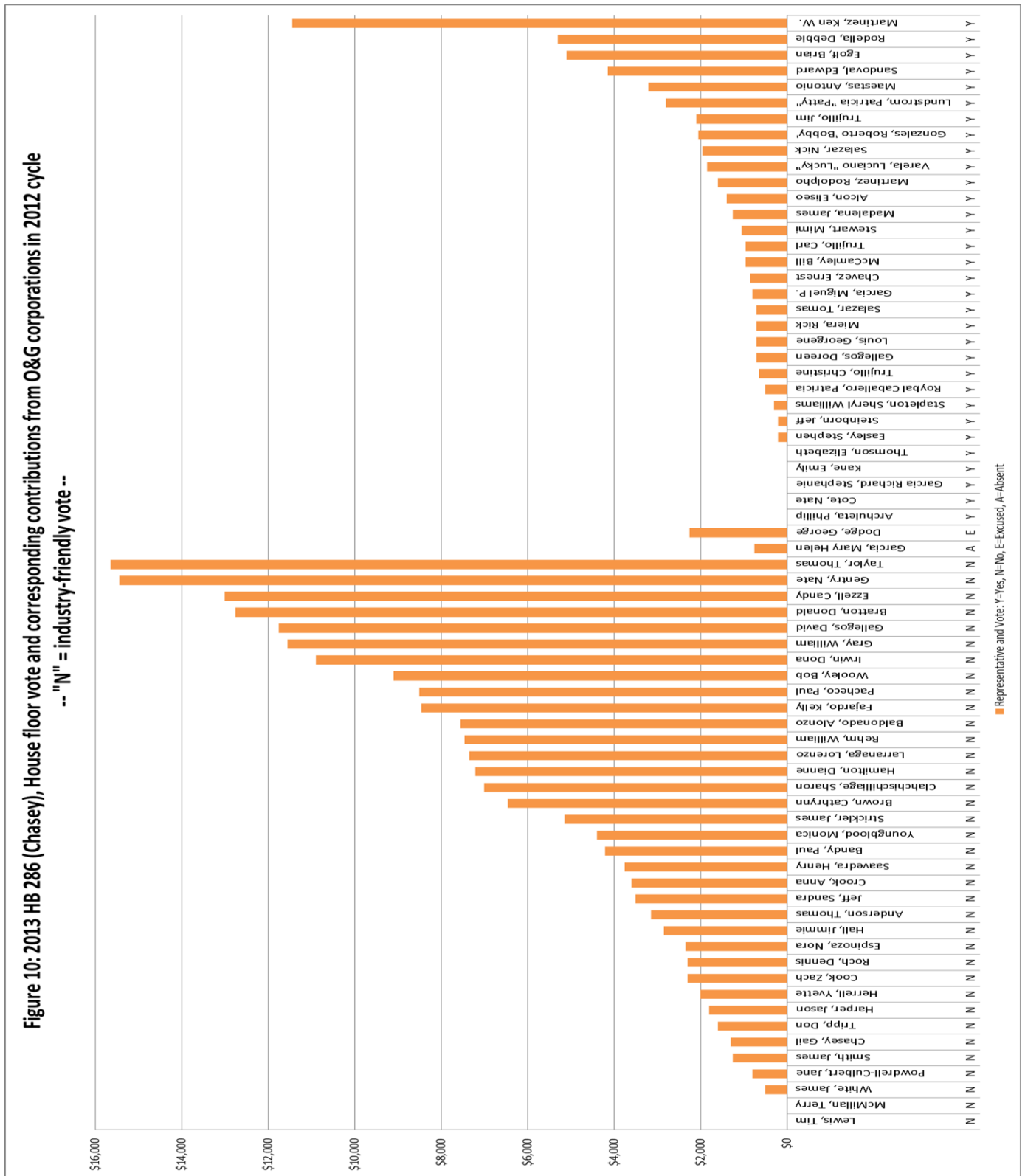


Figure 10: 2013 HB 286, House floor vote and corresponding contributions from Oil and Gas corporations in 2012 cycle. Data from www.followthemoney.org.

Figure 11: 2013 HB 286 (Chasey), House floor vote and corresponding contributions from O&G lobbyists in 2012 cycle
 -- "N" = industry-friendly vote --

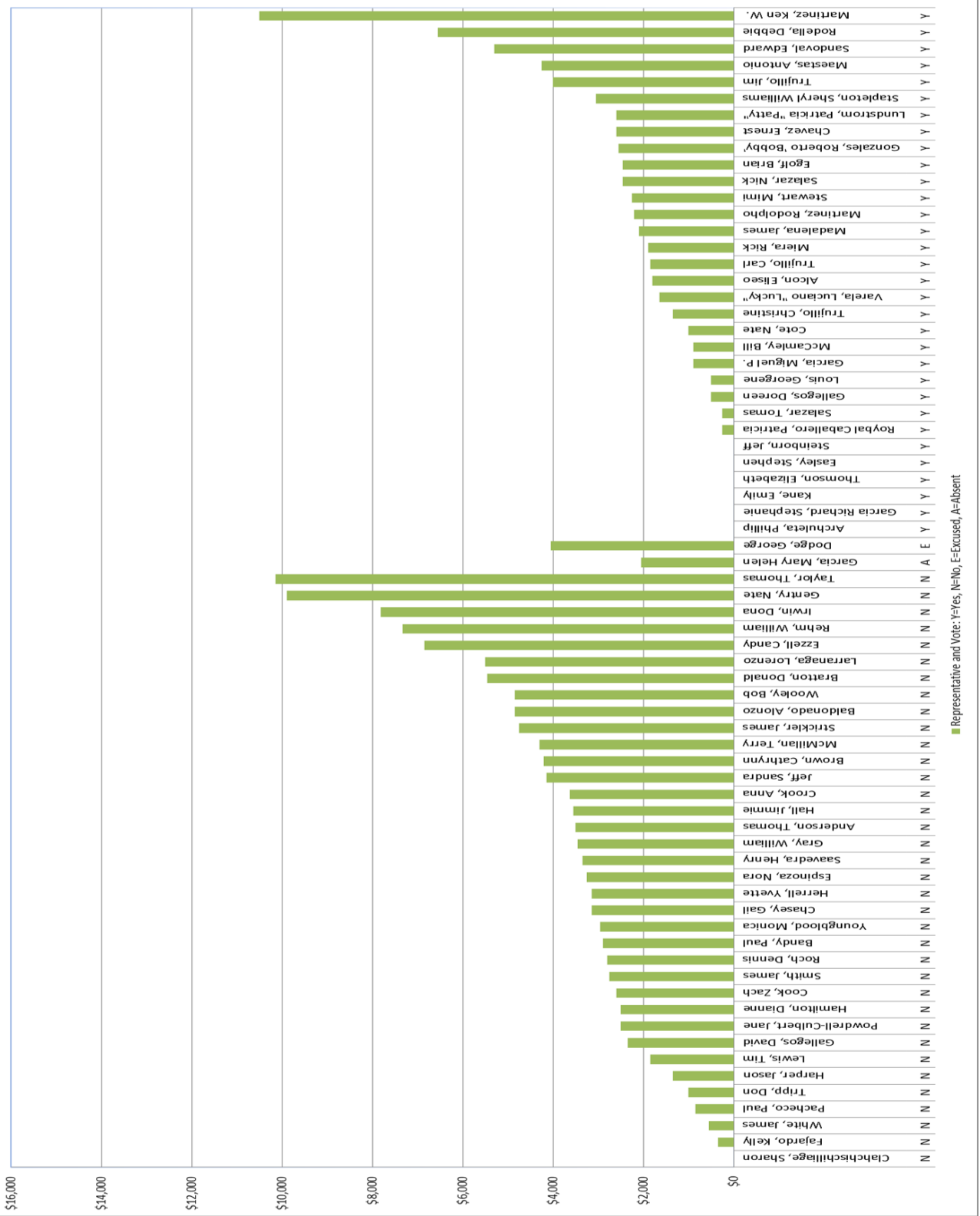


Figure 11: 2013 HB 286, House floor vote and corresponding contributions from Oil and Gas lobbyists in 2012 cycle. Data from the New Mexico Secretary of State (See Table 2).

V. The Agricultural Industry's Influence & Senate Bill 18

Another example of an industry and its lobbyists attempting to influence a floor vote during the 2013 legislative session is found in Senate Bill 18 (SB 18). This bill, sponsored by Senator Peter Wirth (a Santa Fe Democrat, and chairman of the Senate's Conservation Committee), required labeling for all food and commercial feed containing genetically modified materials. It was killed on the floor of the Senate in an unusual procedural vote.

New Mexico is a rural state with deep agricultural roots. From the Pueblos to the Spanish colonists to the Anglos who largely moved in after the Treaty of Guadalupe Hidalgo, the Land of Enchantment has been home to farmers, ranchers, and sheep herders. Presently, cattle and sheep outnumber people in the state and, as of 2006, nearly 60% of the state's land (45 million of 77 million acres) was used for agricultural purposes.^{xvi} However, agriculture in New Mexico is no longer dominated by small or even medium-sized interests. As in the rest of the American Southwest, New Mexican agriculture is now heavily irrigated and industrialized.^{xvii}

Like any other organized and modernized industry, New Mexico's agricultural interests have found ways to influence public policy that impacts their operations. In addition to over \$140,000 in campaign contributions in the 2012 election cycle, the agricultural industry had 18 registered lobbyists working the 2013 legislative session. Among them were some of the powerful and connected lobbyists detailed in the previous section, including: former Senator Clint Harden; the Trujillo brothers; Allison Smith; Scott Scanland; and Marla Shoats.

A Confusing Process, but a Creative Way to Kill a Bill

When a bill is introduced to the New Mexico Legislature, it is referred to committees to which its subject matter is relevant. Bills may be advanced to either the next committee or to the floor by a committee recommending that the bill "do pass" or by advancing the bill without making a recommendation. Once a bill is introduced and referred to the relevant committees, it usually runs its course through the committee process, with each committee reporting its action to the floor of its body and asking approval of its committee's report. The reports are almost always adopted routinely. A motion to not adopt a committee's report—and hence reverse the committee's action—is extremely rare, but that is exactly what happened in the case of SB 18.

The floor vote that is the basis of this section must be explained because it was not a vote directly on SB 18's policy substance. The bill was initially referred to the Senate's Public Affairs and Judiciary Committees. While the bill made it out of the Public Affairs Committee on a party-line vote, albeit without recommendation, it did not make it to the next committee, and was stopped dead in its tracks. This was because there was a motion to reject the Public Affairs Committee's report that SB 18 pass without recommendation. The motion required a voice vote on the Senate floor and Lieutenant Governor John Sanchez ruled that the voice vote succeeded, effectively killing the bill. However, Sen. Jerry Ortiz y Pino challenged this ruling, requiring a roll call vote to uphold the ruling of the Lieutenant Governor. The resulting vote is the basis of this section. Twenty-three senators voted yes to uphold the ruling of the chair and 17 voted no. If a majority had voted no, the bill would have been allowed to go on its way to the next committee, but the challenge failed and the bill died.

The Vote on SB 18 and Potential Influence by the Agricultural Industry

During the 2012 election cycle, agricultural lobbyists and their clients contributed \$141,247 to senators who voted on SB 18, or were absent during the vote. While arguably more procedural than substantive, the floor vote effectively killed SB 18. Senators are cognizant of the difference between procedural votes and votes on a bill's substance. Thus, it is possible that an individual senator would support a bill on a procedural vote even if he/she did not support the policy within the bill. Still, senators know the effect of their vote regardless of whether it is on a procedural or substantive matter, and those voting to not adopt the committee report knew they were voting to kill the bill. The question is whether these votes were influenced by lobbyists and their clients in the agricultural industry.

The Numbers: Contributions and Expenditures

As noted above, although a lobbyist may represent multiple clients, it is presumed that legislators are more aware of the totality of a lobbyist's campaign contributions rather than which proportion of the contributions represents a certain client's interests. Of the 18 registered lobbyists with agricultural clients, only six made campaign contributions totaling \$45,227. Two lobbyists, T.J. Trujillo and Marla Shoats, with a combined \$42,029 in contributions, made nearly all of these campaign donations.

Trujillo contributed \$21,829 and Shoats gave senators \$20,200. T.J. Trujillo's only agricultural client is the Biotechnology Industry Organization (BIO). According to its own website, the BIO is the world's largest biotechnology trade association, and is a 501(c)(6) non-profit organization headquartered in Washington, D.C. Some of the BIO's most well-known members are Monsanto and DuPont. The organization is active at the federal level and in statehouses around the country, contributing \$1,174,300 nationwide to state candidates from 2005-2012. Marla Shoats represents Las Uvas Valley Dairy, located near Hatch, NM. As a private operation, there is not much publicly available information on the dairy.

The 18 agricultural lobbyists spent an additional \$61,793 wining and dining senators since the end of the 2012 session. These expenditures cannot be tracked to specific senators, and in fact everyone benefits from the giant "Ag Fest" held every session to showcase New Mexico products. Both legislators and staff also benefit from the annual 100th Bill Party, to which TJ Trujillo contributed \$2,500 in 2013 on behalf of the Biotechnology Industry Organization (BIO). Although the payoff is not direct, the expenditures still show that this group of lobbyists spent a considerable amount to gain access to and improve their relationships with senators.

Breaking Down the Numbers

Relationships with policymakers are probably lobbyists' most important asset in promoting or opposing certain pieces of legislation. Yet, because these relationships are not quantifiable, campaign contributions are our best measure of analyzing a legislator's votes. The discrepancy in contributions received by those who voted to kill SB 18 and those who voted to allow the committee process to continue is stark.

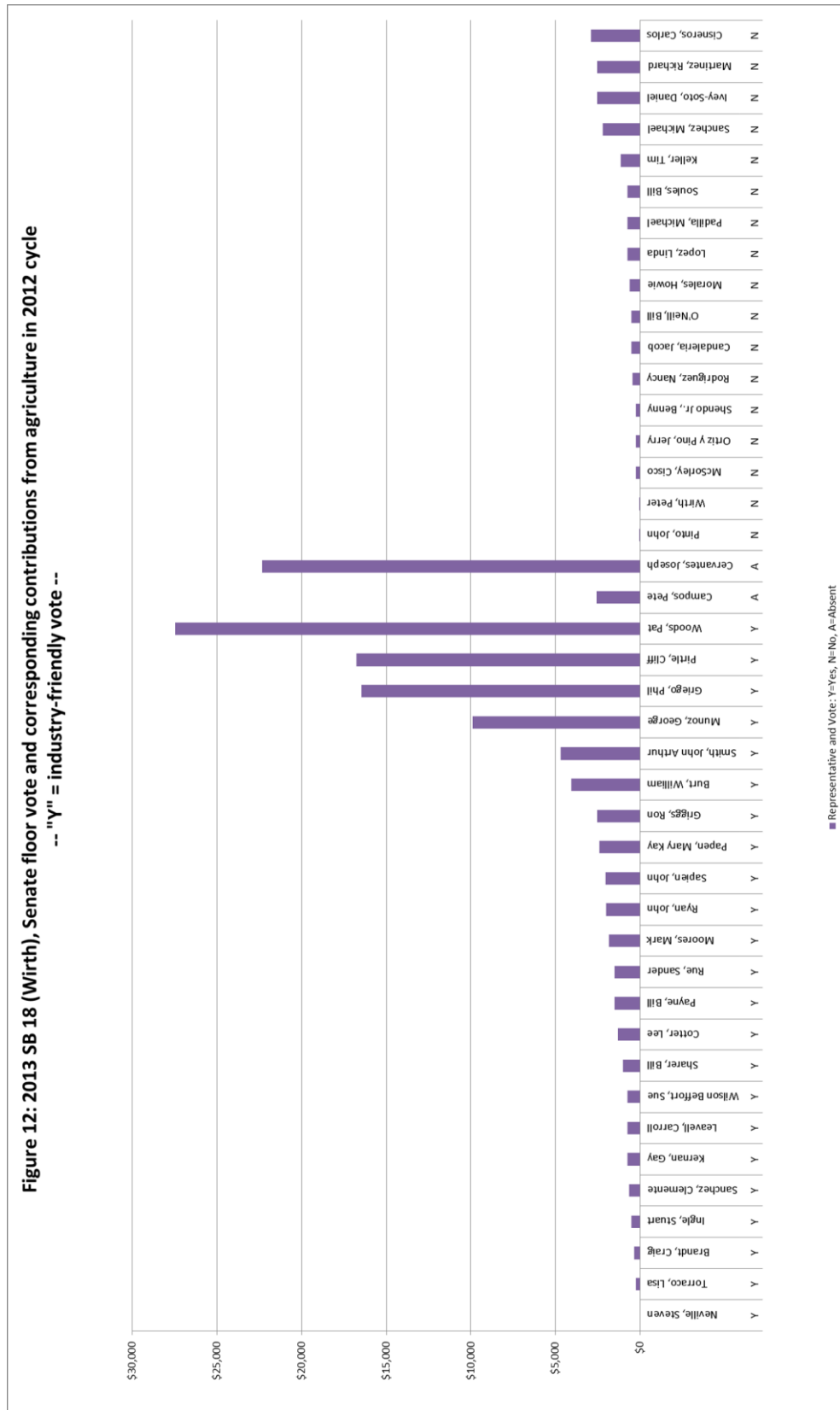


Figure 12: 2013 SB 18 Senate floor vote and corresponding contributions from Agriculture in the 2012 cycle. Data from www.followthemoney.org.

The 23 senators who voted to kill the bill received an average of \$4,341 in campaign contributions from the agricultural industry. This is nearly four and one-half times as much as the \$970 average of contributions to the 17 senators who voted to adopt the Public Affairs Committee’s “no recommendation” report.

All of the Senate’s 18 Republican members voted to kill the bill, and they received an average of \$3,673 in contributions from the agricultural industry. The five Democratic senators who voted to kill the bill, averaging \$6,747 each, received nearly twice as much as their Republican colleagues who cast the same vote.

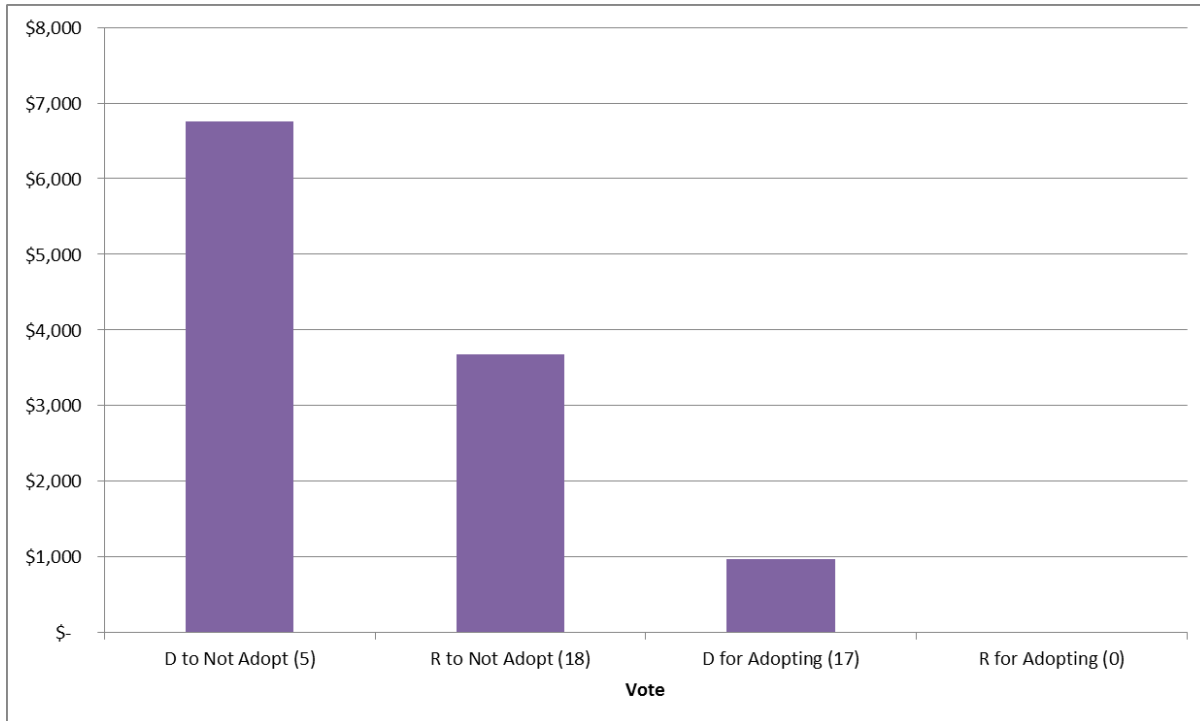


Figure 13: Average Agricultural Contributions by Vote on SB 18. Data from www.followthemoney.org.

Two senators, Joseph Cervantes and Pete Campos, were absent from the vote on SB 18. Senator Campos received \$2,580 and Senator Cervantes received \$22,319 from the agricultural industry. It should be noted that Senator Cervantes and his family partners operate local businesses in farming and chile processing in Dona Ana County and just over 60% of the agricultural contributions he received actually came from these family businesses.

Senator Cervantes received the second most agricultural contributions among senators. Coming in first was Senator Pat Woods, a rancher from the Clovis area, and ranking third was Senator Cliff Pirtle who, like Senator Cervantes, comes from a farming family. For Senators Cervantes, Woods, and Pirtle, and other senators who represent rural parts of the state and have family and friends in the agricultural industry, it is fair to ask whether they would have voted any differently regardless of campaign contributions. That is to say, it is a chicken-and-egg scenario. It may be just as likely that they received these contributions because of their views on agricultural issues as opposed to incentives to grant access to industry representatives.

VI. Beyond Roll Call Votes

The floor votes taken in 2013 on HB 286 (oil and gas regulation) and SB 18 (labeling requirements for genetically modified food) provide a rare glimpse into the overall influence of lobbyists for a specific industry. But before roll call votes can be taken, bills must pass through committees in both the House and Senate. Committees are pathways to the floor and their chairs are the gatekeepers. Chairmen of committees can decide when or if a bill is heard and who is allowed to testify. Bills are amended or substituted in committees, often emerging in a very different form than the original. With fewer members in committees, it takes only a few votes to decide the fate of important legislation.

It is at the committee level that lobbyists are most active. Strategically, it makes sense to focus on the narrowest part of the law-making funnel, especially if the goal is to block passage of changes. Moreover, with committees organized in each chamber around specific issue areas, it is only natural that affected industries and special interest groups focus on the relevant committees and become familiar with committee members. Trial lawyers take a keen interest in the judiciary committees, educators in the education committees, health providers in the public affairs committees, and bankers and insurance companies in the corporations and business committees. Lobbyists form the core audience for these committees and often assist the temporary session staff with information and expert witnesses. They provide food for late night committee meetings and chip in for parties for committees at local restaurants and events for the whole legislature.

Contributions to committee chairs and to the legislative leaders who determine the composition of committees and appoint their chairmen are wise investments for lobbyists and their employers.

Legislative leaders - the Speaker of the House, the Senate President Pro Tem, and Majority Leaders - in both chambers are the largest recipients of campaign cash, but committee chairs are also big recipients. In 2012, the median contribution that House leaders got was \$70,785 compared to a median of \$24,233 for both winning and losing candidates. House chairmen got a median contribution of \$27,235, with several big recipients like House Business and Industry Committee Chair Debbie Rodella (\$58,806) and House Judiciary Chair Gail Chasey (\$51,012).

In the Senate, where campaigns are more expensive, the leaders received a median of \$87,525, while the median Senate candidate (winners and losers) got \$38,397. Senate committee chairs got a median contribution level of even more than the leaders - \$95,208 - with several outliers like Corporations Chair Phil Griego (\$184,544) and Finance Chair John Arthur Smith (\$118,480), who raised big money.^{xviii}

Committee Action is Key Factor in Life or Death of Bills

Each committee in the New Mexico House and Senate operates under the same general rules. However, the chairs control the agenda, hire the staff who write bill analyses, and decide which bills will be heard when and under what conditions. Some chairs hear the bills as they are referred to the committee, while others hear them in varying order. While it can be frustrating not to know when the chair will hear a bill you are working on, the chairs have an important job to make sure the committee's time is not taken up by frivolous bills and to assure that important issues get the full consideration of the committee. The following two accounts illustrate the interaction between special interests, their

lobbyists, and committee members. First, we examine the opposition of the banking industry to Sen. Michael Sanchez's three-year effort to pass a "Mortgage Fair Foreclosure Act." Secondly, we look at the New Mexico Trial Lawyers Association's efforts to block a bill granting immunity from tort liability to Spaceport America and the countervailing efforts of lobbyists for Virgin Galactic, the facility's major tenant, which were ultimately successful in 2013.

VII. Bankers' Lobby Resists Fair Foreclosure Bill

The great recession of 2009-2012, spurred by a national mortgage crisis, hit New Mexico hard. The number of home foreclosures increased significantly, although the situation was not as dire as Arizona, Florida or Nevada's. Still, continued unemployment put New Mexico homeowners at risk of default and loss of their family homes. To help address the problem, Attorney General Gary King and Senator Michael Sanchez put forward legislation in 2011 to allow debtors time to work out their loan through a "loss mitigation process" before the foreclosure and the re-sale of the home. The measure would also provide more information and protect consumer rights during foreclosure proceedings. The bill was introduced in each session from 2011-2013; each time it was killed in committee.

The bills were opposed by a coalition of banking groups including the Independent Community Bankers Association of New Mexico, the New Mexico Mortgage Bankers Association, the New Mexico Bankers Association, the Credit Union Association of New Mexico, and several individual banks. Although this industry is not one of the largest contributors to the legislature, the banking sector has given approximately \$668,000 to legislators since 2002.

The banking sector described here includes banks and lending institutions, commercial banks, credit unions, finance and credit companies, mortgage bankers and brokers, savings banks, and savings and loan institutions. It does not include payday lenders, who are considerable donors in their own right. In 2012 the Independent Community Bankers Association of New Mexico—a major player in the foreclosure debate—was the 8th largest donor to New Mexico Senate candidates, giving \$34,750. The bankers are also large donors to members who sit on the committees in which the Fair Mortgage Act died in 2011, 2012, and 2013.

Consumer advocates, the Attorney General and Senator Michael Sanchez have not had good luck with the foreclosure measure. In 2011, the chances looked good as the bill passed the Senate but then it died in the House Judiciary Committee. In 2012, it survived two Senate committees but was not heard on the floor of the Senate. This year (2013), it passed the Senate Corporations Committee, but died in the Senate Judiciary Committee. Our analysis here is focused on the Senate Judiciary Committee in 2013 and its handling of SB 1.

Chairman Richard Martinez did not hear the bill until late in the session, after repeated pleas from advocates, and when he did, it was the subject of a prolonged debate involving numerous amendments and finally a vote. Eyewitnesses indicate the "Do Pass" motion failed on a 5 to 4 vote, with Senator Joseph Cervantes absent. There is no written record of the vote since Senate committees are not required to report on the fate of bills that remain in their committee as a result of a tabling vote or because they do not pass.

Contributions to members of the Judiciary Committee in 2012 from the following contributors were tallied: the Independent Community Bankers Association of New Mexico, the New Mexico Mortgage Bankers Association, the New Mexico Bankers Association, the Credit Union Association of New Mexico, Wells Fargo and Bank of America. This group formed a subset of the overall banking sector which was most interested in this bill. Committee Chair Richard Martinez received the highest level of banking contributions from this group (\$4,900) with Senators Lopez and Wirth receiving no contributions from this group.^{xix} The Independent Community Bankers gave a total of \$6,750 to five committee members,

making it the second largest individual contributor to committee members (after the NM Realtors Association) in 2012.^{xx}

As seen in Figure 14 the five opponents of the bill received more contributions from the bankers (an average contribution of \$3,930) while the supporters received much less (an average of \$725). Senator Joseph Cervantes, who was absent from the vote, received \$3,050.

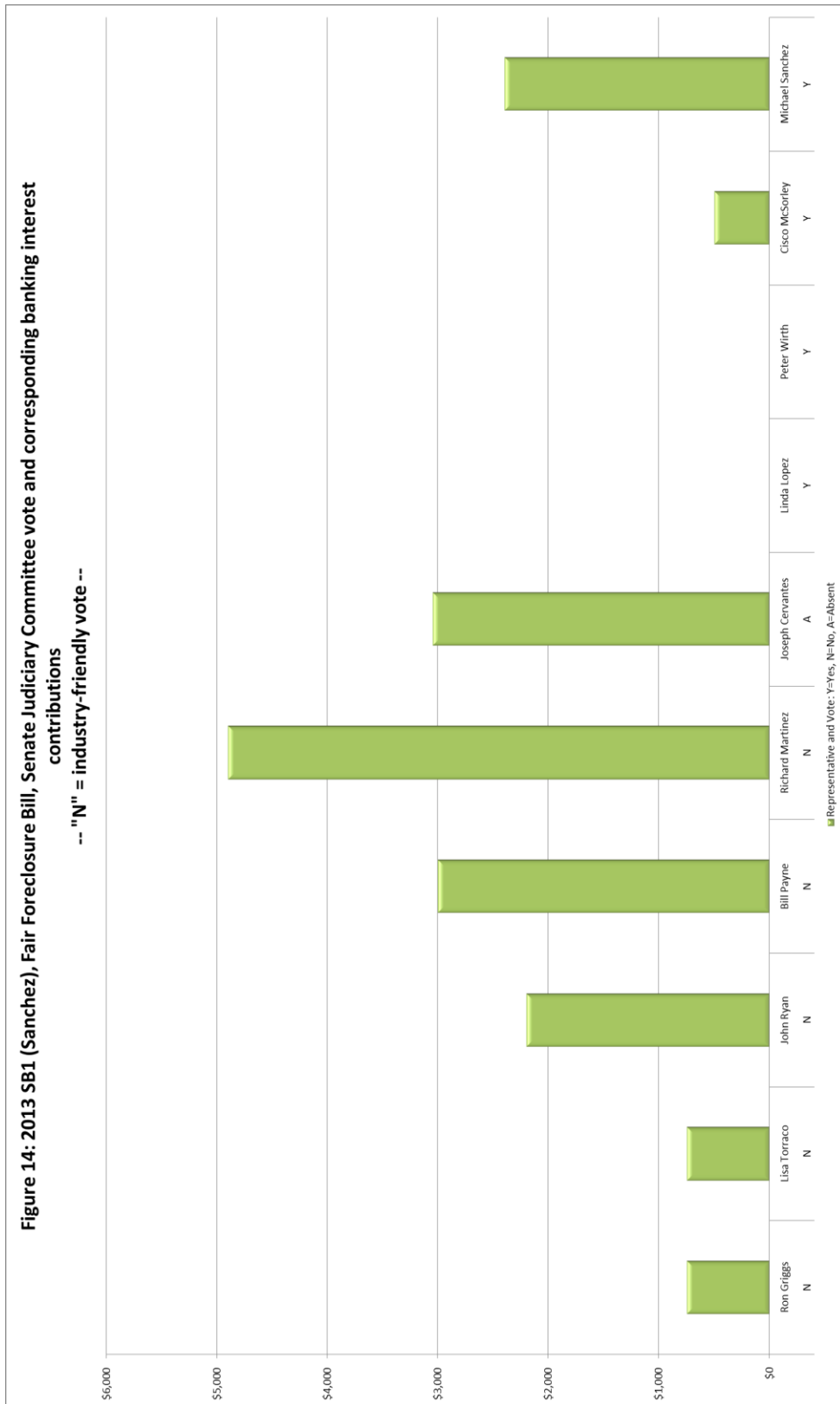


Figure 14: 2013 SB 1, Fair Foreclosure Bill, Senate Judiciary Committee vote and corresponding banking interest contributions. Data from www.followthemoney.org.

Lobbyists for the banking coalition also weighed in with contributions to committee members, although to a much lesser degree. Larry Horan (Mortgage Bankers Association) gave a total of \$1,400 to six committee members; Domonic Silva (Independent Bankers Association) gave \$750 to two members of the committee. The two lobbyists have multiple clients which appear before the committee.

It is interesting to note that the sponsorship of a bill by one of the Senate leaders often presents a dilemma for committee members, lobbyists, and the leader's fellow party members. There is a natural tendency for legislators to go along with their leader, since he or she controls the fate of many members' bills and committee assignments. Also, the leader is often the magnet for campaign contributions from lobbyists and their clients for the same reason.

Given these factors, is the defeat of the Fair Foreclosure bill a testament to the strength and skill of the banking lobby? Jerry Walker, lobbyist for the Independent Community Bankers Association, took credit for the blockage in a March 22, 2013, article in *Albuquerque Business First*. He said the banks were able to block a bad bill, which would have increased by six months the time it would take a bank to foreclose on a property and shed delinquent assets. Other bankers said the bill would weaken bank balance sheets and could dissuade some from lending to homeowners.^{xxi}

Lobbyists for the coalition of bankers opposing the bill included Jerry Walker and Domonic Silva (Independent Community Bankers Association), John Anderson (New Mexico Bankers Association), Larry Horan (New Mexico Mortgage Lenders Association), and Juan Fernandez-Ceballo, Sylvia Lyon, and Al Park (all representing the Credit Union Association of New Mexico). According to reports filed with the Secretary of State, during the 2013 legislative session Jerry Walker, whose sole client is the Independent Community Bankers, spent \$5,675 on meals and beverages for legislators at various Santa Fe area restaurants. Of that total, \$2,359 was spent for a dinner on January 30 for the Senate Judiciary Committee, its staff, and guests at the Four Seasons Resort at Rancho Encantado. Larry Horan, who lobbies on behalf of approximately 20 clients, spent \$7,499.91, while former Representative Al Park, newly departed from the legislature, spent \$3,280.73. Park now lobbies on behalf of eight different clients.

As always, it should be noted that the expenditures of these and other lobbyists are often co-sponsorships of institution-wide events such as the welcoming freshman dinners, party caucuses, the Senate-House basketball game, the 100 Bill Party, or meals for staffers at the Legislative Council Service or Sergeants-at-Arms. The purchase of dinners for committees has also become routine – both inside the Roundhouse and at upscale restaurants in Santa Fe. Lobbyist expenditures (amounting to three-quarters of a million between January 2012 and May 2013) do much to give the institution its polish and provide the amenities which many legislators would be hard pressed to pay for themselves. In return, legislators often recognize and thank lobbyists for their efforts in committee and on the floor of each chamber. Whether they do so with their votes as well is for the reader to judge.

VIII. New Mexico Trial Lawyers vs. Virgin Galactic: Experienced Lobbyists Face Off in Strategic Showdown

The New Mexico Trial Lawyers Association (NMTLA) and their veteran lobbyists have been a force to be reckoned with at the state's capitol roundhouse for many years. Headquartered in Albuquerque, the non-profit association is the professional organization for civil trial attorneys who represent plaintiffs in personal injury, medical malpractice, product liability and employment law cases. The association has a large and active membership, which benefits from the group's continuing legal education, its list server, and steady stream of information about court decisions and case law. Yet, as its web site indicates, perhaps the group's greatest mission is the protection of the right to a jury trial for the clients of its hundreds of lawyers from both New Mexico and West Texas. For the trial lawyers, protecting that right inevitably means involvement with the political process. The group's political action committee, the Committee on Individual Responsibility (COIR), is a major effort of the organization with 129 of the group's members making monthly contributions to COIR of \$75-\$200. In addition, members make their own contributions to individual candidates and are part of a volunteer effort each session to contact their own legislators, do research on individual bills, testify before committees, visit the capitol and contact others in the network. Their work supports that of the association's long-time lobbyists Peter Mallery and David Jaramillo.

In lobbying the legislature, the association's lobbyists have a few advantages. As professionals appealing to a citizen legislature, they know state law and they are not fish out of water. Eight members of the House are lawyers themselves, (including Speaker Ken Martinez, Majority Whip Antonio "Moe" Maestas, and Minority Whip Nate Gentry), accounting for 11% of the members. In the Senate, there are seven attorneys (including Majority Leader Michael Sanchez and Minority Leader Bill Payne), accounting for over 16% of the members. Not all of the lawyers in the legislature, of course, are plaintiffs' lawyers. In 2012, however, the Senate lawyers included Lisa Curtis, who was president of the NMTLA at the time. The legislator-lawyers are often appointed to each chamber's judiciary committee. In the House there are currently seven lawyers (out of 16) seated on the House Judiciary Committee and in the Senate there are currently six (out of 10) on Senate Judiciary. It is interesting to note that while Representative Gail Chasey, Chair of the House Judiciary Committee, is an attorney, Senate Judiciary Chairman Richard Martinez is not.

Issues limiting the liability of businesses, doctors, hospitals, manufacturers, pharmaceutical companies, and midwives come up regularly in the New Mexico Legislature in connection with insurance, consumer protection, and workforce development. Medical malpractice and workers compensation have all been major problems in the past, and the lobbying—and negotiating—efforts of trial lawyers have been an important part of the process, which also includes lobbyists from the medical community, unions, and businesses.

In the past five years one recurring issue has been providing immunity for the operators and suppliers of Spaceport America, a \$209 million facility nearing completion in southern New Mexico. An economic development project of former Governor Bill Richardson, the spaceport is operated by Virgin Galactic, whose flashy founder, Sir Richard Branson, has made many trips to the state to promote the facility. With over 400 suborbital flights costing \$250,000 each already booked for 2014, a major premise of the commercial facility is space tourism. A bill granting limited immunity for the operator of the facility, then trying to attract tenants, was initially passed in 2010. Since then, Virgin Galactic has pushed

for immunity for suppliers (which it owns) as well. However, until a compromise was reached during the 2013 legislative session, NMTLA successfully blocked the immunity measures.

Campaign Contributions made by the NM Trial Lawyers

The trial lawyers' PAC, COIR, has consistently been one of the largest individual contributors to New Mexico candidates since 2004, giving a total of \$788,898 through 2012.^{xxii} In 2012, COIR was the third highest donor, trailing only the public subsidies given to publicly funded campaigns (which are not available in legislative races) and Lisa Curtis who funded her own campaign in 2012 by giving it \$303,329. In 2008, COIR ranked fifth with \$194,150 in contributions, and in 2004 it was ranked fourth with \$122,850 in contributions.^{xxiii} (See previous Figure 6).

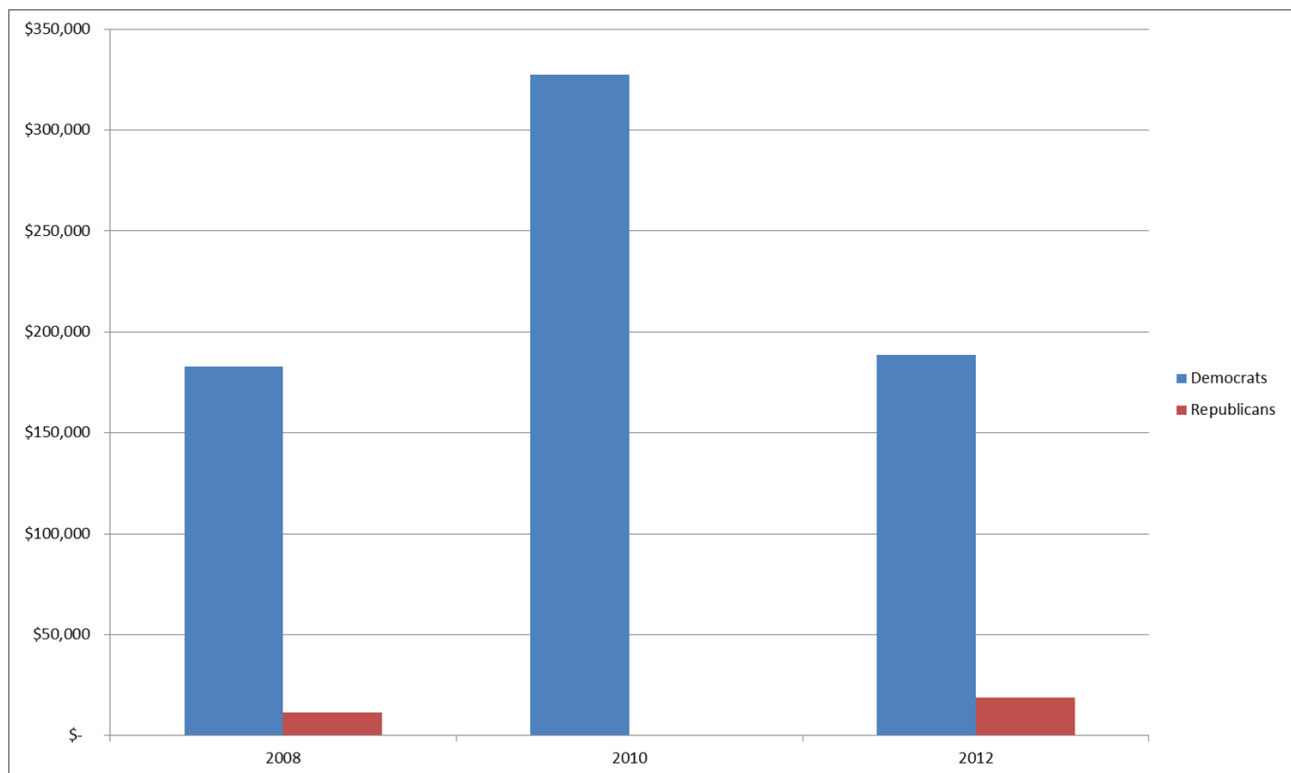


Figure 15: Trial Lawyer Contributions to All Candidates and Committees by Party Affiliation. Data from www.followthemoney.org.

COIR's contributions to individual candidates, however, do not paint a complete picture of the influence of the trial lawyers. Many of the members are big contributors in their own rights, and the organization is a benefactor of the Democratic Party and many political action committees. Before campaign contribution limits were passed by the legislature in 2007, COIR was a leading contributor to the Democratic Legislative Campaign Committee (DLCC). In both 2008 and 2010, before the limits took effect, COIR gave \$50,000 to the DLCC, which used it for mailings in legislative races. In 2012, when PACs were limited to \$10,000 contributions to other PACs, COIR diversified by giving \$131,000 to a variety of PACs run by Democratic legislative leaders and others. COIR regularly works with legislative leaders on polling and candidate training, and is a regular contributor to the Democratic Party, giving \$5,000 in 2012.^{xxiv}

Strategic Contributions to legislative decision makers

For almost 20 years, the major focus of the trial lawyers has been the legislature and its leadership, especially the Speaker of the House, the Senate President Pro Tempore and the majority leaders in both houses. Since 2008 the group has given \$460,927 to legislative candidates.^{xxv} The leadership is crucial in appointing committee members, blocking or speeding legislation on the floor, and sometimes encouraging compromise between conflicting lobbyists. Lobbyists Peter Mallery and David Jaramillo guide the contributions to legislators, with committees of local lawyers often interviewing candidates.

Committee composition is crucial since many pieces of legislation detrimental to a particular industry can be bottled up in committee with the help of a friendly committee chair or a majority in a particular committee with jurisdiction over the group's issues. Both the House and Senate Judiciary Committees are of particular interest to the trial lawyers, as are the business committees in both chambers.

In 2008 when the Senate was up for election, COIR gave \$24,350 to Democratic candidates who sat on the Senate Judiciary Committee. Sen. Linda Lopez got \$6,750; Sen. Michael Sanchez got \$5,750; Chairman Sen. Cisco McSorley (who had no opponent) got \$750 and Rep. Peter Wirth, who had been on the House Appropriations and Finance Committee but was now a senatorial candidate, got \$500. Sen. Tim Eichenberg, and Eric Griego, candidates who were both appointed to the Judiciary Committee in 2009, received \$6,000 and \$4,600 respectively.

In 2010, when only the House was up for election, COIR gave \$42,500 to Democratic candidates who were then members of the House Judiciary Committee, including one (Elias Barela) who lost, despite the group's \$10,000 in contributions. Representatives Joseph Cervantes, Brian Egolf, Bill O'Neill, Al Park, and Mimi Stewart each received \$5,000; Reps. Gail Chasey and Antonio Maestas each received \$3,000, with Lee Alcon receiving \$1,500.^{xxvi}

COIR contributions to leadership that year included a \$50,000 to the Democratic Legislative Campaign Committee (DLCC), which benefited House candidates, \$5,000 to Speaker Ben Lujan, \$5,000 to Majority Leader Ken Martinez, \$5,000 to Rep. Debbie Rodella, chair of the House Business and Industry Committee, and \$5,000 to House Judiciary Committee Chair Al Park (see above).

In 2012, when the entire legislature was up for election, leadership—and their new political action committees formed in the wake of contribution limits—would receive larger contributions. Senate Majority Leader Michael Sanchez received \$15,000; Senator Phil Griego, Chairman of the Senate Corporations Committee, received \$10,000, Representative Rodella received another \$5,000, and Speaker Ken Martinez received \$5,000. Much more money—\$130,000—from COIR went to Democratic legislative PACs including the House Majority Fund, True Blue PAC, Patriot Majority, Leadership PAC, 2012 PAC, Forward NM PAC, NM Working Families PAC, NM Promise PAC, Senate Majority Leadership PAC, the DLCC, the NM Defense Fund, the Elect Senate Dems PAC, the Ken Martinez Leadership PAC, Viva New Mexico, and the Independent Source PAC.

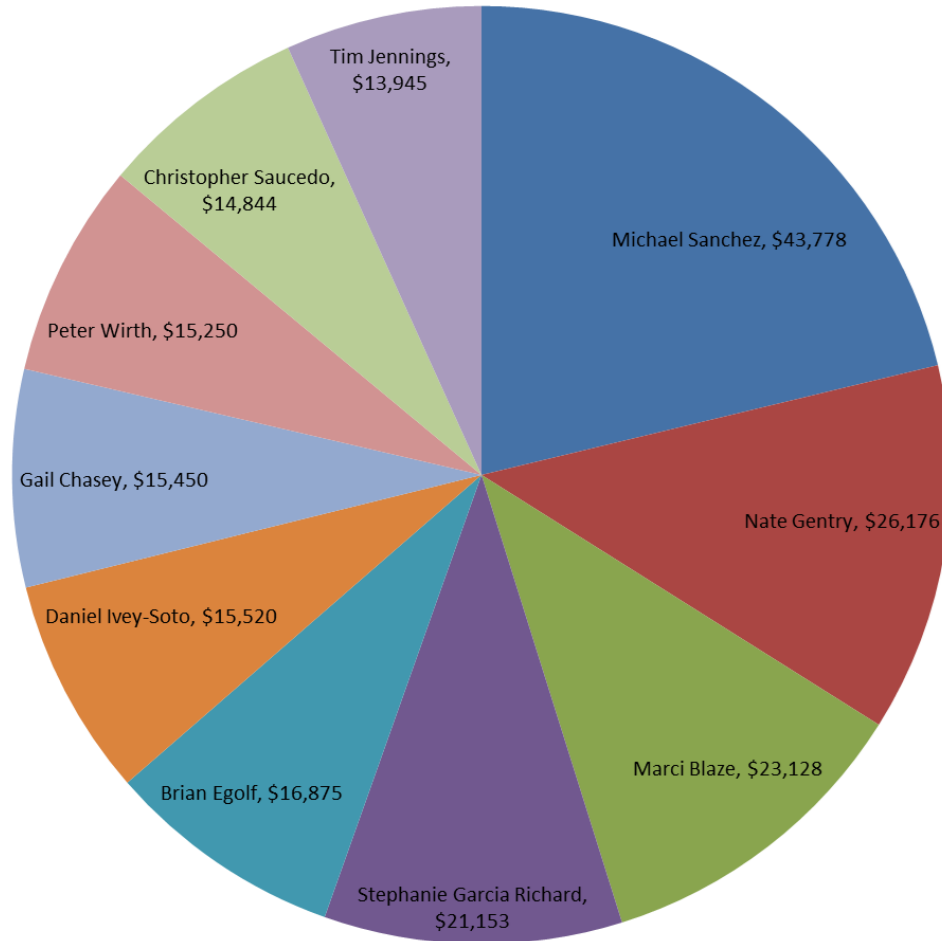


Figure 16: Top Legislative Candidate Recipients of Contributions from Lawyers & Law Firms in 2012. Data from www.followthemoney.org.

Outcomes: Did the Contributions Make a Difference?

The location of a huge facility in New Mexico is an excellent opportunity for economic development, particularly in a rural area where there are few jobs. State policy makers are often called upon to enact incentives and other measures in order to compete with other states trying to attract the business. As the Spaceport was getting off the ground, at the urging of then Governor Bill Richardson, legislators passed a bill granting a degree of immunity to the spaceport operator. Florida, Virginia and a few others states had similar laws. The initial law was due to sunset (expire) in 2018. It did not extend the immunity to suppliers and manufacturers, only to the operator of the facility, Virgin Galactic. Virgin Galactic, however, also owned some of the Spaceport's suppliers and by 2011 was applying pressure to broaden the immunity provisions. Otherwise, according to Virgin Galactic, it would be forced to abandon the \$209 million facility (which the state kicked off with capital outlay expenditures and which it supports with local gross receipts taxes). A team of lobbyists newly hired by Virgin Galactic led the way, with the lobbyists for the Trial Lawyers Association in opposition.

In 2011, two separate bills giving immunity from liability to spaceport suppliers and

manufacturers were killed in the House Judiciary Committee (HB 317, sponsored by Representative Andy Nunez) and in the Senate Judiciary Committee (SB 435, sponsored by Senator John Arthur Smith). In 2012, Senator Papen's SB 3 to "Expand Informed Consent" was tabled in the Senate Judiciary Committee, and Representative James P. White's duplicate bill (HB 239) was tabled in the House Business and Industry Committee. Here we focus on the 2012 committee votes on the Spaceport measures.

To see how the targeted contributions of the trial lawyer's PAC correlated with votes in both the House and Senate committees in 2012 (which tabled the immunity expansions) we compared that year's contributions from the trial lawyers for those who voted for the lawyers' position and those who voted against it. Under current rules neither the House nor the Senate provides the vote count on bills tabled in committee, although the public has access to committee votes on bills which receive a "do pass," a "pass with no recommendation," or a "do not pass" vote through the committee's report, which is posted on the web and read out on the floor of each chamber. However, we obtained the vote count on the tabling motions on HB 239 and SB 3 from sponsors and committee members present for the vote.

House Committee Action

As seen in Figure 17 every member of the House Business and Industry Committee (HBIC) voting to table Rep. White's HB 239 in February of 2012 (the COIR position), with the exception of Rep. Jim Trujillo, had received a contribution from the trial lawyers PAC during the previous election cycle. Committee members voting no, i.e. not to table the spaceport immunity bill, received no contributions from the trial lawyers. On average those voting for the trial lawyers' position received \$2,116 and those voting against them received 0 from the trial lawyers. The 6-5 vote to table did not run along party lines, with one Republican voting for the COIR position and one Democrat voting against it.^{xxvii}

By the time the HBIC considered Rep. White's HB 239 in Feb. 2012, Virgin Galactic—and their lobbyists—had also made some modest contributions to committee members, giving \$200 to all committee members except Chairwoman Rodella, who got \$250, and House Minority Leader Tom Taylor whose PAC (the House Minority Leader's Fund) received \$1,000. The company's lobbyists, Tom and Larry Horan, Raymond Sanchez, and Mickey Barnett, also gave to committee members individually. Chairwoman Rodella received \$500 from Tom Horan; Tom Taylor received \$500 from Mickey Barnett; Jane Powdrell-Culbert received \$300 from Barnett and \$200 from Larry Horan; Lee Alcon received \$200 from Larry Horan and \$200 from Raymond Sanchez, and Donna Irwin received \$200 from Mickey Barnett.

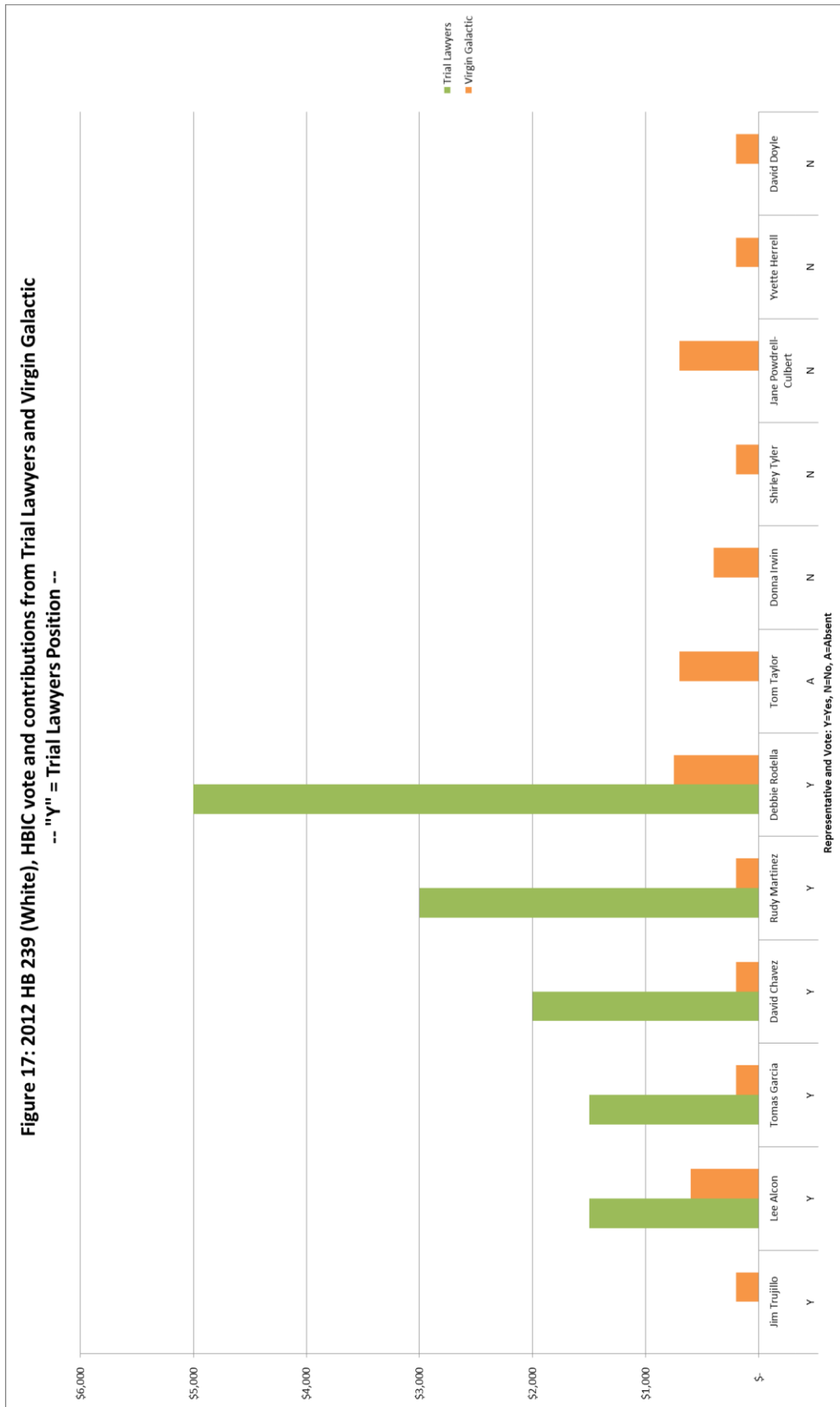


Figure 17: 2012 HB 239, HBIC vote and contributions from Trial Lawyers and Virgin Galactic.

Those voting for the Virgin Galactic position got an average contribution of \$340. Those voting against it received an average of \$358.

When it came to the House Business and Industry Committee, the generosity of Virgin Galactic and their lobbyists had been vastly overshadowed by that of the New Mexico Trial Lawyers Association.

Senate Committee Action

Meanwhile, in the Senate in February 2012, Senator Mary Kay Papen's bill was tabled in the Senate Judiciary Committee. Again, no official record of the vote was available, but eyewitnesses say that all votes on SB 3 were tied, including the motion to table the bill, which meant that the bill was held in the committee for the remainder of the session and never made it to the floor for a vote. The members of the committee voting to table the bill (the COIR position) all received contributions from the trial lawyers, with the exception of Sen. Lisa Curtis, who was appointed to the Senate committee in 2011, and who had not run for office in 2008. Curtis was then president of the Trial Lawyers Association. Sen. Lopez received \$6,750; Sen. Michael Sanchez received \$6,000, Sen. Eric Griego received \$4,600, Sen. McSorley received \$750, and Sen. Peter Wirth received \$500. Those voting against the immunity measure (the trial lawyers' position) received an average of \$2,800 in trial lawyer contributions; those voting for the Spaceport measure did not receive any contributions from COIR.^{xxviii}

However, the trial lawyers now had competition. Virgin Galactic and their lobbyists had begun contributing to committee members in 2011 as well, although the contributions were much smaller. The company contributed \$200 each to committee members Payne, Harden, Lopez, McSorley, Rue and Ryan, and \$250 to Chairman Richard Martinez in 2011. Their lobbyists contributed an additional \$550 to Chairman Richard Martinez in 2011. When the votes were counted, those voting for the Virgin Galactic position received an average of \$320 while those voting against it received an average of \$80.^{xxix}

In both the Senate and the House, Virgin Galactic was outspent by the trial lawyers. Overall, since 2008, the trial lawyers contributed \$460,927 directly to legislative candidates while Virgin Galactic, off to a late start, spent \$21,300.

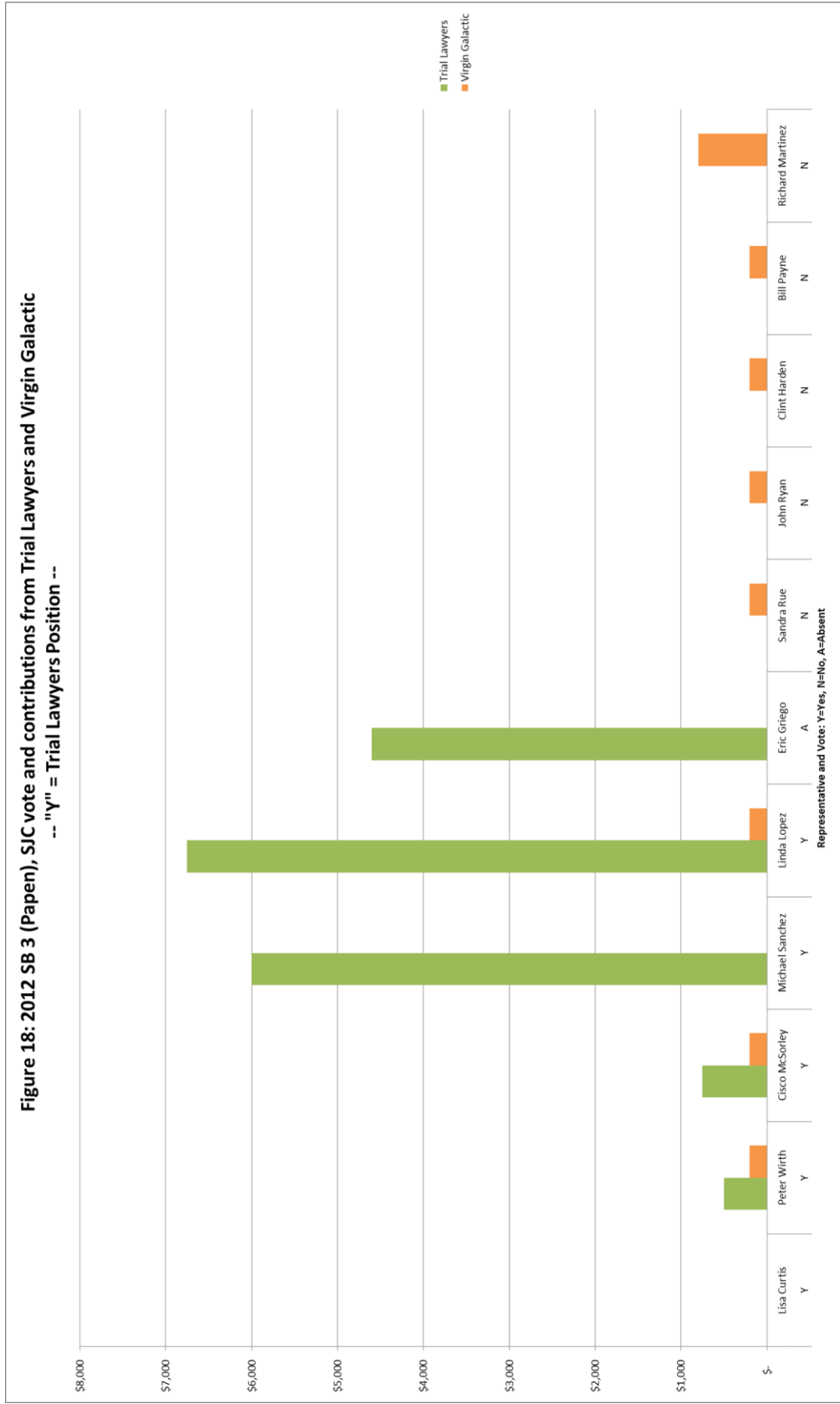


Figure 18: 2012 SB 3, SJC vote and contributions from Trial Lawyers and Virgin Galactic.

Lobbyist Activities, Negotiations and Compromise

As already discussed, campaign contributions are but one possible factor in the success or failure of legislative initiatives, which are usually not settled in one, or even two, sessions. The activities of the lobbyists themselves—their committee testimony, ability to mobilize their constituency to pressure lawmakers from the outside, negotiating ability, strategic sense, and personal relationships with individual lawmakers—are all very important. Lobbyists from both sides of the spaceport immunity issue are experienced and well respected by lawmakers. Peter Mallery and David Jaramillo represent the Trial Lawyers Association on a daily basis in Santa Fe, backed up by a team of volunteer lawyers from every part of the state on call to help. Tom Horan, his son Larry, Raymond Sanchez, and Mickey Barnett are the lobbyists for Virgin Galactic. With the exception of Larry Horan, all are former legislators. Raymond Sanchez is the former Speaker of the House and the brother of Senate Majority Leader Michael Sanchez. Most of these lobbyists have multiple clients, which brings them into frequent contact with legislators in and out of the session. Of course, Republican lobbyists like Mickey Barnett and Democratic lobbyists like Raymond Sanchez have friendships on their own sides of the aisle.

Lobbyists for Virgin Galactic spent a combined total of \$51,539 to entertain, feed and support legislators and their staff from 2011-2013, according to expense reports filed with the SOS. Peter Mallery spent \$7,291 during the same period.^{xxx}

Each of the lobbyists involved has various clients, and it is not clear whether the spending was on behalf of specific clients, or used to simply build goodwill and further personal relationships. But much of it was for big special events like the annual 100 bill party, lunches for the entire legislature, caucus and committee dinners in and outside the capitol, appreciation lunches for the staff and sergeants-at-arms. Often the lobbyists will share the cost of these events in a traditional pattern that has characterized the NM legislature for decades, but sometimes the spending is targeted to relevant committees. For example, Virgin Galactic and the Trial Lawyers Association together spend \$3,842 to keep the judiciary committees in each chamber well fed.

At the start of the 2013 legislative session, on January 22, Democratic leaders called a news conference to announce that a compromise on the spaceport immunity issue had been reached between the Trial Lawyers Association and Virgin Galactic. The dispute between them had continued throughout 2012 with Virgin Galactic threatening to pull out of the endeavor and the two sides offering conflicting testimony at interim committee hearings. However, during the summer, the Democratic leadership, particularly Majority Leader Michael Sanchez and Speaker Ken Martinez, forced the lobbyists from either side to negotiate a deal that would allow continued development of the facility as well as protection of the rights of passengers and others. Both sets of lobbyists had longstanding ties to the leaders and they were trusted to negotiate a deal that would pass the Legislature and be signed by the Governor. And they did. Sen. Mary Kay Papen's SB 240 "Space Flight Informed Consent Application," passed through both judiciary committees, the House Business and Industry Committee and both chambers unanimously. The legislation was signed by Governor Martinez on March 2, 2013. It added suppliers and manufacturers to the existing law, providing them the same limited immunity that the operators, Virgin Galactic, were granted in the original 2010 law. But to qualify for the immunity, the companies would have to prove they have at least \$1 million in liability insurance. Lawsuits still could be brought by passengers for

defects the manufacturers knew about or should have known about, and there would be no cap on what they could recover.

The trial lawyers' group had softened their original position that immunity for the manufacturers put lives in danger, allowed for substandard parts, and jeopardized the right to a jury trial. They would no longer pressure the committees to block the legislation. "When we sat down and we figured out what they really needed, and they understood what our concerns were, we weren't that far apart," Ray Vargas II, president of the NM Trial Lawyers, told the *Albuquerque Journal*.^{xxxii}

Without a mandate from leadership, the showdown between the two camps of powerful lobbyists would have continued. Compromise is not always in a professional lobbyist's self-interest, but the power of lobbyists, with their expense accounts and generous contributions, is far from absolute. Leadership, public opinion, and partisan politics are other, sometimes more powerful influences in a citizen legislature.

IX. 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.^{xxxii} 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.

X. Conclusion

Lobbying and petitioning the government are legitimate activities that are protected by the United States Constitution. Professional lobbyists often provide valuable information about technical issues, and legislators usually only take their advice and data if it proves credible over time. A dishonest lobbyist is soon discovered and his or her effectiveness limited. However, in New Mexico's legislative history lobbyists have assumed a larger role than just policy advisers. They are also friends, relatives, hosts, special event organizers, and important sources of campaign cash for legislators. Their expanded role has likely given them disproportionate access and influence in the New Mexico Legislature. In addition, the fact that the New Mexico Legislature does not provide a salary for its members, as every other state in this country does, and does not provide staff for most members outside the legislative session, increases the power of lobbyists dramatically.

This report examined the influence of professional lobbyists acting on behalf of clients who represent various interest groups on the legislature. Our research indicates that lobbyists and their clients spend a huge amount (lobbyists alone spent \$1.9 million in entertainment and contributions over the past year and a half) to buy good will and affect the outcomes of both elections and legislation. In three of the cases we examined (HB 286, SB 18 and SB 1), our findings suggest that spending plays an influential role in the voting behavior of New Mexico's legislators. Our analysis demonstrates that legislators who voted in accordance with the industries' preferences received larger campaign contributions from them, on average, than legislators who did not. In addition, the lobbyists' spending on contributions and entertainment paid off in terms of successful outcomes except in one case when a deal on the spaceport between two active lobbyist groups was struck, giving the lesser contributors and spenders the outcome they desired.

Regardless, we want to clarify that the correlations found here between lobbyist spending, campaign contributions and voting behavior do not imply that legislators are trading votes for campaign donations or fancy dinners. Identifying individual motivations for voting one way or another are impossible to determine at any level of certainty. That said, the correlation between contributions and voting behavior alone can erode trust in government and interest in politics among the population. If the public believes that powerful interest groups and their hired guns can use their financial resources to steer policy in the direction of their interests, this is not good for the status of democratic governance in our state.

Acknowledgments

This Report was made possible thanks to the support and advice of many individuals and organizations. Common Cause New Mexico would like to thank everyone who contributed to this endeavor, including the key people listed below.

1. Our funder – The Marshall L. and Perrine D. McCune Charitable Foundation
2. Our researchers – Dede Feldman, Jarrett Hines-Kay and Jonas Armstrong
3. The New Mexico Secretary of State's office – Bobbi Shearer, Ken Ortiz and Kari Fresquez
4. The National Institute on Money in State Politics – Follow the Money

-
- ⁱ State Integrity Investigation. Accessed Sept. 16, 2013, <http://www.stateintegrity.org>; Grading State Disclosure. Accessed Sept. 16, 2013, <http://campaigndisclosure.org/gradingstate/nm.html>.
- ⁱⁱ Stephanie Simon, "New Mexico's Political Wild West: Lack of Contribution Limits, Ethics Laws and Lawmaker Pay Seems to Breed Scandal," *Wall Street Journal*, July 17, 2009, accessed Sept. 16, 2013, <http://online.wsj.com/article/SB123233959874194545.html>; James C. McKinley, Jr., "Inquiry Highlights New Mexico's Few Ethics Laws," *New York Times*, accessed Sept. 16, 2013, <http://www.nytimes.com/2009/01/11/us/11newmexico.html?pagewanted=all&r=0>.
- ⁱⁱⁱ David Roybal, *Taking on Giants: Fabian Chavez Jr. and New Mexico Politics* (Albuquerque: University of New Mexico Press), 194.
- ^{iv} National Institute on Money in State Politics. "50-State Assessment of the Costs and Availability of Lobbying Expenditure Data." Accessed Sept. 16, 2013. http://www.followthemoney.org/content/FINAL_50-StateLobbyingReport.pdf
- ^v New Mexico Secretary of State lobbyist contribution reports for May 2012, January 2013 and May 2013; lobbyist expenditure reports including January 2012 report, 48-hour report 2012, May 2012 report, January 2013, 48-hour report 2013, and May 2013 report.
- ^{vi} Figures for total legislative and special interest contributions derived from the National Institute on Money in State Politics' "industry influence" tool on www.followthemoney.org.
- ^{vii} Lawrence Lessig. *Republic Lost: How Money Corrupts Congress and a Plan to Stop It* (New York: Twelve, 2012).
- ^{viii} Statistics drawn from a report commissioned by the New Mexico Oil and Gas Association in 2011, "The Economic Impact of New Mexico's Oil and Gas Industry" written by C. Meghan Starbuck Downes, Ph.D., Assistant Professor of Economics at New Mexico State University.
- ^{ix} The oil and gas industry here includes: oil and gas producers; oilfield service, equipment and exploration; natural gas transmission and distribution; petroleum refining and marketing; gasoline service stations; fuel oil dealers; and liquid propane dealers and producers. This broad definition coincides with that used by the National Institute on Money in State Politics.
- ^x National Institute on Money in State Politics. Accessed September 16, 2013. http://www.followthemoney.org/database/StateGlance/contributor_details.phtml?s=NM&y=2011&i=33.
- ^{xi} Thomas Cole, "Lobbyists and Clients Give Big to Lawmakers," *Albuquerque Journal*, February 14, 2009.
- ^{xii} Thomas Cole, "Money Flows to N.M. Legislative Races," *Albuquerque Journal*, December 19, 2012.
- ^{xiii} Thomas Cole, "Texas Money Helps Fuel Susana PAC," *Albuquerque Journal*, April 25, 2012.
- ^{xiv} National Institute on Money in State Politics. "New Mexico 2012: All Contributions to House/Assembly Candidates." Accessed September 16, 2013. http://www.followthemoney.org/database/StateGlance/contributor_details.phtml?s=NM&y=2012&i=33&f=H.
- ^{xv} Deborah Baker, "Water Pollution Fines Won't be Raised," *Albuquerque Journal*, March 8, 2013.
- ^{xvi} Richard Wilk, ed. *Fast Food/slow Food: The Cultural Economy of the Global Food System*. Lanham, MD: AltaMira Press, 2006, 184.
- ^{xvii} Linda Lobao. *Locality and Inequality: Farm and Industry Structure and Socioeconomic Conditions*. Albany: State University of New York Press, 1990, 23; Enrique Salmon. *Eating the Landscape: American Indian Stories of Food, Identity, and Resilience*. Tucson, AZ: University of Arizona Press, 2012, 149.

^{xviii} All figures from the National Institute on Money in State Politics (www.followthemoney.org). Of course, there are many variables that go into how much each legislative candidate receives, and in that sense, both the median and the average contribution level is deceptive. Some candidates are in hotly contested races, some have no opposition, some are challengers, and some are incumbents. In 2012, only four of the eight Senate Chairs had opposition and just four out of 12 House chairs faced opposition. Here we have used median figures to discount outliers. In addition, these figures are for direct contributions to candidates only. Many leaders and committee chairs had separate PACs which were used to elect candidates from the same party.

^{xix} Contribution levels calculated using the Legislative Committee Analysis Tool (“LCAT”) on www.followthemoney.org; see Figure 14.

^{xx} Calculated using LCAT on www.followthemoney.org.

^{xxi} Winthrop Quigley, “Senate Foreclosure Bill Criticized,” *Albuquerque Journal*, January 27, 2012.

^{xxii} National Institute on Money in State Politics. “New Mexico Trial Lawyers Association: 2012.” Accessed September 16, 2013. <http://www.followthemoney.org/database/topcontributor.phtml?u=6310&y=2012&incy=0&ince=0&incs=0&incf=0>.

^{xxiii} National Institute on Money in State Politics. “New Mexico Trial Lawyers Association.” Accessed September 16, 2013. <http://www.followthemoney.org/database/topcontributor.phtml?u=6310&y=All&incy=0&ince=0&incs=0&incf=0>.

^{xxiv} Secretary of State reports.

^{xxv} From the National Institute on Money in State Politics (www.followthemoney.org): \$141,650 in 2008; \$126,777.87 in 2010; and \$192,500 in 2012.

^{xxvi} Figures from the National Institute on Money in State Politics (www.followthemoney.org).

^{xxvii} In the next election cycle, which began immediately following the 2012 legislative session, the trial lawyers continued contributing to members of the committee, giving an additional \$5,000 to Chairwoman Debbie Rodella, \$3,500 to Lee Alcon, \$2,500 to Rudy Martinez and \$5,000 to Donna Irwin. Lobbyist David Jaramillo also gave Lee Alcon \$750 in March of 2012.

^{xxviii} The issue would surely come up again. In 2012 election cycle, which began immediately after the legislature adjourned, the committee members received new, larger contributions from the lawyers. Majority Leader Michael Sanchez received \$10,000, and McSorley and Wirth each received \$2,500. The lobbyists for the trial lawyers also contributed \$250 to Linda Lopez (from David Jaramillo) and \$1,250 to Michael Sanchez (\$750 from Jaramillo and \$500 from Mallery).

^{xxix} The next year Virgin Galactic gave Payne and Ryan each an additional \$300 and their lobbyists were more generous in 2012. Majority Leader Michael Sanchez received \$2,350 from the Democratic lobbyists on Virgin’s team, including \$1,200 from his brother Raymond Sanchez and \$1,150 from the Horans. Chairman Richard Martinez and Lopez got \$550 each, and McSorley and Wirth received \$200 apiece. Former Senator Mickey Barnett, the Republican member of Virgin’s lobbying team, contributed to Republican Senators Payne (\$750), Ryan (\$800), and Sander Rue (\$300). The struggle, it was assumed, would continue.

^{xxx} Larry Horan reported \$17,624; Tom Horan reported \$16,156; Raymond Sanchez reported \$4,662, and Mickey Barnett reported \$13,096. David Jaramillo did not report any lobbying expenditures. Reports were fairly specific on what the money was spent on with the exception of Mickey Barnett who provided no details except that these were “lobbyists expenses.”

^{xxxi} Deborah Baker, “Spaceport Liability Accord Claimed,” *Albuquerque Journal*, January 23, 2013.

^{xxxii} 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).