

**Testimony
of
Common Cause/NY
League Of Women Voters/N.Y.S.
New York Public Interest Research Group
Before The
New York Temporary State Commission On Lobbying
Regarding
The New York State Lobbying Act
Albany, NY
January 26, 2007**

Thank you for this opportunity to testify. Let us start off the testimony with some overall observations. First, thank you to the members of the Lobbying Commission and its staff for your public service on behalf of the people of the state of New York. If the ethics and lobbying reform legislative package unveiled this week by Governor Spitzer and the state's legislative leaders is enacted into law, the Temporary State Commission on Lobbying will end its work sometime this summer. Over the past decade, the work of the Commission has been a model for effective ethics advocacy. Your stewardship has been appreciated and has served the people well.

Second, we have significant concerns about the creation of the new state agency, the Commission for Public Integrity, which will replace the work done by the Lobbying Commission and the State Ethics Commission. We hope that this hearing today will begin a public discussion on how best to police lobbying and ethics.

Third, our comments today are based on proposals that we would like to see added to the reform measure unveiled by the governor. Given the seismic changes anticipated by the changes proposed by the governor, it makes sense to us to comment today with an eye toward the new law. As a result, some of our recommendations may fall outside the scope of your initial hearing notice. Moreover, as we plow through the 73-page bill draft and hearing reactions to the legislation from others, there may be additional measures that we would like to see included in legislative recommendations.

Given the secrecy surrounding the development of the new legislation, we offer our comments and appreciate this first public opportunity to offer our recommendations. We urge you to include them in your legislative recommendations to the governor and the leaders.

The Commission for Public Integrity must be made independent of the control of any one political figure.

Replacing the Lobbying Commission with its diffusely-appointed membership and replacing it with a gubernatorially-dominated Commission for Public Integrity raises serious concerns for us. Instead, we believe that there needs to be an independent ethics commission with jurisdiction to monitor and enforce New York's ethics laws in both the executive and legislative branches. The state ethics commission should consist of 17

individuals with two persons appointed by each of the following officials: the comptroller, the attorney general, speaker and minority leader of the assembly and the temporary president and minority leader of the senate, and five persons appointed by the governor. The commission, without regard to political affiliation, would appoint the executive director.

In addition, as we read the proposal a majority of the Commission membership would have to approve an investigation in advance of agency action. If we are correct, the combination of gubernatorial control over the membership combined with the limit on investigatory powers could drastically limit the ability of the Commission to do its job without fear or favor.

The new law must include restrictions on “pay to play” activities of lobbyists and those receiving government contracts.

Restrict campaign contributions from those receiving government contracts. There are no special restrictions placed on those entities receiving government contracts. Yet obtaining such contracts is a privilege, not a right. Real restrictions should be placed on such entities to eliminate concerns that “pay to play” activities are allowing less qualified companies to provide public serves.

Lobbyists and those receiving government contracts must voluntarily agree to significant restrictions on campaign fundraising activities. Such entities should agree to a prohibition on contributions to state and local party committees (including “housekeeping accounts”) and agree to a maximum \$500 limit to candidates who directly represent them. Such limits should apply to close family members and corporate subsidiaries.

The definition of lobbying must be expanded.

Currently, there are gaps in what is considered lobbying under state law. For example, efforts to influence agency “permitting” decisions fall outside of the scope of the law. In addition, it has been argued by the Lobbying Commission that some efforts to influence government contracting decisions also fall outside the scope of the lobbying definition.

The lobbying law should be amended to ensure that *any* effort to influence government decisions be considered within the definition of lobbying. (While keeping the current exemptions intact, except for the current exemption from disclosure of lobbyists contacting legislators for the purposes of procurement. Our groups also believe that agencies should keep track of procurement contacts from legislators.)

Insulate the new director of the Commission on Public Integrity from political pressure.

Under the proposed law, the director of the commission does not have a term of office and serves at the pleasure of the Commission on Public Integrity. Given the numerical dominance of the members appointed by the governor, it is our view that the new director should be given a fixed term of office and removal during that term can only be done for cause.

Given the politically charged nature of the job, it is important for the Commission's Executive Director to be as insulated as possible from political reprisals. If new protections are put in place it should be coupled with a process that limits political influence on the original appointment as well.

Our recommended model is based on New York City's Independent Budget Office. Using the IBO model, future Commission Executive Directors should be appointed based on the recommendations of a lobbying advisory committee. The lobbying advisory committee shall consist of one person appointed by each of the following officials: the Governor, the Senate Majority Leader, and the Assembly Speaker. The speaker of the assembly and the majority leader of the senate shall jointly appoint six other members of the advisory committee. The members appointed must include at least one former director of Lobbying Commission or equivalent; one expert in lobbying; one dean (or former) of a law school in the state; one officer (or former) of a labor union; one officer (or former) to a business corporation; and one officer (or former) of a civic organization in lobbying matters.

Coupled with limits on the reasons for dismissal, such a screening panel would ensure that the Director is independent and can act in the public's best interests without fear of political pressure. We believe that the current lobbying staff leadership conducts its business in the best interests of the public, however unless reforms are made there is no guarantee that future directors would behave so fearlessly.

Require the reporting of business relationships between lobbyists and lawmakers.

Currently there are few limits on the business relationships legislators can have with lobbyists. Restrict or require disclosure of the extent of personal business activities lobbyists and public contractors, client-owners and senior managers of such lobbyists, and contractors and their immediate family members can undertake with public officials.

Require localities to post notices of local lobbying reporting requirements.

Under current law, those who are paid to influence governmental decisions in municipalities with populations in excess of 50,000 must report their activities to the state Lobbying Commission. Yet, few local governments do anything to ensure that such local lobbyists are aware of the reporting requirement.

Require that the lobbyists' registration requirement be disclosed in all public materials relating to local government.

In addition, we urge you to continue to work in coordination with New York City Clerk's office as they endeavor to implement last year's New York City-based strong lobby reform legislation. So far, it has been helpful. For example, NYC is moving to same reporting timetable as the State and is now requiring on-line reporting. Further coordination may help may ensure that lobbyists at the municipal level are in fact reporting to both entities.

Require public officials to report the information on clients to an independent ethics commission.

New York State does not require that lawmakers disclose any information regarding their business clients when they file disclosure forms. According to the Center for public Integrity, twenty-three states require that legislatures disclose some information regarding their clients; this information can include the industry of the client. Of those twenty three states, nineteen are required to actually disclose the clients' names. (Site: <http://www.publicintegrity.org/oi/db.aspx?act=disco&qid=24>, questions 23 and 24.)

Questions we have for you.

1. Repeal of the Lobbying Act Enforcement Fund - pg. 40

Under this proposal, Section 1-O of the legislative law (penalties regarding to lobbying act violations) is repealed and re-written. The new proposal states, "all monies recovered by the attorney general or received by the commission from the assessment of civil penalties authorized by this section shall be deposited into the general fund." Current law allows for the deposit of these funds into a lobbying act enforcement fund that provides some baseline funding for Lobby Commission activities thereby insulating the commission somewhat from the whims of legislative support or opposition. It appears to us that, under this proposal, this fund will cease to exist. If so, how would that affect the resources of the new Public Integrity Commission?

2. Commission Members - pg. 4

Previous law stated that members of the commission could not "hold office in any political party." Under this proposal, they cannot be "a political party chairman." It seems that this opens the door to participation by other party officials. Are we correct?

3. Chairman of the Commission serves at the pleasure of the Governor and is designated by him - pg. 5. Is our reading correct? If so, how do you anticipate the potential impact a governor could have over the investigations of the new Commission?

Additional comments for databases:

1. Lobbying Disclosure Database – For the most part the Lobby Commission's database is useful and apparently accurate. However, it could stand to make several improvements.
 - a. Provide some method of downloading the entire database, or at least subsets of the data provided. Perhaps akin the utility offered by the NYC CFB's website.
 - b. Clients should be required to report the FilerID for any and all PACs that they operate. This information would allow the lobby commission to link directly to their contributions made via clients' PAC(s).
 - c. There should be a standardized format for the reporting of bill numbers that have been lobbied on. Currently legislative bill numbers are reported in a variety of formats thus complicating the search process.

2. Campaign Finance Database - Legislation should be enacted to improve the campaign finance disclosure requirements. The following list is comprehensive but not all inclusive.
 - a. Create a separate classification of committees for Political Action Committees and require such committees report the purpose of such committee.
 - b. Improve the reporting requirements for donors. Many other jurisdictions, including New York City and the Federal Government, require the disclosure of employer and occupation. Additionally, NYC requires disclosure of any “intermediaries.”
 - c. All campaign finance disclosure reports should undergo a full audit. This should be mandatory.
 - d. Disclosure software should be designed with error correction in mind. Reports with missing, improperly entered or contradictory data should be automatically rejected. For example, missing or incomplete addresses, zip codes that do not match reported city and state, incorrect purpose codes, missing explanations, etc.
 - e. Contributions between registered NYS committees should be required to report the FilerID of the receiving or contributing committee. For example if PAC X contributes to Committee Y both X and Y should be required to report the FilerID of the committee that they are contributing to or receiving from.

Thank you again for this opportunity to testify. And thank you once again for your tremendous public service to the people of the state of New York.