

Department of Legislative Services
 Maryland General Assembly
 2001 Session

FISCAL NOTE
Revised

House Bill 2 (Delegate Taylor, *et al.*)

(Study Commission on Lobbyist Ethics)

Commerce and Government Matters

Economic and Environmental Affairs

Ethics Law - Lobbyist Ethics Reform

This bill amends and expands provisions of the Maryland Public Ethics Law related to lobbyists and lobbying activities.

The bill is effective November 1, 2001.

Fiscal Summary

State Effect: Special fund revenues (Lobbyist Registration Fund) would increase by \$8,000 in FY 2002, increasing 20% annually thereafter. General fund expenditures could increase by \$182,000 in FY 2002 for the State Ethics Commission. Future years reflect annualization, salary increases, and inflation.

(in dollars)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
SF Revenue	\$8,000	\$9,600	\$11,200	\$12,800	\$14,400
GF Expenditure	182,000	149,700	156,000	163,400	170,500
Net Effect	(\$174,000)	(\$140,100)	(\$144,800)	(\$150,600)	(\$156,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill incorporates the recommendations of the Study Commission on Lobbyist Ethics in five areas (administration and enforcement of lobbyist regulation, lobbyist registration, lobbyist activity reporting, prohibited practices, and political campaign activity and reports of contributions). The provisions of the bill for the five areas are outlined below.

Administration and Enforcement of Lobbyist Regulation

Administration

- requires the Ethics Commission to provide a training course for lobbyists at least twice each year (one session must be in January) and provide information to new lobbyists at the time of initial registration;
- requires each lobbyist to attend at least one training course in each two-year period during which the lobbyist is registered; and
- requires the Ethics Commission, consistent with budget allocations, to provide counsel as needed to advise persons subject to its jurisdiction.

Enforcement

- authorizes the Ethics Commission to require a lobbyist who violates the lobbyist regulation provisions to file additional reports or information relating to registration or lobbying activity reports;
- authorizes the Ethics Commission to directly impose an administrative fine not exceeding \$5,000 for each violation;
- authorizes the Ethics Commission to suspend the registration of an individual lobbyist who knowingly and willfully violates the Lobbying Subtitle or has been convicted of a criminal offense arising from lobbying activities, and prohibit the lobbyist from lobbying for compensation for up to three years. The Ethics Commission is also authorized to revoke the registration of an individual lobbyist who, based on acts arising from lobbying activities, has been convicted of bribery, theft, or other crime involving moral turpitude;
- authorizes an individual lobbyist whose registration has been suspended or revoked to apply to the Ethics Commission for reinstatement of the lobbyist's

registration, and authorizes the Ethics Commission to reinstate the registration if it would not be detrimental to the public interest and the integrity of the governmental process;

- increases from \$1,000 to \$10,000 the maximum fine that can be imposed for a misdemeanor conviction for a knowing and willful violation of the Lobbying Subtitle, with the exception of a violation related to the political campaign activity and reports of contributions provisions; and
- increases, from one to two years the statute of limitations applicable to the prosecution of a criminal violation of the Public Ethics Law.

Electronic Filing and On-Line Public Inspection of Regulated Lobbyist Reports

- requires the Ethics Commission to develop procedures for various lobbyist reports to be filed electronically and made available for public inspection electronically through the Internet.

Lobbyist Registration

- applies the legislative lobbying registration “triggers” to Executive Branch activities relating to regulations and executive orders;
- requires registration for an entity who lobbies by means of communication other than “face-to-face” and who receives at least \$5,000 in compensation;
- requires registration of an entity that is paid to influence executive action to secure a business grant or loan with a value of more than \$100,000;
- exempts from lobbyist regulation certain appearances before Executive Branch units;
- requires termination of registration by a lobbyist who becomes subject to the Public Ethics Law as an official or employee. However, a lobbyist who, as of April 15, 2001, is an official subject to regulation due to serving on a board or commission, is not required to terminate registration until November 1, 2002; and
- makes certain clarifications in the Lobbying Subtitle.

Lobbyist Activity Reporting

- requires reporting of invitations to a legislative unit meal or reception with the Department of Legislative Services (DLS) at least five days before the meal or reception. Also requires DLS to: (1) publish once a week the date and location of the meal or reception and the legislative unit that was invited to the meal or reception; and (2) forward the report to the Ethics Commission within three business days. Also requires a lobbyist who files a report with DLS to file a report with the Ethics Commission within 14 days after the date of the meal or reception containing: (1) the total cost of the meal or reception; (2) the identity of any contributing sponsor; and (3) the amount of the contribution made by a sponsor. If the lobbyist does not know the information within 14 days, the lobbyist shall specify the nature of, and estimate the amount for, each reportable item;
- exempts lobbyists from the requirement to report the cost of the legislative unit meal or reception in the semi-annual lobbyist activity report to the Ethics Commission if the information regarding the legislative unit meal or reception is reported accurately and completely within 14 days to the Ethics Commission; and
- makes clarifications in the Lobbying Subtitle including reorganization and renumbering of lobbyist activity reporting provisions.

Prohibited Practices

The bill prohibits lobbyists from engaging in the following activities:

- initiating or encouraging the introduction of legislation for the purpose of opposing it;
- counseling any person to violate any provisions of the Public Ethics Law or any other State or federal law;
- engaging in or counseling any person to engage in fraudulent conducts;
- knowingly making to an official or employee a statement of material fact relating to lobbying activity that the lobbyist knows to be false;
- engaging in lobbying without being properly registered as a lobbyist;
- requesting an official or employee to recommend to a potential client the lobbying services of a lobbyist;

- making a gift that has been solicited in violation of law;
- engaging in any charitable fund-raising activity at the request of an official or employee, including soliciting or transmitting a charitable contribution;
- making or facilitating the making of any loan of money, goods, or services to an official or employee, except in the ordinary course of business;
- knowingly concealing the identity of a lobbying client from an official or employee;
- committing a criminal offense arising from lobbying activity; and
- serving as an officer or participating in fund-raising or in actions relating to filling a vacancy in a public office while serving on a State or local central committee.

Political Campaign Activity and Reports of Contributions

- requires an individual lobbyist to file a separate report, at the time of filing the lobbying activity report, disclosing any contributions made during the reporting period to members of the General Assembly, the incumbent in one of the four statewide offices, or candidates for any of those positions;
- requires the employer of a lobbyist to file a semi-annual report with the State Board of Elections disclosing contributions of at least \$500 made to a member of the General Assembly, the incumbent in one of the four statewide offices, or candidates for any of those positions;
- prohibits an individual lobbyist from forwarding fund-raiser tickets or other fund-raising solicitations to benefit a member of the General Assembly, the incumbent in one of the four statewide offices, or candidates for any of those positions; and
- consolidates existing provisions related to lobbyist participation in fund-raising activities.

Current Law: The provisions in current law related to the provisions of the bill are as follows:

Administration and Enforcement of Lobbyist Regulation

Administration

The Ethics Commission provides an annual orientation program for lobbyists, and staff is available to answer verbal and written inquiries from lobbyists. There is no requirement for lobbyists to attend any orientation or education program.

Enforcement

The Ethics Commission must hold an administrative hearing on a complaint. If the commission determines that a violation has occurred it may issue a reprimand or a cease and desist order, or recommend appropriate discipline to a supervisory authority (not relevant for regulated lobbyists). The decisions are subject to judicial review. To enforce the order, the commission must petition the circuit court. The court can issue a cease and desist order, grant injunctive relief, impose a civil fine of up to \$5,000 per violation, and void an official act of an official or employee. The penalties for a criminal violation are imprisonment for up to one year or a fine not to exceed \$1,000, or both. The Ethics Commission cannot suspend or revoke the registration of a lobbyist.

Electronic Filing and On-Line Public Inspection of Regulated Lobbyist Reports

Information on lobbyist registration is available on-line. However, lobbyist reporting is not done electronically and is not available on-line.

Lobbyist Registration

There are “triggers” to determine when a person must register as a lobbyist. Exceptions to lobbyist registration are:

- an entity communicating face-to-face with an official or member of the Executive Branch and who (1) incurs expenses of less than \$100, and (2) earns less than \$500 in compensation;
- an entity who lobbies as to legislative action with either the Legislative or Executive Branch by a means other than face-to-face; and
- an entity compensated for trying to influence executive action to secure from the State a business grant or business loan unless the entity makes gifts totaling \$100 or more.

In addition, a registered lobbyist is not required to terminate registration as a lobbyist when he or she becomes subject to the Public Ethics Law as an employee or official of the State.

Lobbyist Activity Reporting

The reporting periods for lobbyists are November 1 through April 30 and May 1 through October 31. There is no requirement for reporting of invitations to legislative unit meals or receptions within a shorter time period.

Prohibited Practices

Certain practices are illegal in the context of defrauding a client or counseling or engaging in fraudulent behavior but are not violations of the Public Ethics Law.

Political Campaign Activity and Reports of Contributions

Lobbyists are not required to report personal campaign contributions. State officials are not prohibited from using the list of lobbyist employers for fund-raising campaigns, and employers of lobbyists are not required to report campaign contributions. Lobbyists can serve as impartial conduits for campaign fund-raising solicitations.

Background: Legislation was enacted in 1979 that required certain lobbyists to register with the State and to periodically report their expenditures in attempting to influence legislative action and certain kinds of executive action. This general system of regulation has remained relatively unchanged over the years. In that period, however, there have been many changes in circumstances. The number of regulated lobbyists has increased greatly, and the expenditures by such lobbyists have expanded exponentially. Moreover, the expectations of the public with respect to limiting inappropriate relationships between lobbyists and officials are much higher.

As a result, the General Assembly concluded in 1999 that the Ethics Law as it relates to the regulation of lobbyists should be re-examined, and the Study Commission on Lobbyist Ethics (study commission) was created by the passage of Senate Joint Resolution 3 and House Joint Resolution 20. During the 1999 session, the General Assembly also considered the recommendations of the Special Study Commission on the Maryland Public Ethics Law (“Cardin commission”). The scope of that commission’s study was very broad, but it expressly refrained from examining the provisions of the Ethics Law relating to the regulation of lobbyists. See generally, *Report of the Special Study Commission on the Maryland Public Ethics Laws, (1998)*.

The joint resolutions directed the study commission to accomplish the following:

- examine the Maryland Public Ethics Law as it relates to regulated lobbyists;
- collect information about lobbying practices and standards of ethics for regulated lobbyists, including provisions of law relating to the regulation of lobbyists enacted by other jurisdictions;
- receive testimony as deemed appropriate;
- formulate a Code of Ethics for Lobbyists;
- propose any appropriate statutory changes to the Maryland Public Ethics Law relating to lobbyists; and
- report its findings to the Governor and the General Assembly not later than December 31, 1999 (extended by the Governor and Presiding Officers until November 1, 2000).

The study commission did not address the following issues:

- regulation of governmental lobbying;
- enforcement issues:
 - determination of when a fee structure negotiated by a regulated lobbyist constitutes a contingency fee which is illegal under the Public Ethics Law; and
 - procedures to be followed when a regulated lobbyist is dismissed by a lobbyist's client; and
- issues dealt with recently by the General Assembly:
 - regulating the solicitation and acceptance by officials of gifts from lobbyists; and
 - the regulation of private business activity between lobbyists and officials.

For additional information on the study commission and the recommendations see *Final Report of the Study Commission on Lobbyist Ethics (2000)*.

The State Ethics Commission has 7.6 staff members and for the lobbying year ending on October 31, 1999 processed 2,008 lobbyist registrations, each with a registration fee of \$20. These registrations were by 602 different lobbyists on behalf of 864 separate employers (some employers have more than one lobbyist and many lobbyists have more than one employer). During this lobbying year there were:

- 54 events for all members of the General Assembly;
- 45 events for Senate standing committees;
- 60 events for House standing committees; and
- \$694,958 in expenditures for events to which all members of the General Assembly, either house, a standing committee, or a geographic delegation were invited.

Total lobbying expenses reported for the lobbying year ended October 31, 1999 were \$23.5 million.

State Revenues: The State Ethics Commission estimates that an additional 400 lobbyist registrations will occur in the first year as a result of this bill. Growth is anticipated at 20% annually. With a lobbyist registration fee of \$20, special fund revenues (Lobbyist Registration Fund) would increase by \$8,000 in fiscal 2002, growing to \$14,400 in fiscal 2006.

State Expenditures: General fund expenditures could increase by an estimated \$182,000 in fiscal 2002, which takes into account the bill's November 1, 2001 effective date. This estimate reflects the cost of hiring a staff attorney and a coordinator for the lobbyist filing and related computerization mandates. It includes salaries, fringe benefits, communications, travel, supplies, equipment purchases, contract expenses computerization, and per diem expenses. It also includes \$100,000 for computerization of lobbyist filing and the availability of lobbyist reports on the Internet. One additional board meeting could result in additional per diem expenses of \$500 each year.

Salaries and Fringe Benefits	\$ 75,900
Computerization	100,000
Other Operating Expenses	<u>6,100</u>
Total FY 2002 State Expenditures	\$182,000

Future year expenditures reflect (1) full salaries with a 6.5% increase in fiscal 2003 and a 4.5% increase each year thereafter, with 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) \$25,000 in annual expenses for computerization of lobbyist filing and reporting.

Both the Department of Legislative Services and the State Board of Elections could handle the requirements of the bill using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 75 (The President and Senators Collins and Frosh) – Economic and Environmental Affairs.

Information Source(s): Department of Legislative Services, State Board of Elections, State Ethics Commission

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Analysis by: Christine A. Scott

Direct Inquires to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510