# THE NEW JERSEY LEGISLATIVE ACTIVITIES DISCLOSURE ACT

## ANALYSIS AND RECOMMENDATIONS FOR AMENDMENT



A JOINT REPORT ISSUED BY

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AND THE
ELECTION LAW ENFORCEMENT COMMISSION

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# INTRODUCTION

This report issued by the Attorney General and the Election Law Enforcement Commission represents their evaluation of New Jersey's statutory and regulatory disclosure program applicable to lobbyists and legislative agents.

The New Jersey legislative activity disclosure program currently vests responsibility for administration and enforcement with both the Office of the Attorney General and the Election Law Enforcement Commission. The implementation of financial disclosure reporting in February 1982, and the experiences acquired through that program, provided a timely opportunity to review the current bifurcated program in an effort to determine what changes, if any, would be required to achieve a workable program which would carry out the underlying public policy.

The evaluation leading to this report was conducted with the philosophy that activities associated with the profession of lobbying represent an important and appropriate component of the legislative and governmental process. Lobbyists and legislative agents provide governmental officials with vital information concerning the impact of legislative activity upon the individuals and organizations which they represent. Moreover, lobbyists and legislative agents often serve as a valuable source for expert opinion as to the impact and implications of proposed or enacted public policy.

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However, any activity such as lobbying which is so inherently intertwined with the day-to-day conduct of legislative activities must be subject to public scrutiny as to the nature, character and extent of the activity being conducted.

This report presents an analysis of the effectiveness of New Jersey's current statutes. It concludes with a number of recommendations. While each recommendation addresses a specific subject, the recommendations as a whole present those actions which are required to achieve a workable and meaningful program for public disclosure of lobbying-related activities.

# SECTION I

## HISTORY OF LOBBYING REGULATION IN NEW JERSEY

In 1964 the New Jersey Legislature enacted the first comprehensive statutory framework for the regulation of lobbying activity in this state. L. 1964, c. 207. The New Jersey Legislature acted in response to a specific recommendation contained in a report on legislative procedures prepared by the Eagleton Institute of Politics of Rutgers, The State University, The New Jersey Legislature, A Report Submitted by the Eagleton Institute of Politics, pp. 16-17, Recommendation 6, November 15, 1963.

The initial Act, and the subsequent "Legislative Activities Disclosure Act of 1971" which superseded the 1964 legislation, L. 1971, c. 183, opened with the affirmation of the Legislature that, "... the preservation of responsible government requires that the fullest opportunity be afforded to the people of the State to petition their government for the redress of grievances and to express freely to individual legislators and to committees of the Legislature their opinion on legislation and current issues..." The legislative declaration of intent continues, however, as follows:

> ... the preservation and maintenance of the integrity of the legislative process requires the identification in certain instances of

> persons and groups who seek to influence the content, introduction, passage or defeat of legislation.

N.J.S.A. 52:13C-18. From its inception in 1964, and again in 1971, legislative regulation of lobbying activities expresses the dual goal of promoting the free flow of ideas between legislators and citizens while also clearly disclosing to the public the identity and activity of persons who seek to influence legislation.

The 1964 statute provided that prior to any direct communication with the Legislature any person employed as a "legislative agent," a term defined to include any person who was employed or engaged in influencing legislation in person or through any other person, was required to file a registration statement with the Secretary of State. N.J.S.A. 52:13C-4 (repealed). In addition to the initial registration statement, each legislative agent was required to file a quarterly report with the Secretary of State of activity attempting to influence legislation. Such reports had to identify the persons for whom and in whose interest the activity was undertaken. N.J.S.A. 52:13C-5 (repealed). Failure to file registration statements, quarterly reports or to maintain required records was a criminal misdemeanor. N.J.S.A. 52:13C-15 (repealed).

The 1971 Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq., retained the requirements for the filing of the notice of representation and quarterly reports. However, the 1971 Act expanded the contents of the notice of representation to include the type of legislation the agent was interested in and a description of the arrangement or understanding under which the agent was employed. N.J.S.A.52:13C-21. Quarterly reports similarly were enlarged to include a description of the subject items of legislation. N.J.S.A. 52:13C-22. In addition, legislative agents were required to wear name tags in the State House when they were present for the purposes of influencing legislation. N.J.S.A. 52:13C-28. The criminal sanctions for failure to file statements or reports were removed and replaced with authority in the Attorney General to apply for a court order to compel compliance. N.J.S.A. 52:13C-36.

The 1964 Act imposed filing requirements both on persons who employed legislative agents, that is, the lobbyist entity itself, and the legislative agent. The threshold for reporting was $500 in any calendar quarter, spent or received to influence legislation by direct communication. N.J.S.A. 52:13C-6 (repealed). The 1971 Act limited filing responsibilities to legislative agents only. The term "legislative agent" was defined to include any person receiving compensation, including reimbursement of expenses, exceeding $100 in any three month period, except where the communication was an

isolated, exceptional or infrequent activity in relation to the regular employment of any person. N.J.S.A. 52:13C-20(g). No filing requirements were imposed upon lobbyist entities. However, in a 1977 amendment, lobbyist entities were prohibited from employing as legislative agents any person who was not registered under the Act. N.J.S.A. 52:13C-21.1.

Neither the 1964 Act nor its 1971 successor, required any disclosure of specific amounts being expended for the purposes of lobbying, other than indicating by implication that the legislative agent exceeded a threshold amount. However, with the enactment of the Campaign Contributions and Expenditures Reporting Act ("Campaign Reporting Act") in 1973, the Legislature required that any organization spending money to influence legislation file with the Election Law Enforcement Commission an annual report of contributions and expenditures for lobbying purposes. N.J.S.A. 19:44A-1 et seq. This requirement was contained in a comprehensive statutory framework for the reporting of contributions and expenditures related to political finance activities. The Campaign Reporting Act required that entities defined as "political information organizations" file by March 1st a report of all contributions and expenditures in the preceding calendar year to influence the content, introduction, passage or defeat of any legislation. L. 1973, c. 83, section 8 (subsequently amended by L. 1981, c. 151 repealing this requirement). The term "political information organization"

was defined as "... any two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, whether or not it is required to be registered pursuant to the Legislative Activities Disclosure Act of 1971...which seeks to influence the content, introduction, passage or defeat of legislation...." N.J.S.A. 19:44A-3(g) (repealed). Literally applied, the Campaign Reporting Act required every expenditure for lobbying to be reported by the entity making the expenditure. Unlike the 1971 Act, it contained no definitions of the term "influence legislation" or "communication to the Legislature."

The lobbying reporting provisions of the 1973 Campaign Reporting Act were never implemented or enforced and were ultimately repealed in 1981. L. 1981, c. 151. Shortly after the 1973 enactments, opponents of the Act commenced litigation to challenge the constitutionality of the lobbying provisions. In a 1975 Chancery Division opinion the "political information organization" reporting requirements were struck down as violative of the First Amendment because the Campaign Reporting Act contained no threshold that would relieve relatively small, unorganized lobbying groups of the bank account and reporting requirements. New Jersey Chamber of Commerce v. New Jersey Election Law Enforcement Commission 135 N.J. Super. 537 (Ch. Div. 1975). As a result, all filing requirements were suspended pending an appeal to the State Supreme Court. The New Jersey Supreme Court's decision is a landmark in the development of lobbying regulation in this state. 83 N.J. 57 (1980).

In the Chamber of Commerce opinion the Supreme Court focused on the definition of "political information organization" then contained in the Campaign Reporting Act. A "political information organization" was defined as one "... which seeks to influence the content, introduction, or passage or defeat of legislation." N.J.S.A. 19:44A-3(g). The Court limited the concept "to influence" as excluding groups "... whose conduct is quite innocuous and who do not have the demonstrative capacity or will to make a tangible impact on the legislative process." 82 N.J. at 76. However, the Supreme Court interpreted the phrase to apply to "... activity which consists of direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals." 82 N.J. at 79. The Court gave the Election Law Enforcement Commission the responsibility of establishing, through its rulemaking authority, an appropriate monetary enforcement threshold. In doing so the Court expressly struck down as too low the $100 threshold which the Commission had previously enacted. 83 N.J. at 84-86.

Because the Campaign Reporting Act provisions concerning lobbying were stated in general objectives rather than specific statutory criteria, the Commission was faced with the task of preparing comprehensive regulations for the guidance of the lobbying organizations that would be required

to report. The Commission's proposed rules were submitted containing a threshold of lobbying contributions or expenditures of not more than $2,500 a year, and were subsequently adopted. 12 N.J.R. 439(a). Absent further legislative or judicial action, the first reports filed pursuant to the 1973 statute by lobbying entities would have been due in early 1981 for the calendar year 1980. The newly proposed regulations generated controversy. The principal issues involved conflicting views concerning the scope of the activity that would be considered lobbying and, therefore, be subject to reporting. On June 26, 1980 two bills were introduced in the State Senate to repeal the "political information organization" provisions of the Campaign Reporting Act and to substitute financial disclosure requirements as part of the quarterly reports filed with the Attorney General. (1971 Legislative Activities Disclosure Act, N.J.S.A. 52:13-18 et seq.) These were Senate Bills Nos. 1396 and 1397. The principal thrust of the legislation was to remove from the scope of reportable lobbying activity any expenses related to communications between lobbyists or legislative agents and legislators which were not expressly dealing with legislation. For example, entertainment related expenses were not to be considered "lobbying" unless "direct communication" concerning legislation took place at the time of the expenditure.

After passage by the Legislature, then Governor Brendan Byrne conditionally vetoed Senate Bill No. 1396 with the

following recommendations for amendment: "...(1) continue the Commission's role in regulating lobbyist activity, (2) re-establish the financial threshold and periodic reporting requirements of the Commission's regulations but eliminate their unnecessarily onerous aspects, and (3) clarify the substantive reporting requirements of the bill so that the expenses of lobbyists on entertainment for legislators, for example, would be reportable although made only in relation to, rather than expressly for, a 'direct, express and intentional communication with legislators.'" Significantly, the conditional veto made it clear that expenses related to lobbying communications were reportable even if the communication was not expressly for lobbying. Therefore, the conditional veto sought to require reporting of entertainment expenses undertaken by lobbyists even if at the time of the entertainment there was no express communication concerning legislation.

The Legislature approved the recommendations of the Governor and the legislation was enacted as amended. L. 1981, cc. 150 and 151. The new law repealed the "political information organization" requirements of the Campaign Reporting Act, effectively superceding che regulations previously promulgated by the Commission. As a result, the Commission ceased its activity related to disclosure reports for calendar year 1980 and commenced the drafting of new regulations.

After a public hearing on the Commission's proposals, new comprehensive regulations were adopted in December 1981.

13 N.J.R. 695(a). Consistent with the new legislation, the regulations were in many respects less stringent than the predecessor regulations and such items as "overhead" of lobbyist organizations were no longer reportable. However, in keeping with the conditional veto of the Governor, expenditures by lobbyists and legislative agents for entertainment of legislators were made reportable even if at the time of the event no express discussion of legislation occurred. N.J.A.C. 19:25-8.7(b). The Commission prepared for filing of the first lobbyist disclosure reports pursuant to the new law for activities in calendar year 1981 on February 1, 1982.

Before the first reports were filed, there was further legislative action. On December 3, 1981, an amendment to the new Act was introduced limiting the scope of reportable lobbying activities to those that "expressly" related to lobbying communications. Senate Bill No. 3474. The statement to that bill contained the following explanation:

> The Election Law Enforcement Commission's regulations, however, interpret the law to require that expenditures be listed even when no lobbying has taken place during the time that the legislative agent expended money on behalf of a legislator.
>
> This bell would add the word "expressly" in connection with the expenditures reporting requirements, thereby clarifying the intent of the Legislature that the only expenditures required to be reported would be those made during a period when the specific purpose of the occasion was to directly affect a specific piece of legislation as defined in P.L. 1981, c. 150.

This amendment clearly contradicted Governor Byrne's conditional veto message. Nevertheless, it was enacted into law on January 12, 1982, the second to last bill enacted during the legislative session, less than three weeks before the first reports were to be filed. Lobbyist disclosure reports filed February 1, 1982 for calendar year 1981 were therefore filed without disclosure of what has become characterized as "good will" lobbying expenditures.

Other aspects of Governor Byrne's conditional veto are noteworthy. Senate Bills Nos. 1396 and 1397 accomplished the desirable objective of placing all lobbying disclosure requirements in one statutory framework. N.J.S.A. 52:13C-18 et seq. Therefore, lobbyists and legislative agents are no longer required to be familiar with both the Legislative Activities Disclosure Act (N.J.S.A. 52:13C-18 et seq.) and the Campaign Reporting Act (N.J.S.A. 19:44A-1 et seq.). The Campaign Reporting Act was enacted primarily as an election finance disclosure statute and not as a comprehensive financial arrangement for reporting lobbying activity. The adoption of a unified statute laid the foundation for a financial disclosure program, in combination with lobbyist registration and activity reporting, which would function as an orderly and coordinated program for disclosure of all pertinent lobbyist activities.

Unfortunately, the conditional veto recommendation to place the financial disclosure aspect of lobbying reporting

with the Election Law Enforcement Commission while continuing the filing of registration and quarterly reporting with the Office of the Attorney General preserved the duplication of the reporting responsibilities that has existed since the 1973 Campaign Reporting Act. Lobbyists must continue to file registration statements with the Attorney General and must file the annual financial disclosure report with the Commission.

## SECTION II

## EXPERIENCE OF THE ATTORNEY GENERAL WITH RESPECT TO REGISTRATION ACTIVITIES

The experience of the Office of the Attorney General in administering and enforcing the registration aspects of the Legislative Activities Disclosure Act has been difficult. Unlike most areas of administrative regulatory control, there is no provision for the Attorney General to impose civil sanctions. Therefore, rather than initiating a civil enforcement procedure through the Office of Administrative Law when violations occur, the Attorney General must institute suit in the Superior Court of New Jersey. Only upon commencing a formal action in the Superior Court may the Attorney General compel disclosure of the records of the legislative agent. If the Attorney General prevails and establishes a violation, the Superior Court can only order that the legislative agent comply with the provisions of the Act. There is no penalty provision as such; however, if the Attorney General prevails, the cost of the investigation and trial, including reasonable attorney's fees, may be imposed upon the legislative agent. N.J.S.A. 52:13C-36.

Presumably, the cost associated with a Superior Court trial could far exceed any statutory civil penalty that would normally be imposed for a filing violation. On the other hand, should the legislative agent prevail, the State of New

Jersey must pay the cost of the trial and the defendant's reasonable attorney's fees.

An additional difficulty which confronts the Attorney General is that it is only after the initiation of suit that the Attorney General may inspect the records that will determine whether or not a filing obligation or violation existed. Further, it would in all likelihood require an extraordinary violation to justify the State's dedication of staff resources and possible exposure to attorney fees and trial costs. Since the enactment of this procedure in 1971, no Attorney General has undertaken such a suit. The Act also provides that upon the failure to comply with any provision of the Act, the Attorney General may bring a civil action to enjoin the offending person from engaging in lobbying activity. N.J.S.A. 52:13C-32. That provision also requires the Attorney General to commence suit in the courts of New Jersey, and to date has not been used.

Other provisions of the Act provide for criminal penalties. For example, a legislative agent who fails to file a required notice of representation or report, or maintain any record, is guilty of a criminal violation. N.J.S.A. 52:13C-33. Again, since enactment in 1971 there has not been a criminal prosecution. Experience would indicate that criminal sanctions for filing violations, or for failure to keep records, are disproportionately severe absent some intentional effort to mislead members of the Legislature or the public.

Thus, the procedures and penalties currently provided are not well suited to traditional considerations of administrative regulation and control. The great majority of regulatory violations are lateness or omissions in filing. These do not justify imposition of severe criminal sanctions, or the dedication of limited prosecutorial resources and expense for Superior Court suits.

# SECTION III

## SUMMARY OF ACTIVITIES AND FINDINGS OF THE ELECTION LAW ENFORCEMENT COMMISSION

The implementation of financial reporting by lobbyists and legislative agents was accompanied by varying degrees of uncertainty, noncompliance, and anxiety by those individuals and organizations which were or may have been subject to the reporting requirements.

While such a situation is not unusual at the time of the implementation of any regulatory reporting program, the issues were intensified by virtue of the amendment to the reporting statute less than three weeks prior to the deadline for the filing of the initial reports. Moreover, there was an almost universal lack of records which would allow reporting entities to determine with certainty the precise allocation of expenditures between lobbying activity and other activity engaged in, by or on behalf of a lobbyist.

In recognition of this situation, the Commission sought to devote the first year of operation of the reporting program to familiarizing the regulated industry with the requirements of the reporting program. An initial concern was to take those steps which would provide direct assistance to those entities which had or should have filed reports. In an effort both to promote compliance and insure that filing entities understood

the requirements of the disclosure Act, the Commission prepared plans which would have resulted in a field visit with each individual or organization that filed a report of activities during calendar year 1981. These plans were curtailed in response to Fiscal Year 83 appropriation levels.

Reports filed with the Commission were subject to review by Commission staff. Thereafter, reports were randomly selected from among those which had been found to be either (i) facially accurate and/or (ii) those in which the staff review revealed problems. Reports so selected were subject to an in-depth review, which included an interview with the individual who was responsible for completing and certifying the report. The purposes of these interviews were to assure that the filing entity had an accurate understanding of the statute's requirement and to familiarize the Commission with the practical difficulties encountered during the program's first year of operation. From these reviews a number of observations and conclusions can now clearly be drawn.

At the outset it should be stated that each of the entities interviewed demonstrated a clear and unmistakable effort to comply with the requirement of the financial disclosure program. In no case would it be appropriate for the Commission to conclude that a filing entity had acted in an intentional or willful manner to avoid disclosure requirements.

On the other hand, the quality and the content of the disclosed information varied from reporting entity to reporting entity. While some deviation must be anticipated in any new reporting program, this problem was intensified by the fact that most reporting entities did not maintain records which would allow for a precise allocation of expenditures between reportable and nonreportable activity. Accordingly, the Commission's staff concentrated on discussing the methodology used for the 1981 reports. Moreover, each filing entity was instructed as to methods which could be utilized during 1982 which would provide appropriate records in support of reported information.

## RECORD KEEPING

Most of those individuals interviewed expressed concern over the adequacy of the allocation methodology utilized in preparing their report or maintaining records for future years. The Commission is aware of a general concern in this area throughout the lobbying community and a desire for the Commission to establish guidelines or standards for an acceptable record keeping system. While there seems to be general industry understanding that the Commission would consider as adequate and sufficient those records which would demonstrate a reasonable basis for the information reported, there appears to exist a need for the promulgation of more explicit guidelines. A record keeping manual, similar to that now provided for campaign finance activity, will be prepared as soon as practicable.

It should be noted that the current system of reporting does not assure absolute consistency of reported information. For example, it was noted that the allocated cost of support personnel would change if a reporting entity had two secretaries each devoting 30 percent of their time in support of lobbying activities rather than a single secretary devoting 60 percent Since the threshold for reporting support personnel is 50 percent only the latter case required disclosure, although a reporting entity utilizing the first model would have devoted the same resources to the same activity and yet not be subject to disclosure.

## EXPENDITURES FOR FOOD, BEVERAGE AND ENTERTAINMENT

There appears to be little, if any, uncertainty among reporting entities that gift and entertainment-related expenditures need not be reported if no direct communication takes place at the time of the expenditure. It is interesting to note that approximately $203,000 was reported as expenditures made by legislative agents for nonpersonnel expenditures. Of this amount, slightly more than $10,000 was attributed to gifts or entertainment. Moreover, only approximately $1,200 of the total reported expenditures qualified for attribution to a specific legislator or staff member by exceeding the threshold of the $25 a day or $200 a year expended as to any specific legislator, the Governor, or members of their respective staffs.

Based upon field interviews, two conclusions can be drawn. First, the current statutory framework makes enforcement of the disclosure provisions impractical if not impossible. Documentation or other objective criteria are effectively nonexistent. There is no accurate source of the information required to determine compliance other than the individuals who are actually participating in the communication. While individuals or organizations reporting under the terms of the Act are entitled to a presumption of compliance, there is no way to verify the accuracy of the filed information. Secondly, enactment of Chapter 513 (the "expressly" amendment) resulted in a reduction of reported expenditures as compared to that which would have been disclosed had the amendment not been enacted. It is clear that disbursements for entertainment, such as food and beverage, are being made in situations where, one can only presume, no discussion concerning legislation is taking place. While the exclusion of such activity is entirely consistent with current law, it has severely restricted the extent of information which is made available to the public concerning expenditures made by lobbyists and legislative agents in creating good will with members of the Legislature, the Governor, and members of their respective staffs.

## DUAL ADMINISTRATION

Understandable confusion and uncertainty exists as a result of a system which accords administrative and regulatory

responsibility to two separate and distinct agencies. At present, not only is a legislative agent required to register and file quarterly reports of nonfinancial activity with the Office of the Attorney General, but the agent must also file annual financial disclosure reports with the Commission. On the other hand, the lobbyist employer, usually the actual source of funds, must only file financial disclosure statements with the Commission. Only in those cases where a legislative agent is not employed by but is retained by the organization represented does an entity incur filing obligations with both agencies. The current system of two depository agencies, and two reporting sequences, is confusing and burdensome in itself. There appears to be a clear consensus among lobbyists and legislative agents that the current dual reporting system should be merged.

A merging of the current dual reporting and administrative system would also provide improved access to information. Individuals or organizations interested in reviewing filed reports would have access to all properly reportable information at one time. In addition, the agency responsible for unitary administration would be in a position to prepare summaries of filed information.

## CLASSIFICATION OF REPORTABLE EXPENDITURES

The categories and definitions of reportable expenditures were reviewed in an effort to insure compliance by reporting

entities and also to determine whether the regulatory format in this area was providing meaningful information in a useful form. As a result of the review, the Commission believes that disbursements for travel and lodging of legislative agents and other employees of the reporting entity should be considered for elimination. Inclusion of such expenditures tends to inflate the total reportable financial activity soley because legislative agents and other employees are located outside the Trenton area. The legislative agent who merely crosses the street to arrive at the State House reports little or no daily travel and lodging expenses. By comparison, the legislative agent who maintains a place of business outside of the Trenton area would report a higher figure in this expenditure category. While inclusion of such expenditures does provide a more complete picture of the amount of financial resources being devoted to lobbying-related activities, its deletion would not substantively impair the quality of information subject to public disclosure.

## SECTION IV

## RECOMMENDATIONS

### RECOMMENDATION #1. ESTABLISH A UNITARY REPORTING SYSTEM ADMINISTERED BY A SINGLE STATE AGENCY.

Present law provides that legislative agents must file registration statements and quarterly reports with the Attorney General. These reports describe on whose behalf the legislative agent is conducting lobbying and particular areas of legislation in which the agent is active. Agents filing such statements and reports receive identification tags that must be worn while in the State House for the purpose of lobbying. The statements and the reports do not contain any information on the amounts of money spent for lobbying.

Additionally, lobbyist entities, which employ or retain legislative agents, and the legislative agents themselves must file annual financial disclosure reports of contributions and expenditures for lobbying with the Commission if the amount of such contributions and expenditures exceeds a threshold dollar figure. To the extent that the financial disclosure statements require identification of the lobbyist employing or retaining the legislative agent, and identification of legislative objectives, they duplicate the reports filed with the Attorney General. The situation is further compounded

by the fact that only lobbyist entities that employ or retain legislative agents are required to file the annual reports. Some lobbyist entities incorrectly assume they have an obligation to file registration statements or quarterly reports with the Attorney General.

There is no inherent reason why a single agency cannot administer both the registration and financial disclosure laws. In fact, information concerning one reporting program may potentially be helpful in determining applicable requirements of the other program. More importantly, dual reporting and its resulting confusion are an administrative burden on the the associations and persons active in lobbying. Finally, the members of the Legislature and the public will be better served by access to a single source for public records regarding lobbying activities.

To enhance public confidence the agency responsible for administration of the disclosure program should preferably be an independent, bipartisan commission, with responsibility for administration and civil enforcement, of the law. Responsibility for criminal enforcement, in the event of intentional or willful noncompliance, should remain with the Attorney General.

To this end, it is the specific recommendation of the Attorney General that responsibility for the administration

and civil enforcement of the entire legislative activity disclosure program be vested with the Election Law Enforcement Commission. In support of this recommendation, the Attorney General notes that, despite its title, the Commission has been engaged in the regulation of lobbying activities since 1973 and has acquired experience and expertise in the subject matter. Moreover, the Attorney General believes the Commission has demonstrated an ability to fairly and effectively administer public disclosure programs. These activities, combined with the opportunity to avoid the creation of an additional disclosure agency, make the Election Law Enforcement Commission the most appropriate agency to be charged with the responsibility now shared between the two agencies.

The Commission has no position as to the selection or creation of an agency to assume program responsibility but is prepared, at the direction of the Governor and Legislature, to assume responsibility for the program.

RECOMMENDATION #2. REPEAL CHAPTER 513 OF THE LAWS OF 1981 SO AS TO INCLUDE, AS REPORTABLE, EXPENDITURES BY LOBBYISTS AND LEGISLATIVE AGENTS FOR GIFTS, ENTERTAINMENT, OR OTHER PERSONAL BENEFIT EXPENDITURES WHETHER OR NOT "DIRECT COMMUNICATION" OCCURRED AT THE TIME OF THE EXPENDITURE.

Present law does not require lobbyists or legislative agents to disclose expenditures undertaken on behalf of legislators, the Governor, or members of their staffs unless the expenditures are "expressly" connected to lobbying communications. As is indicated by the current statute's legislative history, the only expenditures required to be reported are those made when the specific purpose of the occasion was to directly affect legislation. Therefore, expenditures by a lobbyist or legislative agent which results in the receipt of a personal benefit by a legislator or the Governor or members of their staffs does not have to be disclosed when no lobbying has taken place during the time the legislative agent or lobbyist expended money to the benefit of the legislator. This is so even though the purpose of the occasion may be to establish or maintain the good will which is essential to a successful lobbyist and when the expense is legitimately treated as a deductible expense for tax purposes.

Meaningful disclosure of financial activity by lobbyists and legislative agents can never be realized unless all significant expenditures, including those which

inure to the benefit of the Governor, or a legislator, or members of their staffs are subject to disclosure requirements. Public confidence in the integrity of the legislative process and disclosure program is necessarily compromised if the regulatory system permits a lobbyist to make personal benefit expenditures to lawmakers without disclosure.

It must be remembered that the underlying purpose of the disclosure system is not to uncover illicit activity. To the contrary, lobbying has and will continue to be a legitimate and important component in New Jersey's legislative process. Disclosure of financial and nonfinancial activity of lobbyists and legislative agents is in no way intended to represent a qualitative judgment of the lobbying activity. On the other hand, well defined laws and regulations which implement a constitutional program of public disclosure will have the salutory effect of providing pertinent information to the public concerning the activity and interaction of lobbyists with the State's executive and legislative leaders.

It is interesting to note that disclosure of campaign finance activity has become an inherent part of New Jersey's political process. The appropriateness of requiring candidates to disclose the amount of their total receipts and to identify individual contributors above a statutorily designated threshold amount has become an unquestioned part of New Jersey's election process. On the other hand, legislative

and regulatory requirements which have been proposed to provide public access to information regarding expenditures which inure to the benefit of the Governor, a legislator, or members of their staffs, have been rejected as inappropriate public policy for this State.

One cannot escape the fact that the activity this recommendation seeks to make subject to public disclosure all occurs within the public arena. Undoubtedly, legislators and lobbyists have developed relationships which include purely social encounters. Moreover, it is entirely appropriate that lobbyists and public officials occasionally meet merely to become acquainted or more familiar with each other. Subjecting such activity to financial disclosure does not prejudge the activity, particularly when only that activity which is otherwise treated by the reporting entity as business related, is subject to disclosure.

One alternative to disclosure of such expenditures would be a prohibition of any expenditures which inure to the personal benefit of any lawmaker. Although some other states have selected such an alternative, there is concern that such a prohibition might jeopardize legitimate avenues of communication between lobbyists and lawmakers. An alternative to such a strict approach is to permit such expenditures, but to require that they be publicly disclosed. Unfortunately, under the current New Jersey law, neither of

these alternatives is in place. A lobbyist is permitted to make personal benefit expenditures for lawmakers without disclosing that fact. In the absence of prohibition or disclosure, public confidence in the integrity of the lawmaking process is eroded.

Experience under the current financial disclosure program by lobbyists and legislative agents leads to the undeniable conclusion that the current program is not complete, because it does not provide truly meaningful information to the public, and is in fact impracticable if not impossible to enforce effectively.

Quite simply, the timing of a lobbying communication should not govern whether or not the fact of a personal benefit expenditure must be subject to public disclosure.

Public confidence is ill-served if an incomplete regulatory program is created and held out to represent a meaningful system of public disclosure. If the current statutory program in fact represents the public policy of this State, serious consideration should be given to eliminating the program of financial disclosure by lobbyists and legislative agents so as not to continue a program which gives the appearance of disclosure while denying public access to meaningful information.

## RECOMMENDATION #3. REQUIRE REPORTING ON A QUARTERLY RATHER THAN ANNUAL BASIS.

Present law requires legislative agents to file quarterly reports with the Attorney General, and requires lobbyists and legislative agents to file annual reports with the Commission. The financial disclosure reports filed with the Commission are filed every February 15, for the previous calendar year.

It is proposed that all reporting be done on a quarterly basis. Quarterly reporting will significantly relieve the record keeping burdens currently imposed upon lobbyists and legislative agents, especially since they would be relieved of the burden of reporting on transactions as much as 12 months old. More importantly, the Legislature and the public should be provided with information that is reasonably current. Quarterly reporting will substantially increase the probability that members of the Legislature and the public know what organizations and persons are lobbying on behalf of what legislation, before action is taken upon the legislation.

Some consideration was given to a reporting system based upon legislative activity. For example, more frequent reporting could be required during those periods when the Legislature is meeting more frequently. However, in the interest of uniformity and simplicity, quarterly reporting is preferable. Each report would cover a period of three

months, and filing entities should be extended a period of at least 14 days in which to prepare and file their reports after the termination of the quarter.

The current threshold for financial disclosure of $2,500 a year should be adjusted to apply to activity occurring within the quarterly reporting period.

RECOMMENDATION #4. REDEFINE THE TERMS "LOBBYIST" AND "LEGISLATIVE AGENT" TO ELIMINATE CONFUSING AND OVERLAPPING FILING REQUIREMENTS.

Under present law the term "lobbyist" refers to a corporation, association or some other organization that employs or retains the services of a legislative agent. The "lobbyist" is the ultimate organizational entity that is seeking to influence legislation. The term "legislative agent" means a person who receives compensation above a threshold amount to conduct lobbying. The definition does not distinguish between a person who is employed on a full time basis to represent the views of his employer, and the agent or firm which represents several different clients. The difference is not important for purposes of registering the persons who must wear the identifying badges however, for purposes of financial disclosure, the present statutory terminology creates unnecessary confusion.

As a practical matter, the full time employee who is a legislative agent for his or her employer does not have to file a financial disclosure report as such. The financial activities of such an employee will be included in the report filed on behalf of the "lobbyist" employer. Such legislative agents should continue to be specifically permitted to incorporate their disclosure as part of the disclosure report of their lobbyist employer. However, where a "legislative agent" is an outside person or firm, there should be disclosure as to who

the lobbying clients are, what fees were paid for lobbying purposes and what expenditures were made. Under current law such firms are lumped together with other "legislative agents." It is proposed that entities in the business of lobbying on behalf of others be recognized as a separate category for purposes of financial disclosure reporting. This proposal will not impose any new or additional reporting requirements, but would simply clarify that it is these entities which have filing responsibilities, rather than the full time "legislative agent" employee.

It is further proposed that the term "lobbyist" be changed to "lobbyist organization" in order to clarify that it applies not to the persons making the lobbying communications but rather to the entities whose interests are being represented Finally, "lobbyist organizations" should be defined in terms of whether the entity is conducting lobbying activity in this state rather than in terms of whether or not it happens to employ legislative agents. It is quite conceivable that a lobbyist organization engaging in substantially more than $2,500 of lobbying activity in a year does not employ or retain any single legislative agent whose reimbursement exceeds $100 in any three month period. The definition of a "lobbyist organization" should not provide an incentive to diversify an entity's overall lobbying effort among many legislative agents so that it can avoid filing reports.

## RECOMMENDATION #5. ELIMINATE DISCLOSURE REPORTING OF TRAVEL AND LODGING COSTS OF LEGISLATIVE AGENTS.

Present law requires that lobbyists and legislative agents disclose expenditures relating to travel and lodging. Such expenditures are not sufficiently important to the public to justify the record keeping necessitated by such reporting. For example, agents not located near Trenton necessarily will have larger expenses in this category than others who are near the Capitol. For these reasons, it is proposed that reporting entities be relieved of disclosing expenditures relating to the travel and lodging of their agents.

RECOMMENDATION #6. LOBBYING INTENDED TO INFLUENCE THE ENACTMENT OF RULES AND REGULATIONS BY ADMINISTRATIVE AGENCIES SHOULD BE SUBJECT TO PUBLIC DISCLOSURE.

Present law does not require disclosure of lobbying directed to the Executive Branch except to the extent that the Governor, his staff or members of the cabinet are lobbied with respect to appointments or legislation. Therefore, while lobbying activities directed towards influencing statutory law are subject to disclosure, efforts directed towards the rule making process of administrative agencies are not.

Administrative rules adopted pursuant to the power delegated to administrative agencies by the Legislature have the force and effect of law. State v. Atlantic City Electric Company., 23 N.J. 259, 270 (1957). Rule making activity by administrative agencies may, as a practical matter, have far greater impact on the day-to-day activities of effected individuals and businesses. Therefore, it is proposed that lobbying activity intended to influence adoption of administrative rules and regulations enacted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., be included within the scope of reportable lobbying activities.

Recently enacted amendments to the Administrative Procedures Act substantially expand the requirements for public notice and opportunity to be heard in the rule making

process. L. 1981, c. 27. Each proposed rule of an administrative agency must be published in the New Jersey Register with a summary of the provisions of that rule, a statement of purpose, a statement of social impact, and a statement of economic impact. N.J.S.A. 52:14B-4(a)(1). Administrative agencies are required not only to give the public an opportunity to be heard, but further to make a public record of agency response to all public comments received by the agency. N.J.S.A. 52:14B-4(a)(4). The enactment of the 1981 amendments to the Administrative Procedures Act promotes public involvement in agency rule making and reflects the farsighted concern of the Legislature that this significant area of law making be subject to appropriate protections of the public interest.

The protections that the Legislature have deemed appropriate to include as part of the rule making process can be further enhanced by providing the public with access to information regarding the activities and expenditures undertaken to influence the outcome of the rule making process. Under existing law, administrative agencies are required to make public not only the proposals but also to receive comments from the public and to publish the agency responses. If the principles of lobbying disclosure are extended to administrative rulemaking, members of the public would also have access to information concerning the organized activities intended to influence the process.

In a 1981 survey of lobbying legislation enacted in each of the states, Common Cause reported that 44 states reported disclosure of lobbying expenditures and 27 of those include lobbying directed towards the Executive Branch decision making process. In view of the recent amendments to the New Jersey Administrative Procedures Act promoting public participation in the rule making processes such a development in New Jersey would be timely and important.