

MAINE STATE LEGISLATURE

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(New Title)
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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2313

S. P. 766

In Senate, March 19, 1976

Reported by the Minority from the Committee on State Government and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Require Registration and Reporting of Professional Lobbyists.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the regular session of the 107th Legislature enacted "An Act Revising Lobbyist Disclosure Procedures" and then inadvertently repealed this enactment without adequate replacement; and

Whereas, it is essential to the integrity of the legislative process that there be complete and workable regulation of lobbyists appearing before the Legislature at all times; and

Whereas, in order to ensure this regulation during the special session of the Legislature, it is necessary that this legislative proposal be enacted and take effect as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

3 **MRSA c. 15**, as last repealed by PL 1975, c. 621, § 2, is reenacted to read:

CHAPTER 15
LOBBYIST DISCLOSURE PROCEDURES

§ 311. Declaration of purpose

The Constitution of Maine guarantees the right of the people to petition their government for the redress of grievances and to freely express their opinions on legislation and issues. The Legislature reaffirms its obligation to hear the requests and opinions of all of the people, and to preserve and maintain the integrity and accessibility of the legislative process.

The Legislature recognizes that groups of citizens may choose one among them to present their views to Legislators, and, because of the amount and complexity of proposed legislation, may employ persons knowledgeable in the legislative process to present their views. Such activities are proper methods of expressing the opinion of a group of citizens.

The Legislature also recognizes that such activities must be carried out openly so that other citizens are aware of the opinions and requests made in this manner. Legislative decisions can fully reflect the will of all the people only if the opinions expressed by any citizen are known to all and debated by all, and if the representatives of groups of citizens are identified and their expenditures and activities are regularly disclosed.

Therefore, the Legislature declares that, in order to insure the full participation of all the people of the State in the legislative process, full disclosure of the identity, expenditures and activities of any persons who engage in professional lobbying is required. Such disclosure will insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State.

§ 312. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

1. **Committee.** "Committee" means any committee, subcommittee, or joint or select committee of the Legislature, or any special committee or commission, by whatever name, established by the Legislature to make recommendations for legislative action or to develop legislation.
2. **Communicate.** "Communicate" means the act of expressing, imparting or conveying information or impressions from one person to another, by either oral or written means.
3. **Compensation.** "Compensation" means money, service or anything of value or financial benefit which is received or to be received in return for or in connection with services rendered or to be rendered.
4. **Employer.** "Employer" means a person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide services.

5. **Employment.** "Employment" means an agreement to provide services in exchange for compensation or reimbursement of expenditures.

6. **Expenditure.** "Expenditure" means any advance, conveyance, deposit, distribution, transfer of funds, payment, pledge or subscription of money or anything of value or any contract, promise or agreement to transfer funds or anything of value, whether or not legally enforceable.

7. **Legislative action.** "Legislative action" means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either House or by any committee or by an official in the Legislative Branch acting in his official capacity, or action of the Governor in approving or vetoing any legislative document presented to the Governor for his approval.

8. **Lobbying.** "Lobbying" means to communicate directly with any official in the Legislative Branch for the purpose of influencing any legislative action, when reimbursement for expenditures or compensation is made for such activities. Lobbying shall not include communications made in conjunction with the appearance by any person before any committee in connection with any matter or measure before such committee and any written statement submitted by any person to any committee in connection with such matter or measure; or any communication made by a person in response to an inquiry or request for information by an official in the Legislative Branch.

9. **Lobbyist.** "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying; or any person who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" shall not include an individual who is a partner, associate, member or employee of a partnership, firm, corporation or professional association which has been employed for lobbying when such individual is acting for the lobbyist in representing the employer.

10. **Official in the Legislative Branch.** "Official in the Legislative Branch" means a member, member-elect, candidate for or officer of the Legislature, or an employee of the Legislature.

11. **Person.** "Person" means an individual, business, corporation, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality, but does not include the State of Maine, any agency of the State of Maine, the University of Maine or Maine Maritime Academy.

12. **Reimbursement.** "Reimbursement" means any money or anything of value received or to be received as repayment for expenditures.

13. **Year.** "Year" means calendar year.

§ 313. Registration of lobbyists and employers

Any person acting as a lobbyist and the person who employs that lobbyist shall jointly register at the office of the Secretary of State no later than 2

business days after the commencement of activities constituting lobbying and a fee, as determined by the Secretary of State, shall be paid for such joint registration.

§ 314. Duration of registration

Each joint registration required pursuant to this chapter shall expire on the last day of the year in which such registration occurred. Upon termination of employment of a lobbyist, the fact of termination and the date thereof shall be reported to the Secretary of State by the employer within 30 days of such termination. Termination of employment shall not relieve the lobbyist or employer of the reporting requirements of this chapter.

§ 315. Registration docket

The Secretary of State shall prepare and maintain a docket for the registration of lobbyists and employers of lobbyists required to register pursuant to this chapter. The registration docket and all supplementary files of information and materials filed pursuant to this chapter shall be open to public inspection during the office hours of the Secretary of State. Such docket shall contain the name of the lobbyist and the person employing the lobbyist; the business address of each; the nature of the business of the person employing the lobbyist; and a statement as to the compensation which the lobbyist will receive for his services or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for his services. This docket shall be updated on a weekly basis and shall be arranged and indexed as follows:

1. Employers of lobbyists. An alphabetical listing of those persons who have employed a lobbyist, which listing shall indicate the names of all lobbyists employed by the employer; and
2. Lobbyists. An alphabetical listing of those persons employed as lobbyists, which listing shall indicate the names of all persons by whom each lobbyist is employed.

Upon termination of the employment of a lobbyist and the reporting of such termination by the employer, the fact of such termination and the date thereof shall be entered under the name of both the employer and the lobbyist.

Such docket shall be reestablished annually by the Secretary of State and the docket for any year shall be maintained and be available for public inspection in the office of the Secretary of State for 4 years from the expiration of such docket.

§ 316. Registration forms

The Secretary of State shall prepare and make available registration forms for the registration of lobbyists and employers required to register pursuant to section 313. These forms shall require the following information:

1. Names. The name of the lobbyist and the name of the person employing such lobbyist. If the lobbyist is a partnership, firm, corporation or professional association, the names of the partners, associates, members or employees who will be acting for the lobbyist in representing the employer shall also be provided;

2. Business addresses. The business address of both the lobbyist and the person employing such lobbyist;
3. Date. The date upon which lobbying was commenced or expect to be commenced;
4. Nature of business. A description of the nature of the business of the person employing such lobbyist; and
5. Compensation. The amount of compensation which the lobbyist will receive for his services or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for his services.

These forms shall be signed by both the lobbyist and the employer and the signatures contained thereon shall serve as a certificate that the information contained on such form is true, correct and complete.

§ 317. Reports

1. Monthly session reports. During the period in which the Legislature is in session, every lobbyist shall file with the Secretary of State, no later than 15 calendar days subsequent to the conclusion of the preceding month, a report concerning his lobbying activities for the previous month. A lobbyist shall file a separate report for each employer which he has served as a lobbyist. This report shall be on a form prescribed by the Secretary of State and shall contain a complete and current restatement of the information required to be supplied pursuant to section 316 and the following information:

- A. The amount of compensation received or due to be received for lobbying during the preceding month. In the case of a regular employee, such amount shall be the number of hours of activities as a lobbyist multiplied by the employee's regular rate of pay;
- B. Total expenditures during the previous month for lobbying for which the lobbyist has been or expects to be reimbursed by the employer;
- C. The total amount of moneys expended directly to or on behalf of one or more officials in the Legislative Branch, including their immediate family, as defined in Title 1, section 1012, subsection 2, and the amount, if any, which the lobbyist has been or expects to be reimbursed by the employer;
- D. The name of any officials in the Legislative Branch or their immediate family to whom or on whose behalf an expenditure or expenditures totaling in excess of \$25 was made in any one calendar month and the date, amount and purpose of such expenditure or expenditures;
- E. A listing of each Legislative Document, Senate Paper or House Paper in connection with which the lobbyist engaged in the lobbying; and
- F. A listing specifically identifying any Legislative Document, Senate Paper or House Paper for which the lobbyist was compensated, expects to be compensated, or expended, in excess of \$1,000 for lobbying activities related thereto and a statement of the amounts compensated, expected to be compensated, or expended in conjunction therewith.

2. **Post-session reports.** Within 30 days following the adjournment of a session of the Legislature, the lobbyist and his employer shall file a joint report which shall contain all the information required in subsection 1 and shall summarize all compensation, expenditures and Legislative Documents beginning with the date of registration through the date of adjournment.
3. **Annual reports.** Within 30 days following the end of the year in which any person was registered pursuant to section 313, the lobbyist and his employer shall file a final report on a form prescribed by the Secretary of State containing the following information:
 - A. The information required at the time of registration as set forth in section 316;
 - B. The total amount of compensation paid to or due to be paid to the lobbyist by the employer for lobbying services provided by the lobbyist during the preceding year;
 - C. The total expenditures made by the lobbyist during the preceding year for which the lobbyist has been or expects to be reimbursed by the employer;
 - D. The total amount of moneys expended directly to or on behalf of one or more officials in the Legislative Branch, including their immediate family, as defined in Title 1, section 1012, subsection 2, during any calendar month in the preceding year and the amount, if any, which the lobbyist has been or expects to be reimbursed by the employer;
 - E. The name of any officials of the Legislative Branch or their immediate family to whom or on whose behalf during any calendar month in the preceding year an expenditure, or expenditures, in excess of \$25 was made and the date, amount and purpose of each expenditure or expenditures;
 - F. A listing of all Legislative Documents, Senate Papers or House Papers in connection with which the lobbyist acted in that capacity during the preceding year; and
 - G. A listing specifically identifying any document for which the lobbyist was compensated, expects to be compensated, or expended in excess of \$1,000 for lobbying activities related thereto and a statement of the amounts compensated, expected to be compensated or expended in conjunction therewith.

The report required by subsection 1 shall be signed by the lobbyist.

The reports required by subsections 2 and 3 shall be signed by both the lobbyist and his employer. All persons signing such reports shall acknowledge the truth and completeness of the statements and information contained therein before a notary public or justice of the peace.

§ 318. Restricted activities

1. **Contingent compensation.** No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the outcome of any legislative action.

2. Instigation of legislative action. No person shall instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to oppose or support such legislative action.

§ 319. Penalties

1. Perjury. The penalty for willfully and knowingly filing incorrect or incomplete information in a registration or report required by this chapter shall be that provided for perjury.

2. Fine or imprisonment. The penalty for willfully or knowingly failing to file a registration or report as required by this chapter, or for violating section 318, shall be a fine of not more than \$1000 or imprisonment for not more than 11 months, or both.

§ 320. Disposition of fees

All fees collected pursuant to this chapter shall be used by the Secretary of State for the administration of this chapter. The Secretary of State may use these fees to hire personnel to serve at his pleasure and to assist him in administering this chapter.

The Secretary of State shall, no later than December 15th of each year, establish the amount of the registration fee required to be paid pursuant to section 313 for the subsequent year, except that the registration fee for the year 1976 shall be \$15. Such fees shall be established on a basis that will generate sufficient revenue to administer the filing and reporting requirements of this chapter but such fees shall not, in any case, unreasonably exceed the amount necessary to administer the filing and reporting requirements of this chapter. All fees collected under this chapter as in effect on December 31, 1975, are to be used in all respects as though they were originally collected pursuant to this chapter. Fees collected in any one year may be used in the same or any succeeding year to administer this chapter and such funds shall not lapse.

§ 321. Powers and duties of the Secretary of State

In order to carry out the purposes of this chapter, the Secretary of State shall have the following powers and duties.

1. Furnishing of forms. The Secretary of State shall furnish forms to persons required to register or file reports.

2. Availability of copying facilities. The Secretary of State shall make copying facilities available to the public during regular office hours and, notwithstanding any other provisions of law fixing the cost of such services, shall charge the actual cost of such services.

3. Filing of voluntary information. The Secretary of State may accept and file any information voluntarily supplied which exceeds the requirements of this chapter.

4. Preservation of registrations and reports. The Secretary of State shall preserve all registrations and reports filed pursuant to this chapter for 4 years from date of receipt and thereafter may dispose of same.

§ 322. Enforcement

The provisions of this chapter may be enforced by the Attorney General upon the request of the Secretary of State.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect 14 days after approval by the Governor, or in the event this Act is enacted without the approval of the Governor, it shall take effect 14 days after final enactment.

STATEMENT OF FACT

This legislation attempts to balance the interests of the citizens in free speech and their ability to petition their government with the state's interest in securing information concerning lobbying activities. Initially, this legislation defines lobbying to encompass only direct communications with Members and employees of the Legislature when the person making the communication is being compensated or reimbursed for expenses and the communication is designed to influence legislative action. The solicitation of others to communicate with Members of the Legislature is not included since, it appears, there is a distinction between appropriate regulation of direct communications by compensated individuals and indirect attempts by such persons to solicit and encourage others to be heard on the issues. The United States Supreme Court in **United States v. Harriss**, 347 U. S. 612 (1954), explicitly construed the federal lobby disclosure law to exclude all indirect lobbying activities and, "thus construed," declared that it did not violate the First Amendment.

This legislation also excludes from its scope the appearances of all persons, whether or not they are compensated, before committees in public session. Former Deputy Attorney General John W. Benoit, Jr., in a letter dated October 10, 1975, and transmitted to the Speaker of the House inquired as to "whether a constitutional question is raised by a statute defining lobbying as including activity wherein a person appears before a legislative committee at a public hearing on proposed legislation, written notice of said hearing being given for the purpose of encouraging participation by the general public to testify." Also excluded from the scope of this Act are communications to Members of the Legislature and its employees which are in response to a specific inquiry. This exclusion was provided in order to insure the free flow of requested information. This legislation does not intend to circumscribe or include within the definition of lobbying the receipt of newspapers, newsletters, periodicals, magazines, etc. which are published by various organizations and which are not directed primarily at Members of the Legislature, but rather are provided to Members of the Legislature for their informational value.

Registration and reporting of lobbyists and employers is required. During the legislative session, reports are required on a monthly basis with a final session report required no later than 30 days following adjournment. A year-

end report is also required. These reports will disclose the compensation paid to lobbyists, the expenditures made by lobbyists and the legislation with which lobbying activities were conducted.

The reporting of funds expended to or on behalf of a Member of the Legislature is also required by this legislation.

This legislation does not require those persons who register to retain various books, records and documents or to surrender them upon request of the Secretary of State. These provisions have been eliminated since serious questions of a constitutional nature in the area of individual and associational privacy are raised by the inclusion of such a requirement.

The provisions relating to the collection and use of registration fees by the Secretary of State are written in such a manner as to require an annual review of these registration fees. In the case of *Moffett v. Killian*, 360 F. Supp. 228 (1973), the United States District Court for the District of Connecticut declared the fee registration requirements of the Connecticut Legislative Reporting Act to be unconstitutional because the sums received by the state were in excess of the amounts actually needed to administer the registration law. The court declared that the fee constituted "an unconstitutional tax on the exercise of First Amendment rights which may not be imposed."

This legislation is designed to insure that the First Amendment rights of lobbyists and their employers are not abridged, while, at the same time, requiring the provision of certain information in order that the public can be made aware of the identity of individuals compensated to engage in significant lobbying activities.

Examples of the proposed registration and reporting forms are as follows:

.....
Date accepted and filed

LOBBYIST & EMPLOYER JOINT REGISTRATION

....., 19....

TO THE SECRETARY OF STATE, AUGUSTA, MAINE

In accordance with the provisions of 3 MRSA § 314, the persons named herein as "Lobbyist" and "Employer of Lobbyist" hereby register and represent that the lobbyist or lobbyists named herein will communicate directly with officials in the Legislative Branch for the purpose of influencing legislative action and that said lobbyist or lobbyists named herein will be compensated or reimbursed for expenditures in conjunction with those activities.

LOBBYIST

EMPLOYER OF LOBBYIST

.....
Name (Type or print)

.....
Name (Type or print)

.....
Signature

.....
Signature

..... Business address Business address

..... Name (Type or print)

..... Signature

..... Business address

1. Date upon which lobbying activities were commenced or expect to be commenced.
2. Nature of business of employer of lobbyist.
.....
.....
3. The amount of compensation which the lobbyist will receive for his services, or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for his services.
.....
4. If the lobbyist is a partnership, firm, corporation or professional association, supply the names of the partners, associates, members or employees who will be acting for the lobbyist in representing the employer.

..... Name

..... Name

A registration fee in the amount of \$15 must accompany this registration. Checks should be made payable to "Secretary of State".

..... Date accepted and filed

LOBBYIST DISCLOSURE MONTHLY SESSION REPORT

.....,19

To the Secretary of State, Augusta, Maine

In accordance with the provisions of 3 MRSA § 314, the following monthly session report is filed for activities during the month of

LOBBYIST

EMPLOYER OF LOBBYIST

..... Name (type or print)

..... Name (type or print)

..... Business address

..... Business address

- 1. Date upon which lobbying activities were commenced
- 2. Nature of business of employer
- 3. The amount of compensation which the lobbyist will receive for his services, or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for his services

- 4. If the lobbyist is a partnership, firm, corporation or professional association, supply the names of the partners, associates, members or employees who acted for the lobbyist in representing the employer during the month which is the subject of this report.

.....
 Name Name

- 5. The amount of compensation received or due to be received for activities as a lobbyist during the month which is the subject of this report is: (For regular employees, this amount is determined by multiplying the number of hours of activities as a lobbyist by the employee's regular rate of pay.)

- 6. The total expenditures made during the month which is the subject of this report for which the lobbyist has been or expects to be reimbursed by the employer is:

- 7. The total amount of moneys expended directly to or on behalf of one or more officials in the Legislative Branch during the month which is the subject matter of this report is and the lobbyist has been or expects to be reimbursed the amount of by the employer.

- 8. In the event an expenditure, or expenditures, totaling in excess of \$25 was made to or on behalf of an official in the Legislative Branch during the month which is the subject matter of this report, please state:

.....
 (Name of official in Legislative Branch)

.....
 (Date of expenditure)

.....
 (Amount of expenditure)

.....
 (Purpose of expenditure to official in the Legislative Branch)

- 9. List each Legislative Document, Senate Paper, or House Paper in connection with which the lobbyist engaged in lobbying during the month which is the subject matter of this report. (List by Senate Paper or House Paper number when a Legislative Document number is not available.)

..... Business address Business address

- 1. Date upon which lobbying activities were commenced
- 2. Nature of business of employer
-
- 3. The amount of compensation which the lobbyist will receive for his services, or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for his services
-
- 4. If the lobbyist is a partnership, firm, corporation or professional association, supply the names of the partners, associates, members or employees who acted for the lobbyist in representing the employer during the legislative session which is the subject matter of this report.

..... Name Name

- 5. The amount of compensation received or due to be received for activities as a lobbyist during the legislative session which is the subject matter of this report is: (For regular employees, this amount is determined by multiplying the number of hours of activities as a lobbyist by the employee's regular rate of pay.)
- 6. The total expenditures made during the legislative session which is the subject matter of this report for which the lobbyist has been or expects to be reimbursed by the employer is:
- 7. The total amount of moneys expended directly to or on behalf of one or more officials in the Legislative Branch during the legislative session which is the subject matter of this report is and the lobbyist has been or expects to be reimbursed the amount of by the employer.
- 8. In the event an expenditure or expenditures, on any one occasion in excess of \$25, was made to or on behalf of an official in the Legislative Branch during any one month of the legislative session which is the subject matter of this report, please state:

.....
 (Name of official in Legislative Branch)

.....
 (Date of expenditure) (Amount of expenditure)

.....
 (Purpose of expenditure to official in the Legislative Branch)

- 9. List each Legislative Document, Senate Paper, or House Paper in connection with which the lobbyist engaged in lobbying during the legislative session which is the subject matter of this report.

(List by Senate Paper or House Paper number when a Legislative Document number is not available.)

.....
.....
.....
.....

10. List each Legislative Document, Senate Paper or House Paper in connection with which the lobbyist engaged in lobbying during the legislative session which is the subject matter of this report for which the lobbyist was compensated or expects to be compensated or expended in excess of \$1,000 for lobbying activities related thereto and specify the amounts compensated, expected to be compensated or expended in conjunction therewith.

L.D.	Compensation	Expenditures
.....
.....

.....
(Signature of lobbyist)

.....
(Signature of employer)

* * * * *

County of, ss., 19..

Personally appeared before me the above
(Name of lobbyist)

who does hereby make oath that the statements and information contained in the foregoing report are true.

Before me,
Notary Public/Justice of the Peace

My commission expires
** **** **

County of, ss., 19..

Personally appeared before me the above
(Name of employer or representative)

who does hereby make oath that the statements and information contained in the foregoing report are true.

Before me,
Notary Public/Justice of the Peace

My commission expires