

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1695

H. P. 1424

House of Representatives, April 14, 1977

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hughes of Auburn.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Require Reporting of Lobbying of Administrative Action.**

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

5 MRSA c. 4 is enacted to read:

CHAPTER 4

REGISTRATION OF PERSONS

INFLUENCING ADMINISTRATIVE ACTION

§ 61. Definitions

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

1. Administrative action. "Administrative action" means a proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Part 6, the Maine Administrative Code.

2. Agency. "Agency" means any state agency.

3. Agency official. "Agency official" means any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity.

4. Business entity. "Business entity" means any organization or enterprise operated for profit, including, but not limited to, a proprietorship, part-

nership, firm, business trust, joint venture, syndicate, corporation or association.

5. **Contribution.** "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a 3rd party or an enforceable promise to make a payment to an elected state official, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of an elected state official is a contribution to the elected official, unless full and adequate consideration is received for making the expenditure.

The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events and the granting of discounts or rebates not extended to the public generally.

Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payment made by any individual for his own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him.

6. **Elected state official.** "Elected state official" means the Governor, Attorney General, Secretary of State and Treasurer of State.

7. **Filer.** "Filer" means the person filing or required to file any statement or report under this chapter.

8. **Gift.** "Gift" means any payment made directly or indirectly to an elected state official or agency official to the extent that consideration of equal or greater value is not received. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The term "gift" does not include informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed informational material.

9. **Immediate family.** "Immediate family" means the spouse and dependent children.

10. **Influencing administrative action.** "Influencing administrative action" means promoting, supporting, influencing, modifying, opposing or delaying any administrative action by any means, including, but not limited to, the provision or use of information, statistics, studies or analyses.

11. **Lobbyist.** "Lobbyist" means any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any elected state official or agency official for the purpose of influencing administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing administrative action. No person is a lobbyist by reason of activities described in section 76.

12. **Lobbyist's account.** "Lobbyist's account" means any fund, account or trust controlled by a lobbyist in connection with his activities as a lobbyist.

13. **Payment.** "Payment" means a payment disbursement transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value whether tangible or intangible.

14. **Payment to influence administrative action.** "Payment to influence administrative action" means any of the following types of payment:

A. Direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses or any other purpose, by a person employing or contracting for the services of the lobbyist separately or jointly with other persons;

B. Payment in support or assistance of a lobbyist or his activities, including, but not limited to, the direct payment of expenses incurred at the request or suggestion of the lobbyist;

C. Payment which directly or indirectly benefits any elected state official or agency official or a member of the immediate family of any such official;

D. Payment, including compensation, payment or reimbursement for the services, time or expenses of any employee, for or in connection with direct communication with any elected state official or agency official; and

E. Payment for or in connection with soliciting or urging other persons to enter into direct communication with any elected state official or agency official.

15. **Period covered.** "Period covered" by a statement or report required to be filed by this chapter means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report which has been filed and ending with the closing date of the statement or report in question. If the person filing the statement or report has not previously filed a statement or report of the same type, the period covered begins on the effective date of this chapter. Nothing in this chapter shall be interpreted to exempt any person from disclosing transactions which occurred prior to the effective date of this chapter according to the laws then in effect.

16. **Person.** "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee and any other organization or group of persons acting in concert.

17. **State agency.** "State agency" means every state office, department, division, bureau, board and commission, but does not include the courts or any agency in the legislative or judicial branch of government nor the University of Maine or Maine Maritime Academy.

#### § 62. Registration required

Any person employed or retained as a lobbyist shall register with the Secretary of State before doing anything to influence administrative action.

**§ 63. Registration statement**

Each lobbyist shall register by filing with the Secretary of State a recent 3-inch by 4-inch black and white photograph of himself, a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts and a statement containing:

1. Name and address. His full name, business address and telephone number;
2. Employer's name and address. The name and business address of each person by whom he is employed or with whom he contracts for lobbying purposes and the term of his employment or contract if known;
3. State agencies. A listing of each state agency whose administrative actions he will attempt to influence as a substantial or regular portion of his activities as a lobbyist; and
4. Other information. Any other information required by the Secretary of State consistent with the purposes and provisions of this chapter.

**§ 64. Renewal**

Each registered lobbyist shall renew his registration by filing a new photograph, authorization and registration statement annually in the month of January.

**§ 65. Amendment of registration statement**

If any change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed within 20 days after the change. Each registered lobbyist shall file a notice of termination within 30 days after he ceases the activity which required his registration. He shall remain subject to sections 72 and 73 for 6 months after filing his notice of termination.

**§ 66. Lobbyist account**

Every lobbyist who incurs expenses or expects to incur expenses in connection with his activities as a lobbyist shall establish one or more accounts, each of which shall be designated by a name. All payments received by a lobbyist for the purpose of paying expenses incurred by him in connection with his activities as a lobbyist shall be deposited without delay into his account. A lobbyist may deposit other funds, including his own personal funds, into his account.

**§ 67. Payments from lobbyist account**

1. Lobbyist expenses to be paid from account. Except as provided in subsection 2, no person shall pay any expense incurred by a lobbyist in connection with his activities as a lobbyist, unless such payment is made directly from the lobbyist's account. Any lobbyist who makes a gift to an elected state official or an agency official is deemed to be acting in connection with his activities as a lobbyist.

2. Regulations. The commission shall promulgate regulations permitting the use of cash which has been withdrawn from a lobbyist's account to defray petty cash items.

§ 68. Periodic lobbyist reports

Every lobbyist shall file periodic reports containing:

1. Payments. The monetary value of all payments, including, but not limited to, salary, fees and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing administrative action, and the full name and address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

2. Accounts. With respect to each account controlled by the lobbyist at any time during the period covered by the report:

A. The name of the account;

B. The amount deposited in the account during the period;

C. The full name and address of each person who is the source of any amounts deposited into the account, together with the amount attributable to each source;

D. The date any amount of each disbursement from the account during the period, together with the full name and address of the payee, a specific description of the consideration, if any, for which the disbursement was made and the full name and address or official position of the beneficiary if the beneficiary is other than the payee or the lobbyist. In the case of disbursements for gifts of food and beverages, the full name of the person and the official position, if any, who received the food and beverages, and the amount paid for each person shall be stated. In the case of any disbursement which covers more than one item, all information shall be shown that would be required if a separate disbursement had been made for each item. The commission may by regulation provide for the reporting of overhead expenditures without detailed itemization; and

E. The cash balance of the account at the beginning and end of the period covered by the report;

3. Information required by regulation. With respect to any expenses in furtherance of his activities as a lobbyist which, pursuant to section 67, subsection 2, are not made directly from an account, such information as regulations of the commission shall require;

4. Names of officials. The name and official position of each elected state official and agency official and the name of each member of the immediate family of any such official or candidate with whom the lobbyist has engaged in an exchange of money, goods, services or anything of value and the nature and date of each such exchange and the monetary values exchanged;

5. Names of business entities. The name and address of any business entity in which the lobbyist knows or has reason to know that an elected state

official or agency official is a proprietor, partner, director, officer or manager, or has more than 50% ownership interest, with whom the lobbyist has engaged in an exchange of money, goods, services or anything of value and the nature and date of each exchange and the monetary value exchange, if the total value of such exchanges is \$500 or more in a calendar year;

6. Description of administrative action. A specific description of administrative action which the lobbyist has influenced or attempted to influence and the agencies involved, if any; and

7. Other information. Any other information required by the Secretary of State consistent with the purposes and provisions of this chapter.

#### § 69. Employers and payers required to file reports

Subject to the exemptions in section 76, the following persons shall file the statements required by section 70:

1. Employer of lobbyists. Any person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons; and

2. Person paying to influence administrative actions. Any person who directly or indirectly makes payments to influence administrative action of \$250 or more in value in any month, unless all of the payments are of the type described in section 61, subsection 14, paragraph C.

#### § 70. Employer's and payer's reports

Every person described in section 69 shall file periodic reports containing:

1. Names and business address. The name, business address and telephone number of the person making the report;

2. Identification of nature and interests of filer. Information sufficient to identify the nature and interests of the filer, including:

A. If the filer is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business activity in which he or his employer is engaged;

B. If the filer is a business entity, a description of the business activity in which it is engaged;

C. If the filer is an industry, trade or professional association, a description of the industry, trade or profession which it represents including a specific description of any portion or fraction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has no more than 50 members, the names of the members; and

D. If the filer is not an individual, business entity or industry, trade or professional association, a statement of the person's nature and purposes, including a description of any industry, trade, profession or other group

with a common economic interest which the person principally represents or from which its membership or financial support is principally derived.

The information required by this subsection need be stated only in the first report filed during a calendar year, except to reflect changes in the information previously reported.

3. Total amount of payments. The total amount of payments to influence administrative action during the period, and the name and address of each person to whom such payments in an aggregate value of \$25 or more have been made during the period by the filer, together with the date, amount and a description of the consideration received for each such expenditure and the name of the beneficiary of each expenditure if other than the filer or the payee.

4. Names and positions of officials. The name and official position of each elected state official and agency official, and the name of each member of the immediate family of any such official with whom the filer has engaged in an exchange of money, goods, services or anything of value and the nature and date of each such exchange and the monetary values exchanged, if the fair market value of either side of the exchange exceeded \$1,000.

5. Names and addresses of business entities. The name and address of any business entity in which the person making the report knows or has reason to know that an elected state official or agency official is a proprietor, partner, director, officer, manager or has more than a 50% ownership interest, and with whom the person making the report has engaged in an exchange or exchanges of money, goods, services or anything of value and the nature and date of each such exchange and the monetary value exchanged, if the total value of such exchanges is \$1,000 or more in a calendar year;

6. Contribution. The date and amount of each contribution made by the filer and the name of the recipient of each contribution;

7. Description of administrative action. A specific description of administrative action which the person making the report has attempted to influence;

8. Names of lobbyists. The name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount which was paid for specific purposes, including salary, fees, general expenses and any special expenses; and

9. Other information. Any other information required by the Secretary of State consistent with the purposes and provisions of this chapter.

#### § 71. Dates for filing reports

Reports required by sections 68 and 70 shall be filed during the month following each calendar quarter. The period covered shall be from the beginning of the calendar year through the last day of the month prior to the month during which the report is filed, except that the period covered shall not include any months covered in previous reports filed by the same person. When



total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date.

§ 72. Lobbyist contributions prohibited

It shall be unlawful for a lobbyist to make a contribution or to act as an agent or intermediary in the making of any contribution or to arrange for the making of any contribution by himself or by any other person.

§ 73. Certain gifts prohibited

It shall be unlawful for a lobbyist to make gifts to one person aggregating more than \$10 in a calendar month or to act as an agent or intermediary in the making of any gift by any other person.

§ 74. Receipt of certain gifts prohibited

It shall be unlawful for any person knowingly to receive any contribution or gift which is made unlawful by section 72 or section 73.

§ 75. Prohibited lobbyist actions

No lobbyist shall:

1. Personal obligation. Do anything with the purpose of placing any elected state official or agency official under personal obligation to him or to his employer;

2. Deception concerning material fact. Deceive or attempt to deceive any elected state official or agency official with regard to any material fact pertinent to any pending or proposed administrative action;

3. Fictitious appearance of public favor or disfavor. Attempt to create a fictitious appearance of public favor or disfavor of any proposed administrative action or to cause any communication to be sent to any elected state official or agency official in the name of any fictitious person or in the name of any real person, except with the consent of such real person;

4. False representation of official control. Represent falsely either directly or indirectly, that he can control the official action of any elected state official or agency official; and

5. Contingent payment. Accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed administrative action.

§ 76. Exemptions

The provisions of this chapter are not applicable to:

1. Public and state officials. Any elected public official acting in his official capacity or any employee of the State acting within the scope of his employment or any employee of the University of Maine or of the Maine Maritime Academy;

2. Media. Any newspaper or other periodical of general circulation, book publisher, radio or television station, including any individual who owns, pub-

lishes, or is employed by any such newspaper or periodical, radio or television station, which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisement, which directly or indirectly urge administrative action if such newspaper, periodical, book publisher, radio or television station or individual, engages in no further or other activities in connection with urging administrative action other than to appear before a state agency in support of or in opposition to such action; or

3. Religious groups. A person when representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church.

#### § 77. Penalty

A violation of any provision of this chapter shall be a Class E crime.

### STATEMENT OF FACT

This bill establishes a reporting system for lobbyists who attempt to influence any administrative action of a state agency.

Currently, state agencies routinely make decisions affecting the lives and pocketbooks of all of Maine's citizens. This power is a necessary one, but it must be exercised in complete openness, so that Maine people can be sure that any administrative decision made has been made free of improper influence by any person.

This bill, which provides for the registration of persons who receive monetary gain for trying to influence state administrative action and which provides for the registration of the employers of these lobbyists, is a significant and strong step in the direction of openness in government. This approach has been adopted by the Legislature for actions influencing legislative decisions; it should be adopted by the Legislature for actions influencing administrative decisions.