DOCUMENT RESUME

02837 - [A2153273]

Disclosure of Lobbying Activities. August 2, 1977. 15 pp.

Testimony before the Senate Committee on Governmental Affairs; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the Comptroller General.
Budget Function: General Government (800).
Congressional Relevance: Senate Committee on Governmental Affairs.
Authority: Federal Regulation of Lobbying Act. S. 1785 (95th Cong.).

The proposed bill S. 1785 would eliminate most of the ineffectiveness of the present Federal Regulation of Lobbying Act. Various threshold tests would define the organizations that must register and report as lobbyists and the information they must disclose. The most important provisions of the bill for eliminating weaknesses in the present law deal with enforcement. The Comptroller General would have investigatory authority and limited authority to go to court to enforce subpoenas and orders and to correct apparent civil violations of the law by informal methods of conference and conciliation. Vesting civil enforcement powers in the Comptroller General will not only place the enforcement of the legislative branch's information gathering power within the legislative branch where it should be but will also eliminate potential conflict between the Comptroller General and the Attorney General, who would retain authority for any criminal prosecution. S. 1785 should be amended to authorize the Comptroller General to defend advisory opinions and to initiate civil enforcement action unhampered by a 60-day waiting period. (DJM)

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United States General Accounting Office
Washington, D.C. 20548

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FOR RELEASE ON DELIVERY
Expected at 10:00 A.M.
August 2, 1977

Statement of

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of the United States

Before the

Committee on Governmental Affairs

United States Senate

On Disclosure of Lobbying Activities

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present our views on S. 1785.

As you know, on April 2, 1975, GAO issued a report entitled "The Federal Regulation of Lobbying Act--Difficulties in Enforcement and Administration." Since its enactment in 1946, the Federal Regulation of Lobbying Act has been the subject of continual congressional scrutiny and generally has been judged to be ineffective. In our report, we confirmed this judgment. We found the enforcement and administration of the Act to be woefully inadequate and, in 1975, testified to this effect before this Committee. I believe the necessity for change in the present law is now almost universally accepted.

S. 1785

We believe that S. 1785 is a marked improvement over the current lobbying act, and should eliminate most of the difficulties that have arisen under the present law. I would like to make some comments about suggested changes in the bill or areas of the legislation that we believe should be retained.

Scope of Coverage

S. 1785 would replace the present lobbying law with a comprehensive new statute defining the organizations that must register and report as lobbyists and specifically describing the information those organizations must disclose. The bill would apply to any "organization" whose lobbying activities during a "quarterly filing period" satisfied one of several so-called threshold tests.

Threshold 1: Oral Contacts Test

An organization which, acting through its paid officers, directors, and employees, makes 15 or more oral lobbying communications in a quarter would be required to register and report as a lobbyist. Lobbying organizations should be able to determine when this threshold has been crossed with comparative ease. However, it should be recognized that it will be difficult for a third party to police.

The oral contacts test also does not take into account an organization's written lobbying communications. Under this

threshold, an organization could conceivably escape the requirements of a new lobbying law by communicating in writing with Members of Congress. We recommend the Committee consider extending the threshold's coverage to written as well as oral lobbying communications.

Threshold 2: Hours Spent on Lobbying Test

Another S. 1785 threshold test is that at least one paid officer, director, or employee of an organization spends 24 hours or more drafting or making oral or written lobbying communications. This threshold can also be crossed if two or more employees each spend at least 12 hours lobbying.

We have no recommendation on the number of hours employees should spend lobbying before the employer organization must register and report as a lobbyist. From a recordkeeping standpoint, however, it may be difficult for an organization to determine, and for the administering agency to verify, precisely when an employee has spent the prescribed number of hours engaged in lobbying activity.

Further, an organization could employ 12 individuals to spend 11 hours of their time making written lobbying communications and escape the bill's registration and reporting provisions. But if just 2 employees were to spend 12 hours lobbying, the employer organization would be required to register and report as a lobbyist.

Threshold 3: Retained Lobbyist Quarterly Expenditure Test

Still another S. 1785 threshold would apply to organizations that spend a minimum of $1,250 in a quarter to retain, rather than employ, others to draft and make written or oral lobbying communications on the retaining organization's behalf.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report, a quarterly expenditure threshold applicable to retained lobbyists does seem desirable.

Expenditures to retained lobbyists should not be difficult for the retaining organization to determine or for the administering agency to verify. A quarterly expenditure threshold is also preferable, in our view, to an annual expenditure requirement. With only an annual expenditure requirement, an organization could delay the obligation to register for 1 year simply by delaying payment to the person retained to lobby.

We have one reservation, however, with S. 1785's retained lobbyist threshold. As presently drafted the threshold arguably cannot be crossed if just one of the organization's retained lobbyists who receives $1,250 fails to make an oral or written lobbying communication. We recommend the Committee clarify the threshold's intended operation in such a situation.

Threshold 4: Indirect or Grassroots Lobbying

The registration and reporting requirements of S. 1785 will apply to organizations whose exclusive lobbying activity

is an indirect or grassroots campaign costing in excess of $5,000. Indirect or grassroots lobbying generally means encouraging the general public to communicate to the Congress or to certain executive branch officials by, for example, mass mailings.

Certain organizations generate mass letter-writing campaigns through solicitations to the general public. As a result, some criticism has focused on the exclusion of grassroots lobbying from the disclosure provisions of the current lobbying law. We consider the S. 1785 indirect lobbying threshold an important addition to the bill.

We think it especially important to note, from a constitutional standpoint, that the indirect lobbying threshold in no way imposes a registration or reporting requirement on citizens who receive a solicitation and who, as a result, communicate with their Congressmen.

Threshold 5: Contracts, Grants, and Other Benefits

A separate section of the bill would apply to organizations that submit a written bid or proposal to obtain a "contract," "grant," or "other benefit" from the United States involving an obligation of $1,000,000 or more. Unlike other thresholds in the bill, the contract threshold can be crossed without regard to the degree of the organization's award-seeking lobbying effort. Once it is determined that the obligation of the United States could exceed $1,000,000,

offerors and bidders must file a report disclosing certain of their award-seeking activities.

The section's disclosure requirements apply to "contracts," "grants," and "other benefits" exceeding a certain dollar amount. The disclosure requirements may not apply to subcontracts, even though particular subcontracts may involve $1 million or more. We think the section should apply to prime contracts with the United States and to subcontracts for $1 million or more. In addition, we are not sure what is intended to be covered by the term "other benefit." We assume that an "other benefit" could be a Government subsidy for $1 million or more; it might also apply to Government assistance to a private organization, such as the Federal loan guarantees provided private corporations. We recommend the intended scope of this term be defined with greater descriptive clarity.

Coverage of Executive Branch Lobbying

S. 1785 would apply to lobbying organizations that attempt to influence certain executive branch officials with respect to issues before the Congress. The present law only applies to lobbying that is directed toward the Congress. We think it especially wise that S. 1785 presently covers the lobbying of executive branch officials on legislative matters.

Other aspects of executive branch lobbying, such as attempts to influence the content of executive orders, rules, and policy decisions, are not covered by the bill. These latter

activities, like legislation, may directly affect the public. And we see no convincing reason why the executive branch is less susceptible than the legislative branch to the pressure of special interest groups seeking favored treatment.

We believe the Congress should also consider disclosure legislation that covers the lobbying of issues that are not legislative, but instead are matters of administration or activities peculiar to the executive branch.

Adding the dimension of all aspects of executive branch lobbying to lobbying disclosure, however, will require time and careful study. We recognize that this Committee may prefer to study and cover lobbying on nonlegislative issues through a vehicle other than S. 1785.

Communications to "Federal officers and employees"

Only communications to "Federal officers and employees," count as lobbying communications. All Congressmen and all employees of the House and Senate are included in the bill's definition of "Federal officer or employee." Others are also included, namely, executive branch employees paid at levels I through V of the Executive Schedule who are listed in sections 5312 through 5316 of title 5, United States Code; executive branch employees who hold a position at GS-15 and above; and military officers holding a commission within the scope of grade O-6 and above.

We wish to point out, however, that the bill does not cover lobbying of legislative branch agencies such as the

General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, the Congressional Budget Office, and others. I cannot speak for others, but as far as the General Accounting Office and the Cost Accounting Standards Board are concerned, we recommend they be covered by the bill.

Exempt Lobbying Communications

Certain communications that would otherwise qualify as "lobbying communications" are specifically excluded from the coverage of S. 1785. For example, communications directed to the two Senators and the Representative that represent the State and the congressional district, respectively, where the lobbying organization maintains its principal place of business are exempt both from a threshold tally and from disclosure. Communications to Senators and Representatives who represent in part the Standard Metropolitan Statistical Area where the organization has its principal place of business are also exempt.

The latter part of this exemption has an important advantage in that it recognizes that because of the highly interdependent nature of many areas of our country, an organization may in a sense be a constituent of Members of Congress other than those that represent its congressional district. On the other hand, we might point out that organizations located in a large Standard Metropolitan Statistical Area covering parts

of several States will be able to communicate with more Senators and Representatives without registering or reporting than an organization whose principal place of business is located in a smaller Standard Metropolitan Statistical Area.

Lobbying Records

S. 1785 would require lobbying organizations and persons retained by lobbying organizations to maintain records relating to their lobbying activities. The fact that persons retained by a lobbying organization will also be required to maintain and preserve records should facilitate verification of the lobbying organization's registration and reports.

Regulations governing the maintenance of records would be issued by the Comptroller General. And the records would be preserved for a period of at least 5 years. The authority to issue regulations governing the maintenance of records is essential, in our opinion, to establish fair, realistic, and necessary recordkeeping requirements as experience is acquired in administering a new lobbying disclosure law.

Registration and Quarterly Reports

S. 1785 would require lobbying organizations that satisfy a threshold other than the contracts threshold to file a registration statement and quarterly reports with the Comptroller General. The lobbying activity information required to be disclosed in an organization's quarterly report will be considerably more detailed than the information required for registration.

The bill establishes a two-tier system for registering and reporting. Organizations that engage in comparatively minor lobbying and thus cross only the oral contacts threshold will be required to file a "short-form" registration statement and quarterly report. Organizations that engage in more extensive lobbying activity and cross a threshold other than the oral contacts test will file a "long-form" registration statement and report, giving a more detailed picture of their lobbying activities and related expenditures.

We believe the two-tier approach to registration and reporting would be more workable and effective if the gaps we noted earlier in the threshold tests are closed. Otherwise, major lobbying organizations conceivably would not meet the threshold tests for the long-form registration and reporting requirements, but instead, would satisfy only the contacts threshold to which the long-form registration and reporting requirements do not apply.

On balance, S. 1785 would require organizations subject to the bill to disclose a considerable amount of information about their lobbying activities.

However, the bill would not require lobbyists to report their total expenditure for each issue they sought to influence. The amount of money expended by a lobbyist on a particular issue may be of interest to Congress and the public, at least where the amount expended exceeds a certain dollar

minimum. For example, if a lobbying organization spent a total of $50,000 to directly lobby 10 separate issues during a quarterly filing period, and if $40,000 of that amount was spent on one issue, we think it appropriate for the Congress and the public to know that $40,000 was spent to influence the outcome of just one of the 10 lobbied issues, and what that one issue was.

Powers and Duties of the Comptroller General

S. 1785 would designate the Comptroller General as the official with primary responsibility for administering and, to a somewhat lesser extent, enforcing the new lobbying law.

The duties imposed on the Comptroller General would include maintaining and making available to the public, for inspection and copying, lobbyist registration statements and reports, and compiling and summarizing the information contained in these reports in a meaningful and useful way. In addition, the Comptroller General would be empowered to issue rules and regulations; conduct investigations; administer oaths and affirmations; take testimony by deposition; issue subpoenas and orders; initiate civil actions for the purpose of compelling compliance with a subpoena or order; and render advisory opinions concerning the bill's registration, record-keeping, and reporting requirements.

These powers and procedures should significantly improve the effectiveness of lobbying disclosure and eliminate many of the weaknesses of the current law identified in our report.

Enforcement

Finally, we would like to discuss the enforcement provisions in S. 1785. The methods of enforcement contemplated by S. 1785 should eliminate many of the enforcement weaknesses identified in our report.

Under the bill, the Comptroller General would have investigative authority and limited authority to go to Court to enforce subpoenas and orders. In addition, the Comptroller General would have authority to try to correct an apparent civil violation of the law by informal methods of conference and conciliation. In our opinion, these provisions, together with the advisory opinion mechanism, afford lobbying organizations optimum opportunities to bring themselves into compliance with the provisions of the lobbying law before a civil or criminal action is initiated.

If the Comptroller General determines that civil or criminal prosecution may be warranted, the alleged violation is to be referred to the Attorney General for prosecution.

S. 1785 includes a provision authorizing the Comptroller General to bring a civil action in Federal court whenever, after initially referring a case to the Attorney General, the Attorney General fails to bring a civil suit or criminal action within a 60-day period following referral. This provision is similar to one contained in S. 2477, a lobbying disclosure measure passed by the Senate during the 94th Congress.

It is clearly the Attorney General, however, who, at least initially, would have the exclusive authority to enforce the substantive provisions of the new lobbying law through civil and criminal enforcement proceedings. The Attorney General would apparently also be empowered to defend civil declaratory actions that challenged advisory opinions rendered by the Comptroller General.

Disclosure of lobbying activities must be timely to be effective. We believe the Comptroller General should be empowered to defend the advisory opinions he issues and authorized to initiate a civil enforcement action without delay.

Advisory opinions issued by the Comptroller General could be made meaningless if the Attorney General failed to defend a declaratory action filed by a lobbyist against the Comptroller General. In such a case, the Comptroller General would be placed in the awkward position of having his actions effectively overruled by the Attorney General. Moreover, although the Comptroller General would have primary responsibility for implementing the law in a timely and effective manner, for a period of 60 days following each case's referral only the Attorney General would have authority to go to court to compel compliance.

It is for these reasons that we have consistently stated that the agency responsible for administering a new lobbying

disclosure law should be given civil enforcement authority. This should include the authority to go to court to defend civil challenges to the Comptroller General's advisory opinions and to compel compliance with the civil provisions of any new lobbying disclosure law. We do not believe the exercise of this authority should be conditioned on a 60-day waiting period.

There is ample statutory precedent for authorizing the Comptroller General to go to court in his own right or on behalf of the Congress. Specifically, the Energy Policy and Conservation Act directs the Comptroller General to collect energy information for the Congress and empowers him, through attorneys of his own selection, to institute a civil action to collect civil penalties or enforce subpoenas he issues under the Act. Similarly, the Federal Energy Administration Act of 1974 authorizes the Comptroller General to institute a civil action to compel compliance with subpoenas he issues under that Act. And the Impoundment Control Act of 1974 authorizes the Comptroller General to bring a civil action in Federal court, again through attorneys of his own selection, to compel release of impounded budget authority.

In short, we believe that vesting civil enforcement powers in the Comptroller General will not only place the enforcement of the legislative branch's information gathering

power within the legislative branch where it should be, but would, in our view, eliminate potential conflict between the Comptroller General and the Attorney General.

We recommend, therefore, that S. 1785 be amended to authorize the Comptroller General to defend advisory opinions and to initiate a civil enforcement action unhampered by a 60-day waiting period.

We do not believe, however, that the Comptroller General should be given criminal enforcement powers. Enforcement of the Federal criminal laws through formal criminal proceedings is a function of the Attorney General. We can see no reason for departing from this principle in the proposed lobbying legislation.

Mr. Chairman and Members of the Committee, this concludes our statement. We will be glad to respond to any questions you have.