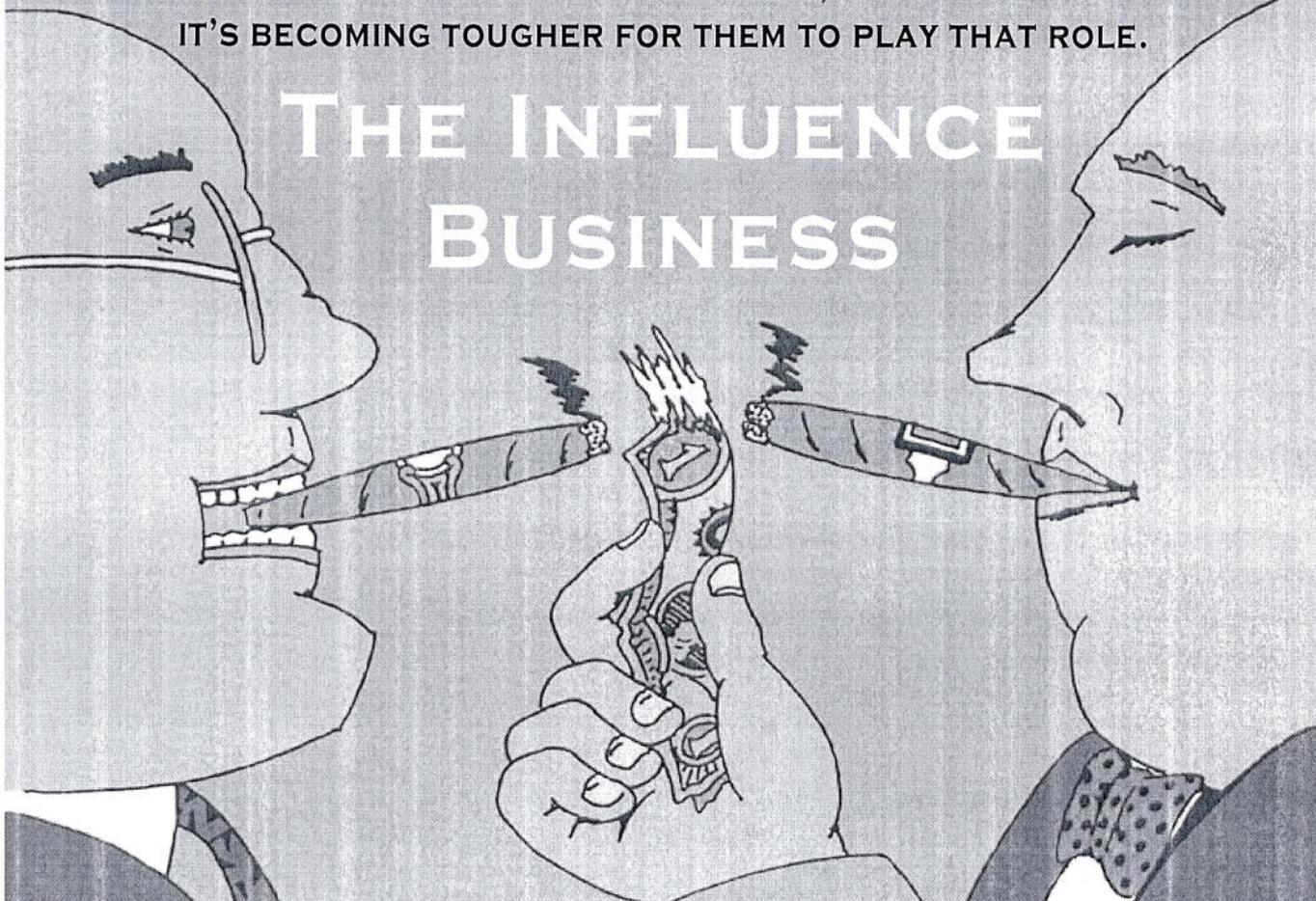


LOBBYISTS HELP SHAPE PUBLIC POLICY, BUT IN MANY STATES IT'S BECOMING TOUGHER FOR THEM TO PLAY THAT ROLE.

THE INFLUENCE BUSINESS



BY PEGGY KERNS

Lobbyists are everywhere.

The neighbor who tells a lawmaker her view of a bill, a community volunteer who testifies at a legislative committee and the local official who writes to his representative are all lobbying.

They're all trying to influence decisions by lawmakers.

But it's the paid lobbyist, representing a group with a special interest, that draws the ire of the public.

"Lobbying is truly the third house in the legislative process," says California lobbyist Gregg Cook of Government Affairs Consulting in Sacramento. "I provide information; the other side does the same thing. It's up to

lawmakers to sift through the material and make an informed decision."

But Cook admits the negative reputation of lobbying bothers him. "I'm proud of what we do," he says, "but the public perception of lobbying is pathetic, and scandals validate that perception."

Love them or hate them, lobbyists are now facing stricter regulations on how they work than ever before. At least 21 states have changed their rules on lobbyists in the past several years. Some lobbyists say they can easily live with the rules, while others say they unnecessarily crimp their style. Those who proposed the rules say the new restrictions were a response to public demand.

A BAD RAP

To say that lobbying and lobbyists have gotten a bad rap is to understate the case. In 2008, a *USA Today*/Gallup poll asked people

to rate the honesty and ethical standards of people in 21 different professions. Respondents put lobbyists at the bottom of the list, below car salesmen and telemarketers.

Even the once-powerful federal lobbyist Jack Abramoff had nothing nice to say about his line of work. After pleading guilty in 2005 to corruption charges involving members of Congress and federal officials, he told the judge at his sentencing: "I'm not the same man who happily and arrogantly engaged in a lifestyle of political and business corruption."

But Carol W. Lewis, ethicist and professor of political science at the University of Connecticut, says lobbying is a normal part of the process. "If lobbying is making our opinions and preferences known to decision makers, then isn't this what citizens in a democracy are supposed to do?"

Even proponents of strict lobbying laws understand the role lobbying plays. On its

Peggy Kerns heads NCSL's Center for Ethics in Government.

Who is a Lobbyist?

website, the National Institute on Money in State Politics says that “many lobbyists do their homework and provide solid, fact-based information to busy legislators. Nevertheless, lobbyists aren’t necessarily looking out for the public interest.”

Jim Bricker, director of government affairs at PEMCO Financial Center in Olympia, Wash., compares the public’s feeling toward lobbyists with how they feel about their local elected official. “Everyone loves their local officials. They know them and know how hard they work. They feel the same toward the lobbyist of their particular special interest. ‘Our guy is good. It’s the other lobbyists who abuse the system.’ ”

Although state and local officials understand the role of lobbyists in the legislative process, they also know the concerns of the public.

“Legislators have an ethical duty to vote their conscience and represent the public’s interest,” says Oregon Representative Dennis Richardson, who notes the public often believes that legislators’ votes are swayed by lobbyists and campaign contributions. “This puts an enormous responsibility on us as elected officials.”

It’s important to listen to lobbyists on both sides of an issue, he says, because lobbyists can be a great source of information. But he cautions lawmakers about becoming too friendly. “Legislators should never confuse positive business relationships with friendships. Ask any long-term legislator who retires. Do lobbyists continue to call after they are out of office? No, the silence is deafening.”

STATE ACTION

State legislatures have taken dramatic steps in recent years to reform their ethics laws, with lobbying and lobbyists as major targets.

“The public is tired of hearing these problems,” says Elizabeth Bartz, president and CEO of State and Federal Communications

States generally agree a lobbyist attempts to influence government action. Beyond this, states differ in the details. These are general guidelines.

Who is considered a lobbyist.

- ◆ Gets paid for the job, no matter what the amount, or has to earn above a certain income from lobbying.
- ◆ Spends a specific amount of time on lobbying, whether or not he or she gets paid.
- ◆ Spends money on lobbying efforts.
- ◆ Mobilizes the “grassroots” by urging citizens to contact their lawmakers.
- ◆ Attends hearings, follows legislation or proposes legislation.
- ◆ Attempts to obtain the goodwill of a public official through activities that build relationships, even if not specifically geared toward legislation.

Who is not considered a lobbyist.

- ◆ Legislators who try to persuade their colleagues to vote a certain way.
- ◆ Local public officials and employees.
- ◆ Citizens who contact their elected officials.
- ◆ The media.
- ◆ State employees, including directors of executive agencies, who provide information on legislation or respond to information requests.
- ◆ People who appear before committees to give testimony or provide information.
- ◆ Volunteers.

Inc., which researches and publishes guides on lobbying laws. “States have no other choice but to clamp down on what lobbyists can and cannot do. This is a subject that is not going away.”

Among the states that enacted changes to their lobbying laws in the past several years are Alaska, Colorado, Connecticut, Florida, Georgia, Idaho, Louisiana, Maine, Minnesota, Missouri, Montana, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia and West Virginia.

The reforms are broad and include:

- ◆ Creating stricter registration requirements;
- ◆ Requiring lobbyists to disclose how much they earn and spend on lobbying;
- ◆ Giving the public more access to registration and disclosure information;
- ◆ Banning or limiting lobbyists from paying for gifts and food, even a cup of coffee;
- ◆ Imposing a time period before legislators can become lobbyists;
- ◆ Creating ethics oversight by establishing ethics commissions and legislative ethics committees; and
- ◆ Giving oversight agencies more power to investigate violations of ethics laws.

By tightening existing lobbying laws and implementing new ones, state legislatures

targeted an industry that most people think, for good or bad, helps shape public policy.

Florida may have started the trend in December 2005 when the Legislature passed one of the country’s strictest gift laws. It prohibits lobbyists from buying lawmakers gifts and meals, even a cup of coffee. Lobbyists also have to report their income. Pushing the legislation was then-Senate President Tom Lee, who said he was uncomfortable with the “wining and dining” environment of lavish receptions and the money spent to influence how laws were made.

“While many of these activities were legitimate, well-intended and perfectly legal, they just never seemed right,” he said at the time.

LOBBYISTS REACT

Former Florida legislator-turned-lobbyist John Thrasher thinks the laws have affected the way lobbyists do business, but he downplays the effect.

“The restrictions haven’t changed what we do or our ability to convey information. What has changed is where and when we provide this information,” he says.

Thrasher became Florida’s speaker of the House during his last term in 1999-2000. Rather than run for another office after being term-limited out of the Legislature, he joined



REPRESENTATIVE
DENNIS RICHARDSON
OREGON

the lobbying firm Southern Strategy Group. Now known by some as a “super lobbyist,” Thrasher acknowledges his political connections have helped him.

“Lobbying is not rocket science,” he says. “It’s a contact sport—blocking and tackling, but you have to do it the right way. Having been on both sides, the best you can do is to have a good academic argument and to tell the truth. The only way to survive as a lobbyist is if you’re an ethical person and people

trust you. The gift ban hasn’t changed this.”

But Mike Feeley, former Colorado legislator and now a lobbyist for Brownstein Hyatt Farber Schreck, says a Colorado law approved in 2006 has changed the environment. The constitutional amendment—considered one of the strictest ethics laws in the nation—bans gifts from lobbyists to legislators.

“The amendment hasn’t done anything except save lobbyists money,” says Feeley,

who served eight years in the Senate, six as minority leader. “Amendment 41 assumed corruption was taking place, but I’ve never met any legislator who could be bought for the price of a lunch. The do-gooders feel better. But the amendment has a negative impact on making public policy and on government officials.”

The gift ban produces unnecessarily awkward social situations, he says. “Sharing information over a cup of coffee or a meal is a common way to conduct business. There’s nothing evil about this. The amendment gets in the way of efficiently conducting business—all in the guise of making us more ethical. It’s ridiculous.”

Jennifer Flanagan, executive director of Colorado Common Cause, sees it quite differently, saying lobbyists dominate Colorado politics and gain access that most citizens do not have.

“Voters supported the ethics law in overwhelming numbers because they wanted to level the playing field for all Coloradans, not just the wealthy interests who can afford to wine and dine the legislators,” she says.

The most recent state to tackle major ethics issues is Louisiana. The governor called legislators into special session in 2008 to consider at least 28 bills that concerned lobbying. What emerged were more thorough and frequent disclosure requirements. Lobbyists’ expenditure reports now will include information on their compensation, the issue being lobbied, and business relationships with public officials and their spouses. Reports must be filed monthly and electronically.

EXTENDING THE NET

The latest trend is placing procurement in the category of lobbying.

Bartz, of State and Federal Communications Inc., cites Maryland, Massachusetts and Ohio as three of the states that have done this.

“Sales people whose paycheck is based on commission now may be considered as lobbyists,” she says. “These people sell staples to offices, food to prisons, pharmaceuticals to state hospitals—all kinds of goods and services. They are being regulated more and more.”

She also sees more states requiring disclosure by lobbyists of their income and the costs of grassroots lobbying, which are efforts to encourage citizens to contact their

elected officials.

Restrictions on lobbying do not include only the private sector. At least 12 states address the use of public funds for lobbying.

These restrictions can include prohibiting the hiring of contract lobbyists by the executive branch, a measure being considered by Mississippi. Iowa prohibits a state executive agency from using public funds for a paid advertisement or public service announcement to encourage a specific action on a bill 30 days before the legislative session. New Hampshire prohibits recipients of a grant or state appropriation from using state funds to lobby.

South Carolina Governor Mark Sanford's 2003 Executive Order bans agencies within his cabinet from hiring independent contractors to lobby the General Assembly. None of these restrictions prohibit agencies from communicating with legislators and providing them with information.

WHAT CHANGED

Legislators and lobbyists generally agree scandals are usually the impetus for reforms, but some see broader influences. Cook thinks one factor is term limits.

"More than any other law, term limits have absolutely changed the culture," he says. "Legislators unable to move to the other house become lobbyists. The number of lobbyists has increased and the number of legislators becoming lobbyists has increased."

Bricker cites the increase in contract lobbyists—people who lobby for a single piece of legislation on contract—and the decrease in corporate lobbyists, who represent an industry, as influencing the culture at the Washington statehouse.

"In 1984, corporate lobbyists made up 22 percent of the total and contract lobbyists less than 10 percent," he says. "Reports for 2007-2008 show corporate representatives at 4.3 percent, with contract lobbyists at nearly 18 percent."

DO THE RULES WORK?

Do these regulations make for more ethical lobbying? It depends on who you ask. Most lobbyists would say no.

"We don't need laws that restrict how we operate in order to bring ethics into

Top 10 Tips to Regulate Lobbyists

These are 10 ways states have devised to regulate lobbyists.

- ◆ Require lobbyists to register and identify their employer.
- ◆ Report on who is being lobbied, how often and on what topics.
- ◆ Report income and connections to public officials.
- ◆ Prohibit or limit gifts to public officials.
- ◆ Report costs of lobbying, including organizing the "grassroots."
- ◆ Require reporting data to be easily available to the public.
- ◆ Prohibit commissions contingent upon a favorable lobbying effort.
- ◆ Ban false statements in lobbying practices.
- ◆ Establish a period of time before legislators may become lobbyists.
- ◆ Include in the definition of lobbying "goodwill," such as someone who builds relationships with legislators.

our work," says Feeley.

Bricker adds, "Effective keys to lobbyists' success are solid information, supported by personal credibility. We are determined not to mislead members."

The American League of Lobbyists, an organization for government affairs professionals, developed the Code of Lobbying Ethics to provide basic guidelines and standards for lobbyists' ethical conduct. The code has been adopted by many state lobbying organizations.

What both sides would agree is that, in the end, lobbyists have only the power public officials give them.

"Lobbyists are the conveyors of information," says Thrasher. "We provide a service—we open doors, know the issues and are strong advocates for our clients and the issues we believe in. But it's up to legislators to be the filter—to weigh all the information and decide what's best for the public."

 **CHECK OUT** the Code of Lobbying Ethics published by the American League of Lobbyists and some perspective on why the number of lobbyists has grown at www.nesl.org/magazine.