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**NEW YORK TEMPORARY STATE**

**COMMISSION ON LOBBYING**

**PUBLIC FORUM ON AMENDING THE LOBBYING ACT**

**COMMENTS SUBMITTED BY**

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Chairman Dunn and members of the Commission, thank you for the opportunity to submit comments on proposed amendments to the Lobbying Act.

It is almost impossible to open the newspapers these days without reading about the need for reform in Albany. The legislative process has been called “gridlocked,” “broken” and “dysfunctional.” Even supportive observers have condemned the “three-men-in-a-room” system of governance, which seems to produce more acrimony than accomplishments. Complaints about the process were made primarily by the “good government” groups, but now a wide range of business organizations, advocacy groups, editorial boards and members of the general public have joined in these criticisms and have called for major reforms.

Much of this criticism is well-deserved. While substantive disagreements on contentious issues are understandable, even proposals that have widespread support – from reforming the Rockefeller Drug Laws, to adopting an on-time budget, to addressing the financial needs of our school system – fail year after year. Moreover, even when there are successes, such as the enactment of improved anti-terrorism laws, those bipartisan efforts are overshadowed because of the failure to make progress on so many other fronts.

Reforming the system is not an option – it is an imperative. Fortunately, Governor Pataki, Speaker Silver, Majority Leader Bruno, Minority Leader Paterson and Minority Leader Nesbitt, as well as many individual legislators, have expressed their support for various reform efforts. Although long-term Albany observers may be cynical about whether these words will translate into actions, it now appears that there is a real consensus to significant changes.

Given the breadth of the problems, however, it is essential that the reforms not be timid or partial – they must be bold and comprehensive, covering lobbying, ethics, budgeting, public authorities, debt practices, elections and campaign finance.

The Temporary State Commission on Lobbying stands at the center of many of these issues, because the vast majority of bills introduced in the State Legislature have lobbyists on both sides, fighting to get the proposals enacted, amended or defeated. As a result, it is particularly appropriate for the Commission to take an active role in seeking to reform the lobbying process.

There is no question that the ability of the public to petition their elected officials is an essential part of the democratic process. Most individuals who think new laws should be passed – whether to reduce the number of guns on the street, lower auto insurance premiums, or increase health insurance coverage – do not have time to go to Albany and lobby their legislators. As a result, it is inevitable that individuals with similar interests will form associations and coalitions, and may hire lobbyists to push for the reforms that they believe in. These activities, and other similar “grass roots” organizing efforts, are very important and must be preserved.

Unfortunately, all lobbyists know that discussing the merits of a proposal is only part of their job, and they are also expected to attend fundraisers for the individuals that they lobby. As a result, without effective controls and oversight, the lobbying process can and will have a corrupting influence, with lawmakers and other government officials becoming too accustomed to the gifts and campaign contributions of the lobbyists, and therefore too quick to accommodate the demands of those contributors.

The answer is two-fold: (1) take steps to separate the financial payments from the substantive decisionmaking; and (2) require greater disclosure, so that the public is aware of the connections that exist.

I know that the bill being circulated was drafted by Commission staff, and has not yet been approved by the Commission. I applaud the Lobbying Commission for holding this hearing, and obtaining comments from the public before taking action on these proposals. In my view, while several of the proposals have significant merit, overall they are too timid, and some are counterproductive.

I'll start with the good proposals, move on to the timid ones, and then discuss those that should be discarded.

First, if we are going to maintain the current structure of the Lobbying Act, then I agree that the law should be extended to cover government contracts, permit applications and other similar governmental decisions. New York State spends billions of dollars each year on contracts, and takes actions on many other issues that benefit particular entities or individuals. It is absolutely essential that there be public disclosure and reporting by the lobbyists hired to influence these decisions.

Second, I support the proposal to expand the Lobbying Act's prohibition against contingent retainers. I also support increasing the sanctions for violating the Lobbying Act, although I believe the focus should be on monetary and criminal sanctions, and am not convinced that companies should be banned from hiring lobbyists to communicate with their elected representatives. Finally, I have no objection to the proposal to codify the Commission's existing due process procedures, although I note that the Lobbying Act already requires that alleged violators be given notice and an

opportunity to be heard, and the Commission has already promulgated guidelines setting forth the necessary due process protections, so these rights already exist.

While these proposals are generally positive, I think the Commission should not be so timid, and should consider reforms that go much farther. For example, why, exactly, should there be “lobbying” on contracts at all? Lobbying should never occur when a contract is being awarded to the lowest responsible bidder, because the company that submits the lowest bid and is found to be responsible must be given the contract. Nor should there be “lobbying” when a contract is being awarded through a Request for Proposals (RFP) or other similar process. In those situations, each company should submit its written response, and those responses should be evaluated objectively, without any outside pressure, to determine which proposal provides the “best value” to the State. The companies should be permitted to ask questions about the process, but should not be allowed to reach out to high-level executives to seek special treatment.

When lobbyists circumvent established procedures, and seek to alter contracting decisions, it causes the public to question the fairness of the entire procurement process. What sort of message does that send to other New York businesses that want to do business with the State? It tells them that “unconnected” companies need not apply, and the State ends up with fewer proposals and lower quality work, as well as higher costs that ultimately must be borne by the taxpayers.

Instead of proposing merely to register lobbyists seeking to influence the award of government contracts, the Lobbying Commission should join me in calling for a complete ban on procurement “lobbying,” and should limit communications to written submissions and responses to agency requests for information. To implement this ban, every agency should:

- designate, for each procurement, a single contact person who can answer questions about the procurement and can request additional information from bidders where necessary;
- require that all communications be made with the designated contact person;
- prohibit contractors and their lobbyists from communicating with anyone else in the agency;
- require agencies to maintain a record of all communications from outside individuals during the procurement process; and
- disqualify any contractor who violates these rules.

If bidders know that improper lobbying will cause them to lose the contract, they will not engage in such lobbying, and instead will spend their time and energy on submitting the best possible proposal.

That covers the “good” proposals and the “timid” proposals – now for the “bad” ones.

The Commission’s staff has proposed to lift the \$75 cap on gifts from lobbyists, and simply require disclosure of all gifts. While I support full disclosure, if the staff recommendation is enacted, it would allow lobbyists to give legislators and other public officials gifts worth hundreds or thousands of dollars. Simply stated, that is one of the most counter-productive proposals I have ever heard.

As the Commission is well aware, a sitting State Senator pled guilty to a felony charge in a bribery case earlier this year, and a sitting New York City Councilman pled guilty in another bribery case just two years ago. The public views these incidents as

evidence that monied interests already have an undue influence over governmental decisionmaking, and they want the existing practices reformed, not exacerbated.

What possible justification can there be for allowing lobbyists to shower legislators with expensive gifts? The existing law already is unduly weak, because the \$75 statutory cap has been interpreted as a “per gift” limit, which means that lobbyists can repeatedly give gifts under \$75 to the same individual, and those gifts can total hundreds or thousands of dollars per year.

The proposed legislation makes a bad situation worse, because it allows repeated gifts of unlimited value. Under this proposal, lobbyists seeking to influence the vote of a legislator arguably could start the meeting by presenting the legislator with an expensive watch or other gift, and the Lobbying Act would not prohibit that. What sort of message does that send to the public, which already believes that influence peddling is rampant in Albany?

Rather than eliminate the cap on gifts, it should be drastically lowered. When I took office in January 1999, one of my first acts was to issue an Executive Order prohibiting staff members from accepting gifts under any circumstances that could permit the inference that the gift was intended to influence the employee in the performance of his or her official business. While an Assistant Attorney General can go to a meeting and accept a cup of coffee or a muffin, anything of more than nominal value is prohibited. No expensive lunches, no dinners, no bottles of wine, no tickets to Broadway shows, or to Yankees, Bills or River Rats games.

Not surprisingly, no one has complained, and this rule has not diminished our effectiveness one iota. What it has done is eliminate any accusations that our decisions

are based upon money rather than substance, which is exactly what we need to do in Albany. If we drastically lower the \$75 limit, and allow legislators to accept only items of nominal value (or if we make the \$75 limit an annual cap, rather than a per-gift cap), it will help to restore the public's confidence in the integrity of the Legislative process.

I also have concerns about some of the other provisions in the proposed legislation. For example:

- The Lobbying Act currently sets forth the powers and duties of the Lobbying Commission, which is consistent with legislation relating to all other State entities and authorities, but this bill inexplicably requires that these powers must be exercised through the Executive Director. This turns existing law on its head. The Executive Director is an employee of the Commission, and the Commission should remain free to exercise its powers on its own, or through other Commission employees. There is no good reason to mandate that all powers be exercised through the Executive Director.
- The bill changes the manner in which the Executive Director can be fired, prohibiting termination if, for example, the Commission members simply lose confidence in the ability of the Executive Director to be effective in the position. All other senior staff members of the Commission – like the senior staff at virtually all other commissions, boards and agencies (including the Attorney General's Office) – serve as “at will” employees, and it makes no sense to provide special protection for the Executive Director of the Lobbying Commission.
- The bill also increases – from \$2,000 to \$15,000 – the monetary threshold for exemption from registration requirements. While I recognize that the current cap may cover small-time “grass roots” organizers, and there probably is a need to increase the threshold somewhat to keep pace with inflation, I am not convinced that a 750% increase is warranted. If sunshine is the best disinfectant, then we should keep as many lobbyists in the sunshine as possible.

- Finally, there is no reason to eliminate the requirement for the filing of lobbying contracts. If the Commission is concerned with paperwork or storage issues, it can require that contracts be filed electronically.

Thank you once again for allowing me to submit my views on these important issues. As I noted earlier, the Lobbying Commission is in the position to play a central role in the push for reform in Albany. Not only do you oversee all lobbying activity in the State, but the Commission itself is composed of appointees of the Governor and the four legislative leaders, which allows you to make proposals in a bipartisan fashion.

I urge you to use your position and power to push for real reforms that will enhance the integrity of the lobbying process, and restore the confidence of the people in their elected representatives.