

Testimony from PA Association of Government Relations
House State Government Subcommittee on Campaigns and Elections
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Honorable members, thank you for the opportunity you've provided the Pennsylvania Association for Government Relations, also known as PAGR, to testify on the important topic of lobbying reform and disclosure. My name is Justin Fleming and I currently serve as President of the organization. I have worked in and around state government for more than 17 years, including the last 11 as a government relations professional with three different non-profit organizations. I currently serve as Director of Government Affairs for Pennsylvania Partnerships for Children, a statewide child advocacy organization.

PAGR is an organization of lobbyists that traces its' beginning to November, 1991 following the passage of a lobbying services tax as part of the budget negotiations earlier in June, 1991. PAGR's mission is to promote the purpose and effectiveness of the lobbying profession consistent with the public interest. Further, association members encourage high standards of personal and professional conduct among all lobbyists. PAGR's bylaws provide for four, (4), membership categories for lobbyist with each category having at least one board representative. The categories include: corporate lobbyists, association lobbyists, independent lobbyists and lawyer lobbyists. The bylaws include definitions for each of these categories as follows:

- 1) Corporate lobbyists – Members in this category shall be those active members of the Association who are employed full-time by a corporation conducted solely for that corporation or business.
- 2) Association lobbyists – Members in this category shall be those active members of the Association who are employed full-time by a not-for-profit association or union, and whose governmental relations activities are conducted solely for the organization.
- 3) Independent lobbyists – Members in this category shall be those active members of the Association who own and operate, are a partner in, or are employed by a business entity engaged in the provision of government relations services to a client or clients for a fee, and who do not qualify for membership in any other category.
- 4) Lawyer lobbyists – Members in this category shall be those active members of the Association who have been admitted to the bar and who own and operate, are partners in, or are employed by a business entity or law firm engaged in the provision of government relations services to a client or clients for a fee.

Currently, PAGR has 151 members representing 115 varied organizations. These categories are important because lobbyists in each of these categories works slightly different which makes regulation of the profession challenging.

As many of you know, the word "lobbyist" is traced by many to a legend of President Ulysses Grant meeting with businessmen in the lobby of the Willard Hotel in Washington DC in the mid-19th century. However, it is more likely that it comes from a 16th century practice where individuals would approach members of the House of Lords and House of Commons in the lobbies, hallways and galleries of the

legislative body to conduct business and provide information to individuals prior to a vote. Lobbying is generally understood to be any attempt by individuals or private interest groups to influence the decisions of government. Virtually every conceivable profession from the agricultural community to zookeepers have an organization representing their interests before the legislative and executive branches of government.

Whatever its' origins, today, lobbyists play a vital role in the working of our system of government. The demands placed on legislators personally and professionally have never been greater. Lobbyists help guide members and staff in policy development due, in part, to the overwhelming number of subjects one must consider when governing within the Commonwealth of Pennsylvania. Prior to becoming a legislator, a member's occupation may have been as an accountant, teacher, nurse, farmer or insurance sales person, just to name a few, but when they arrive in the legislature, they're expected to quickly become experts on every subject.

Lobbyists educate, collaborate and advocate on behalf of their clients or employers providing invaluable information to ensure that policy is developed which represents interests as diverse as the state itself. When proactively working on legislation and the General Assembly is at its' full complement of 50 Senators and 203 members of the House of Representatives, it is the lobbyists job to successfully secure the votes of at least 26 Senators and 102 House members as well as the Governor's signature.

Prior to the passage of Act 134 of 2006, the PA Lobbying Disclosure Act, during every two, (2) year session, lobbyists were required to register with the Secretary of the Senate each month, the names and addresses of the clients represented by each lobbyist, lobbying firm, corporation and association. There was no reporting of expenses. In the late 1990's and early 2000's, in an effort to increase transparency, Senator Robert Jubelirer and Representative Paul Clymer each introduced legislation requiring principals to disclose what they spent on direct and indirect lobbying, gifts, entertainment and lodging. PAGR has worked to represent the interests of government relations professionals across the commonwealth including keeping lobbying registration fees reasonable for all professionals. PAGR has also worked collaboratively with the Department of State to ensure that systems in place for lobbying disclosure are functional and allow for our members and others to comply with the law.

PAGR certainly recognizes it is the role of the General Assembly to make policy and acknowledge that the goal of the legislative package of bills being discussed today are an effort to make Pennsylvania government more transparent and accountable. We want to be part of the process to make these bills as good as we possibly can to achieve that goal, without placing an undue burden on government relations professionals; unnecessarily encroaching on the profession itself or interfering with the right of citizens to petition their government for redress.

With that said, I'd like to introduce my fellow board member who is a past president of PAGR and serves on our public affairs committee, Judy Eschberger to both introduce herself and discuss the proposed legislation within the package. She will highlight some of the questions and concerns raised by our members.

Good morning my name is Judy Eschberger and I am a lawyer by training graduating from Duquesne University School of Law. After graduation, I practiced insurance defense litigation in Pittsburgh for four years prior to accepting a position as Counsel to the Leader in the Senate of Pennsylvania in 1993 where I provided counsel to five, (5), legislative committees for the members of the caucus. In the spring of 1997, I left the Senate and became a contract lobbyist for several firms in Harrisburg prior to starting my

own firm in 2015. Since 1997, I have acted as a lawyer-lobbyist representing large and small corporations as well as non-profit associations throughout the Commonwealth on issues ranging from agriculture to zoning and everything in between. As an attorney, I am a trained advocate ethically bound to zealously represent my clients and to avoid conflicts of interest. On any given day, I can be found lawyering, drafting legislation or amendments, monitoring legislation and regulations, formulating grassroots and grass tops programs and strategically planning how to accomplish my clients' goals including developing any number of contingency plans to make that happen.

When the co-sponsor memo and subsequent legislative package of lobbying reform bills were introduced in mid-June 2021, PAGRs Public Affairs Committee immediately began reading through and analyzing the legislation to see what elements were included in the proposals. Additionally, the committee and PAGR Board sought input from our members to see what pieces were supported and which proposals were opposed. We recently received the survey results, and the good news is that our members largely support the efforts of the General Assembly to increase transparency and accountability from the lobbying community.

However, there are some bills that raise concerns for our members, I will now briefly run through the various pieces of legislation in the package:

House Bill 1599 – Requires a lobbyist that seeks a waiver from clients regarding a conflict of interest to disclose that they sought a waiver within five, (5), days of seeking the waiver. This could be a very cumbersome process for a firm with many clients tracking many pieces of legislation that may be presented with multiple conflicts if certain amendments are included in a piece of legislation. During a busy budget season, it could require countless filings. Perhaps an amendment to the legislation requiring a filing once a month – ever 30 days – would be more appropriate. Typically, conflicts are resolved by presenting the potential conflict to each of the clients and permitting them to decide whether it is significant enough for them to require the lobbyist to withdraw from representation for one of them.

House Bill 1600 – Requires campaign consultants to register, but doesn't provide for a filing fee. This would be an unfunded mandate requiring the Department of State to implement a registration system without any funding to support that effort and may lead to increased filing fees for lobbyists who are not campaign consultants in order to fund the system.

House Bill 1601 – Requires a lobbyist to report an "equity interest" they may have in a client they're lobbying on behalf of. Two weeks after its' introduction and without any discussion with the lobbying community, the bill, which does not define "equity interest" was included in the Administrative Code bill which is now known as Act 70 of 2021. Had we been consulted, we would have told the General Assembly that most lobbyist do not have an equity or ownership interest in their corporate clients and to the extent that a lobbyist's 401(k) might include shares in a corporation they represent, that is a constantly fluctuating number typically unknown to an individual. To the extent that a few corporate lobbyists may receive stock options in the corporation they represent, the amount of shares that they hold would be negligible when compared to the number of shares that corporation has issued to the general public making that disclosure well under one percent, (1%). Perhaps the only registered lobbyist that might have a substantial equity interest would be if a company's owner or the President and CEO with substantial stock interests in the company was registered as the lobbyist. We are unclear what problem this bill was attempting to solve. A number of PAGR members have suggested that a better way

to address this issue would have been to require registered lobbyists to file a Statement of Financial Interest annually.

House Bill 1602 – Requires a lobbyist to register with the Department of State and report whether they have lobbied for a client to receive financial assistance or money through a grant program. First, how many separate registrations are necessary? Under Act 134, lobbying for financial assistance or grant programs for a client remain an attempt to influence legislative and/or executive action and are already captured on lobbying reports. Second, many non-profits apply for grants from a variety of state and federal sources in order to meet their budget needs in providing services. Some of the grants are annual, many are need-based and there is an ever-changing combination of funding sources. Clients may apply for grants unknown to their lobbyist and tracking those actions may be cumbersome. Additionally, grant funding is typically restricted so that monies must be used for program funding, not lobbying. For a 501(c)(3), monies for lobbying must be raised separately by the non-profit association. We are unclear what problem the legislation is attempting to solve.

House Bill 1603 – As drafted, prohibits a campaign consultant from lobbying a state official whose campaign they worked on for the term of the office the individual was elected to. While all lobbying firms do not provide campaign consulting services, this would prohibit a campaign consultant from lobbying for two, (2), or even four (4) years. Does this include lobbyists who represent a labor union? Is it the legislature's intent to require individuals to either lobby or work on campaigns, but not both? We wonder whether such legislation would even survive a legal challenge since it restricts an individual from earning a living.

House Bill 1604 – Framed as a third-party inducement and appears to prohibit an individual from charging a client more than \$10,000 to get state funds or grants awarded. Much like lawyering, independent or contract lobbyists charge a client for the time it will take to accomplish the client's goal and for their expertise and experience at successfully accomplishing a client's stated goal. If a lobbyist is working intensively on a project engaging in many hours of work and meetings, it means they cannot sell their time and expertise to another client. Additionally, if multiple staff people are engaged on a project or a media campaign to educate the public as to the benefits of obtaining a particular grant is included in the project, it is conceivable that the project could easily cost more than \$10,000 to accomplish. Although a lobbyist is prohibited from charging a success fee for their work, in a capitalist system, shouldn't the market be permitted to determine what it will bear? If a potential client chooses not to pay the fee proposed by a lobbyist for a project, they can simply take the work to another lobbyist who may be willing to perform the services for a lower fee. It is unclear whether such legislation would survive a legal challenge.

House Bill 1605 – Prohibits lobbyists and/or firms from receiving referral payments from another lobbyist/firm or campaign consultant. Nearly half of our members surveyed oppose or strongly oppose this bill. Referral payments are common in the practice of law so in the event that a lawyer has a conflict, they can refer the client to another competent attorney of similar expertise. It is not uncommon that the firm working on the matter receives 70 - 90 percent of the fee and the referring attorney gets 10 - 30 percent of the fee. The terms of such agreements are worked out by the parties to the contractual relationship. Again, it is unclear whether such legislation would survive a legal challenge.

House Bill 1606 – Changes the primary reporter of how much is spent on lobbying from the principal to the lobbyist and would institute an additional 1.8% tax for lobbying services on entities that pay sales and use tax. This proposal will lead to greater confusion and less transparency because some principals

retain more than one lobbyist and only they know what they truly spend on lobbying. If the lobbyists are the primary reporters of expenses, they will only be able to account for what they are paid by a principal for lobbying. This may not accurately capture what the principal spends for lobbying if there are other corporate employees regularly interacting with Senate and House members unbeknownst to the independent or contract lobbyist or if there are expenditures for a media campaign that is paid for directly by the principal. In a situation where an in-house corporate lobbyist retains one or more independent or contract lobbyists to represent their interests, there are expenditures for each that may not be captured. Additionally, for the record, the \$300 biennial lobbying registration fee is already one of the highest in the country. Almost 70% of our members surveyed oppose or strongly oppose this proposal.

House Bill 1607 – Does not permit commonwealth entities to hire outside lobbyist to influence other commonwealth entities. What is a “commonwealth entity?” As the bill is currently phrased, “a commonwealth entity includes, **but is not limited to** the General Assembly, judiciary or executive departments or agencies.” Does this include quasi- governmental units such as municipal authorities like the Pennsylvania Convention Center Authority or the cities of Philadelphia, Pittsburgh, Harrisburg, Scranton, Erie, York and Lancaster?

House Bill 1608 – Prohibits a lobbying firm or lobbyist to lobby an individual who was previously a lobbyist but has been hired by the General Assembly for a period of one year after their status as a registered lobbyist expired. More than 58% of our members surveyed oppose or strongly oppose this effort. Again, it impairs an individual from earning a living and it is unclear whether it would survive a legal challenge.

House Bill 1609 – Requires lobbyist ethics training annually. PAGR supports ethics training for both lobbyists and the General Assembly members, if not annually, then once during each 2-year session. PAGR would be interested in providing training for the lobbying community as part of our annual lobbying seminar.

We’d like to thank you for the opportunity to provide the subcommittee with our testimony today. Again, PAGR stands ready to assist you in crafting legislation that creates greater transparency and works for all parties involved. We’re happy to take any questions you may have.