Testimony from PA Association of Government Relations
Senate State Government Committee
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Honorable Senators, 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 172 members representing 117 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 salesperson, 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, 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.

During the past 30 years, PAGR has worked to represent the interests of government relations professionals across the commonwealth. Additionally, PAGR has been hosting an educational seminar called Lobbypalooza since 2000 to train our members about changes to the profession and discuss the issues of the day. PAGR has made every effort to work collaboratively with the Department of State to ensure that the 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 acknowledges that the goal of the four bills being discussed today are an effort to make Pennsylvania government more transparent and accountable. As always, we want to be part of the process of making 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.

We are encouraged by the process so far. Following the House of Representatives' introduction of an 11 bill package of legislation in mid-June, PAGR was invited to testify in mid-September before the House State Government Committee's subcommittee on Campaign Finance and Election regarding the 11 bills. Chairman Grove informed us last Friday that following a review of the testimony and comments gathered at the hearing, amendments are being drafted to each of the bills and he encouraged us to continue reaching out to them if we have additional concerns or suggestions. Likewise, the Senate is moving ahead and we thank you for your engagement on these issues.

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 four-bill package of lobbying reform bills were introduced on October 13, PAGR's Public Affairs Committee immediately began reading through and analyzing the legislation to see what elements were included in the proposals. Although the topics addressed in the four-bill package are similar to those considered by the House, the Senate takes a different approach and although we surveyed our members regarding the House package of bills, we have not had an opportunity to survey our members regarding the Senate's approach because of the quick one-week turnaround from the introduction of the bills to appearing here today at the hearing. That said, our Public Affairs committee has considered the legislation and the PAGR Board has considered our testimony here today. I will share with you that when we surveyed the members, they largely support the efforts of the General Assembly to increase transparency and accountability from the lobbying community.

I will now briefly run through the various pieces of legislation in the package in order to provide you with our initial impressions, concerns and comments:

Senate Bill 801 – Amends both Title 18 – the Crimes Code and Title 65 making it a crime to enter into an agreement to lobby for contingent compensation, but does not appear to mention Section 13A07(e) of the current Lobbying Disclosure Act which already prohibits contingent compensation and after an amendment in 2018, provides for increased civil penalties, a five-year prohibition from lobbying for compensation as well as provision permitting an investigation and prosecution by the Attorney General if it is determined that a lobbyist took part in any of the unlawful acts listed in Section 13A07(f).

Section 13A07

(e) Contingent compensation.--

(1) A person may not compensate or incur an obligation to compensate a person to engage in lobbying for compensation contingent in whole or in part upon any of the following:

(i) Occurrence, nonoccurrence or amendment of legislative action.

(ii) Occurrence, nonoccurrence or amendment of an administrative action other than procurement described in paragraph (1)(iv) of the definition of "administrative action" under section 13A03 (relating to definitions).

(2) A person may not engage in or agree to engage in lobbying for compensation contingent in whole or in part upon any:

(i) Occurrence, nonoccurrence or amendment of legislative action.

(ii) Occurrence, nonoccurrence or amendment of an administrative action other than procurement described in paragraph (1)(iv) of the definition of "administrative action" under section 13A03.

(3) This subsection shall not apply to vendors.

(f) Unlawful acts.--

(1) A lobbyist or principal may not:

(i) Instigate the introduction of legislation for the purpose of obtaining employment to lobby in opposition to that legislation.

(ii) Knowingly counsel a person to violate this chapter or any other Federal or State statute.

(iii) Engage in or counsel a person to engage in fraudulent conduct.

(iv) Attempt to influence a State official or employee on legislative or administrative action by making or facilitating the making of a loan to the State official or employee.

(v) While engaging in lobbying on behalf of the principal, refuse to disclose to a State official or employee, upon request, the identity of the principal.

(vi) Commit a criminal offense arising from lobbying.

(vii) Influence or attempt to influence, by coercion, bribery or threat of economic sanction, a State official or employee in the discharge of the duties of office.

(viii) Extort or otherwise unlawfully retaliate against a State official or employee by reason of the State official's or employee's position with respect to or vote on administrative or legislative action.

(ix) Attempt to influence a State official or employee on legislative or administrative action by the promise of financial support or the financing of opposition to the candidacy of the State official or employee at a future election.

(x) Engage in conduct which brings the practice of lobbying or the legislative or executive branches of State government into disrepute.

(2) The commission may receive complaints regarding violations of this subsection. If the commission determines a violation of this subsection has occurred, the commission, after investigation, notice and hearing:

(i) shall impose an administrative penalty in an amount not to exceed $4,000; and

(ii) may prohibit a lobbyist from lobbying for economic consideration for up to five years.

(3) The commission:

(i) may, as it deems appropriate, refer an alleged violation of this subsection to the Attorney General for investigation and prosecution; and

(ii) shall, if the subject of the complaint is an attorney at law, refer an alleged violation of this subsection to the board.

Another concern is the change to the definition of “lobbying” and “administrative action” included in Title 18. The amended definitions will lessen the amount of disclosure and transparency, it will not enhance or expand it. Currently, Title 65, Section 13A03 defines “lobbying” as follows:

"Lobbying." An effort to influence legislative action or administrative action in this Commonwealth. The term includes:

(1) direct or indirect communication;

(2) office expenses; and

(3) providing any gift, hospitality, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist or principal.

As currently drafted, Senate Bill 801 limits the definition of lobbying by defining it as: “An effort to influence State legislative action for economic consideration.” The current Lobbying Disclosure Act is much broader in that it includes ANY attempt to influence both “legislative” AND “administrative” action AND INCLUDES the mere providing of gifts, hospitality, transportation and lodging as acts of “lobbying.”

Additionally, Senate Bill 801 will further limit the disclosure of lobbying expenses by limiting what is meant by “administrative action.” Senate Bill 801 defines “administrative action” as “The administration of a grant, a loan or an agreement involving the disbursement of public funds.” Again, Section 13A03 of the current Lobbying Disclosure Act defines “administrative action” as:

"Administrative action." Any of the following:

(1) An agency's:

(i) proposal, consideration, promulgation or rescission of a regulation;

(ii) development or modification of a statement of policy;

(iii) approval or rejection of a regulation; or

(iv) procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement).

(2) The review, revision, approval or disapproval of a regulation under the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(3) The Governor's approval or veto of legislation.

(4) The nomination or appointment of an individual as an officer or employee of the Commonwealth.

(5) The proposal, consideration, promulgation or rescission of an executive order.

Perhaps what is necessary in order to effectuate what appears to be the intent of this portion of Senate Bill 801, would be to include its' definition of "administrative action" as one of the items delineated in the current definition of "administrative action" in Section 13A03 of the Lobbying Disclosure Act.

PAGR applauds the clarifications made in Senate Bill 801 with regard to "equity reporting" so that a lobbyist or lobbying firm must disclose whether they have a financial interest in any legal entity in business-for-profit on whose behalf they are lobbying for and to the extent that an "equity report" means a report with a list of each name and address and financial interest held in any legal entity in business-for-profit of which a lobbying firm or lobbyist owns more than 5% of the equity or more than 5% of the assets of economic interest in indebtedness. This addresses our concern in the House version of the bill 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. There is a hesitation by most lobbyists to sign an attestation under penalty of perjury that we have no ownership interest in an entity we lobby for only to learn later that our 401(k) had shares of some corporation we lobbied for unbeknownst to us.

While we applaud the clarification, we do not know whether our membership will agree that 5% is the correct percentage and reserve the right to continue discussing that amount with you during the ongoing work on this legislation. Perhaps, instead of a separate report, a check box or question on the Quarterly Expense Report asking whether lobbyist or lobbying firm has an "X%" interest in any client they are lobbying for and if they check "YES," then they would be directed to include the name and address of the client. Additionally, a number of PAGR members have suggested that a better way to address the equity issue would be to require registered lobbyists to file a Statement of Financial Interest annually.

With regard to requiring a separate quarterly financial assistance report stating whether a lobbyist has lobbied for a client to receive financial assistance or money through a grant program, we believe that is already reported on the existing Quarterly Expense Reports. First, under Act 134, lobbying for financial assistance or grant programs for a client falls under the definition of "Lobbying" as an attempt to influence legislative and/or administrative action and therefore, those amounts 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. Perhaps a check box or question on the existing quarterly report asking whether the lobbying pertained to obtaining state financial assistance or grant money would alleviate the need to file multiple quarterly reports.

With regard to conflicts, 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. We have not received any specific direction from our members regarding how they would suggest conflicts be reported. However, since Act 134 already requires lobbying firms and lobbyists to file a report in the event that the principal(s) did not report some information regarding the lobbying firm and/or lobbyists' lobbying activities so perhaps another check box on the Quarterly Expense Report where the lobbying firm/lobbyist checks a box next to a statement that they have complied with the provisions of the Lobbying Disclosure Act including resolving any conflicts of interest. Lastly, we would like additional time to consult with our members regarding third-party inducement addressed in Senate Bill 801 and follow-up with you once we have a better understanding of their position on these issues.

Senate Bill 802 - Prohibits a principal, lobbying firm or lobbyist to lobby an individual who was previously a lobbyist employed by the principal, lobbying firm or lobbyist, but has been hired by the General Assembly or Commonwealth agency for a period of one year after their status as a registered lobbyist with that principal, lobbying firm or lobbyist expired. More than 58% of our members surveyed oppose or strongly oppose this effort in the broader version introduced in the House because it impairs an individual from earning a living since the House language suggests they couldn't be lobbied at all by anyone for one year. As long as the prohibition is narrowly drawn so that the former lobbyist turned General Assembly or Commonwealth agency employee can be lobbied by anyone except their former principals, lobbying firm or other lobbyists from the firm, it will likely be more acceptable to our membership. We would reserve the right to consult with our membership and follow-up with you once we have a better understanding of their position.

The bill also prohibits a Commonwealth entity, agency or local department or agency of a political subdivision which is defined to include counties, cities, boroughs, incorporated towns, townships, school districts, vocational schools or county institution districts from hiring a lobbyist. Although the Senate version of the bill clarifies exactly who is covered by the term "political subdivision," PAGR is currently unclear whether our membership would have any additional concerns regarding this proposed legislation.

Senate Bill 803 – Extends all the provisions of the Act 134 to political consultants including the names of any affiliate. Defines "political consulting" to include, but not be limited to, "The provision, for compensation, to any state or county public official, candidate or nominee, campaign management, fundraising activities, voter outreach, public relations or media services, but excludes bona fide legal work directly related to litigation or legal advice with regard to securing a place on the ballot, the petitioning process, the conduct of an election of which involves election laws. It also defines "affiliates" to include family members of the same household or immediate family members as well as entities or persons directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of another entity or person. Lastly, it amends the registration requirements for principals, lobbying firms and lobbyists to include the names of any affiliates.

Added to the "unlawful acts" provisions listed in Section 13A07(f) are two specific prohibitions for political consultants; namely, a political consultant is prohibited from lobbying the state or county official or the official's staff for the term of state or county official whose campaign they worked to elect and the political consultant cannot provide those services while a registered lobbyist or principal. 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 unions and work as a political directors for the unions as part of their job duties? 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.

Senate Bill 804 – 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, like many organizations who provide education to their membership, would be interested in providing training for the lobbying community in conjunction with the Department of State and Ethics Commission as part of our annual lobbying seminar. We are curious as to whether ethics training done by our members as part of other licenses or membership organization training would be transferable to this arena. Additionally, if the legislature requires an attestation under penalty of perjury by the lobbyist that they have fulfilled the requirement, we would suggest a check box on the registration form stating that they have completed the ethics course along with a statement indicating the date and place of the training.

We'd like to thank you for the opportunity to provide the committee with our testimony today. Again, PAGR stands ready to assist you in crafting legislation that creates greater transparency, is streamlined and leads to greater compliance. We're happy to take any questions you may have.