Calendar No. 283

105TH CONGRESS, *1st Session* | SENATE | REPORT 105–147

LOBBYING DISCLOSURE TECHNICAL AMENDMENTS ACT OF 1997

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 758

TO MAKE CERTAIN TECHNICAL CORRECTIONS TO THE LOBBYING DISCLOSURE ACT OF 1995

NOVEMBER 8, 1997.—Ordered to be printed

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LOBBYING DISCLOSURE TECHNICAL AMENDMENTS ACT OF 1997

NOVEMBER 8, 1997.—Ordered to be printed

Mr. THOMPSON, from the Committee on Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 758]

The Committee on Governmental Affairs, to whom was referred the bill (S. 758) to make technical amendments to the Lobbying Disclosure Act of 1995 (P.L. 104–65), having considered the same, reports favorably thereon with no amendment and recommends that the bill do pass.

I. SUMMARY AND PURPOSE

S. 758, the Lobbying Disclosure Technical Amendments Act of 1997, amends the Lobbying Disclosure Act of 1995 to make minor adjustments to ensure that the law continues to operate as intended.

II. BACKGROUND

The Lobbying Disclosure Act of 1995 (LDA) was the first substantive reform in the laws governing lobbying disclosure in fifty years, since the Federal Regulation of Lobbying Act became law in 1946. Passage of the LDA was necessary to plug a number of serious loopholes in the 1946 Act. Under the LDA, lobbying of Congressional staff, lobbying of executive branch officials, and lobbying on non-legislative issues are no longer exempt from reporting and disclosure requirements. Moreover, as much-abused "primary purpose" test has been eliminated. At the same time, the lobbying disclosure requirements have been made more understandable and provide for more simple and easy compliance. Since enactment of the lDA, paid, professional lobbyists are required to disclose who is

paying them how much to lobby Congress and the executive branch on what issues.

Once the LDA was implemented by the Clerk of the House and the Secretary of the Senate, several minor problems with the language of the statute materialized. The offices of the Clerk and the Secretary have sought to interpret the LDA with respect to these problems in accordance with the original intent of the law, but it is necessary and appropriate to conform the language of the law to intent, and that is the motivation behind the introduction of S. 758.

III. Legislative History

S. 758 was introduced in the Senate by Senator Levin (D–MI) on May 16, 1997. Last year, Congressmen Charles Canady (R–FL) and Barney Frank (D–MA) sponsored similar legislation, H.R. 3534, and moved it through the House of Representatives. A dispute over one of the provisions precluded the bill from passing in the Senate in the last Congress.

The Senate Committee on Governmental Affairs considered S. 758 on November 5, 1997, and ordered it reported, without amendment, by voice vote.

IV. Section-by-Section Analysis

SECTION 1. SHORT TITLE AND REFERENCE

This section provides that this Act may be cited as the "Lobbying Disclosure Technical Amendments Act of 1997."

SEC. 2. DEFINITION OF COVERED EXECUTIVE BRANCH OFFICIAL

Section 2 addresses an unclear statutory reference in section 3(3)(F) of the Lobbying Disclosure Act (LDA) that defines a covered executive branch official in part as "any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy advocating character described in section 7511(b)(2) of title 5, United States Code."

The intended scope of coverage of section 3(3)(F) was for "Schedule C" employees only. The change to the definition made in section 2 reflects the stated intent by narrowing the statutory reference in subsection 3(3)(F) to ensure that only "Schedule C" employees are "covered executive branch employees" as defined in subsection 3(3)(F). Employees in the Senior Executive Service are not covered executive branch employees as defined in this paragraph.

SEC. 3. CLARIFICATION OF EXCEPTION TO LOBBYING CONTACT

Section 3(8)(B) of the LDA lists a series of exceptions to the definition of "lobbying contact." Subsection 3(8)(B)(ix) excepts communications "required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency." This exception reflects Congress' intent that communications that are compelled by an action of the federal government should not fall within the definition of a lobbying contact under the Act.

The House and Senate reports on the LDA indicated that Congress intended this provision to except communications required

under the terms of a Federal contract, grant, loan, permit, or license. The change made by section 3(a) of S. 758 would ensure such communications will not be considered lobbying contacts under the Act.

Section 3(b) of S. 758 clarifies the definition of a "public official" in subsection 3(15)(F) of the LDA. This subsection currently defines a public official in part as any national, regional, or local unit of any foreign government. However, because no express exemption exists for communications by international organizations composed of groups of governments acting together (such as the World Bank), such international organizations are potentially subject to the registration and reporting requirements of the LDA. In view of the clear exemption of foreign governments under the LDA, it appears to have been an oversight not to have included groups of governments acting together as international organizations in this exemption as well. This clarification would confirm that officials and employees of such organizations will be treated in the same manner as employees of the governments that comprise them.

SEC. 4. ESTIMATES BASED ON TAX REPORTING SYSTEM

Section 15 of the LDA allows those who are subject to sections 6033(b) and 162(e) of the Internal Revenue Code—namely non-profit organizations and businesses required to keep records of lobbying expenses for tax purposes—to elect an alternate method for the reporting of lobbying expenses. In lieu of reporting expenditures based on the LDA definition of "lobbying activities", such organizations are permitted to report such expenditures on the basis of the Internal Revenue Code's definition of "influencing legislation."

However, the statute is not clear on the extent to which such organizations may use the Internal Revenue Code definition for the other reporting and disclosure requirements in the LDA—for example, the Act's threshold test for a "lobbyist", the identification of lobbying contacts, the identification of issues which are the subject of the lobbying, and the identification of the persons who have been lobbied.

Section 4 leaves unchanged the option for non-profit organizations and businesses to report lobbying expenditures based on the Internal Revenue Code definition. For all other Lobbying Disclosure Act purposes, the provision clarifies that registrants who make a Section 15 election must use the Internal Revenue Code definition (including the tax code's definition of a covered executive branch official) for executive branch lobbying, and the LDA definitions for legislative branch lobbying. So, while registrants would base their estimates of expenses on the tax code definition for lobbying of both the legislative and executive branches, they would use the LDA's definitions for all other reporting and disclosure purposes with respect to legislative branch lobbying and the IRS definitions for all other reporting and disclosure purposes with respect to executive branch lobbying.

Section 4 would also require that when registrants elect under Section 15 to use the tax code definition to report their lobbying expenses, they must use that definition in its entirety. No modification is permitted to add back categories of expenditures that would be covered by the LDA definition, and no modification is permitted

to exclude expenditures—such as grassroots lobbying expenses and state lobbying expenses—for activities that are not otherwise required to be reported or disclosed under the LDA.

The Committee notes that nothing in this Section, or in Section 15 of the LDA, authorizes any lobbying firm to use the tax code definitions for any purpose; the option to elect under Section 15 to use the tax code definition is available only to organizations reporting on the activities of in-house lobbyists. The Committee believes the Section 15 reporting option should also be made available to the small number of trade association registrants not required by the Internal Revenue Code to report non-deductible lobbying expenses to their members (i.e., those whose members are tax-exempt) if they nevertheless elect to do so, adhering to the same standards and requirements followed by associations required to make such reports.

SEC. 5. EXEMPTION BASED ON REGISTRATION UNDER LOBBYING ACT

In section 9(3) of the LDA, Congress added a new Section 3(h) to the Foreign Agents Registration Act (FARA) to reflect a determination that the FARA standards are appropriate for lobbying on behalf of foreign governments and political parties, but the LDA disclosure standards should apply to other foreign lobbying. Under the LDA, any lobbyist who represents a foreign interest (other than a foreign government or foreign political party which must register under the Foreign Agents Registration Act) and registers under the LDA is required to provide specific information about such foreign interest.

Section 5 would amend section 3(h) of FARA (as added by the LDA) to clarify that any agent of a foreign principal engaged in lobbyists activities (other than an agent of a foreign government or foreign political party) who registers under the LDA would be exempt from the requirements of FARA. Under section 5 such lobbyists may elect to register under the LDA instead of FARA, even though they may not otherwise be required to register under the LDA because they do not meet the threshold registration requirements of the LDA. This change is made to address an anomaly, under which the most active lobbyists for foreign commercial entities are permitted to register under the LDA, while the least active lobbyists for such entities are required to meet the stricter standards of FARA (because they don't meet the 20% lobbying threshold test of the LDA.) The Committee notes that domestic lobbyists who do not meet all of the threshold requirements of the LDA are wholly exempt from disclosure under either statute.

The Committee's intention is to reaffirm the bright line distinction between governmental and non-governmental representations. Agents of private commercial foreign principals will be exempt from FARA requirements so long as they register under the LDA, whether the level of their reportable activity is substantial (requiring LDA registration), or de minimis (LDA registration optional). For registered entities, this exemption from FARA requirements applies to all employees, including but not limited to those listed as lobbyists. Agents who fail or choose not to register under the LAD (or who terminate their LADA registration) will remain subject to FARA.

V. Estimated Cost of the Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 8, 1997.

Hon. Fred Thompson,
Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 758, the Lobbying Disclosure Technical Amendments Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss.

Sincerely,

Paul Van de Water
(For June E. O'Neill, Director).

Enclosure.

congressional budget office cost estimate

S. 758—Lobbying Disclosure Technical Amendments Act of 1997

CBO estimates that enacting this bill would have no significant impact on the federal budget. S. 758 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 758 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would have no significant impact on the budgets of state, local, or tribal governments.

S. 758 would make a number of technical clarifications to the Lobbying Disclosure Act of 1995. It would exclude from the definition of a "covered executive branch official" certain employees, including members of the Senior Executive Service, and amend the definition of "lobbying contact" and "public official" to clarify certain exemptions. S. 758 also would allow a qualifying nonprofit organization or business to meet its semiannual lobbying reporting requirement by filing with the Senate and the House of Representatives the same report filed to satisfy requirements of the Internal Revenue Code. Finally, the bill would amend the Foreign Agents Registration Act of 1938 to exempt from a requirement to register as a foreign agent anyone who has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995. According to the Office of the Secretary of the Senate, these changes largely codify existing practices.

The CBO contact for this estimate is Mary Maginniss. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

VI. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 758, including the impact of the bill on personal privacy. This bill does not create new regulatory and paperwork impacts or additional impacts on the privacy of individuals. The bill will have no significant impact on pa-

perwork or individual privacy beyond those imposed by existing law.

VII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law in which no change is proposed is shown roman):

LOBBYING DISCLOSURE ACT OF 1995

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SEC. 3. DEFINITIONS.

As used in this Act:

(1) AGENCY.—The term "agency" has the meaning given that term in section 551(1) of title 5, United States Code.

* * * * * * *

(3) COVERED EXECUTIVE BRANCH OFFICIAL.—The term "covered executive branch official" means—

(A) * * *

* * * * * * *

(F) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section **[**7511(b)(2)**]** *7511(b)(2)(B)* of title 5, United States Code.

* * * * * * *

(8) LOBBYING CONTACT.—

(A) * * *

(B) EXCEPTIONS.—The term "lobbying contact" does not include a communication that is—

(i) * * *

* * * * * * *

(ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency, *including any communication compelled by a Federal contract, grant, loan, permit, or license;*

* * * * * * *

(15) PUBLIC OFFICIAL.—The term "public official" means any elected official, appointed official, or employee of—

(A) * * *

* * * * * * *

(F) a national, regional, or local unit of any foreign government, *or a group of governments acting together as an international organization.*

* * * * * * *

SEC. 15. ESTIMATES BASED ON TAX REPORTING SYSTEM.

(A) ENTITIES COVERED BY SECTION 6033(b) OF THE INTERNAL REVENUE CODE OF 1986.—**[**A registrant**]** *A person, other than a*

lobbying firm, that is required to report and does report lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would be required to be disclosed under such section for the appropriate semiannual period to meet the requirements of section 4(a)(3) and 5(b)(4); and

[(2) in lieu of using the definition of "lobbying activities" in section 3(7) of this Act, consider as lobbying activities only those activities that are influencing legislation as defined in section 4911(d) of the Internal Revenue Code of 1986.**]**

(2) for all other purposes consider as lobbying contacts and lobbying activities only—

(A) lobbying contacts with covered legislative branch officials (as defined in section 3(4)) and lobbying activities in support of such contacts; and

(B) lobbying of Federal executive branch officials to the extent that such activities are influencing legislation as defined in section 4911(d) of the Internal Revenue Code of 1986.

(b) ENTITIES COVERED BY SECTION 162(e) OF THE INTERNAL REVENUE CODE OF 1986.—**[**A registrant that is subject to**]** *A person, other than a lobbying firm, who is required to account and does account for lobbying expenditures pursuant to* section 162(e) of the Internal Revenue Code of 1986 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would not be deductible pursuant to such section for the appropriate semiannual period to meet the requirements of sections 4(a)(3) and 5(b)(4); and

[(2) in lieu of using the definition of "lobbying activities" in section 3(7) of this Act, consider as lobbying activities only those activities, the costs of which are not deductible pursuant to section 162(e) of the Internal Revenue Code of 1986.**]**

(2) for all other purposes consider as lobbying contacts and lobbying activities only—

(A) lobbying contacts with covered legislative branch officials (as defined in section 3(4)) and lobbying activities in support of such contacts; and

(B) lobbying of Federal executive branch officials to the extent that amounts paid or costs incurred in connection with such activities are not deductible pursuant to section 162(e) of the Internal Revenue Code of 1986.

(c) DISCLOSURE OF ESTIMATE.—Any registrant that elects to make estimates required by this Act under the procedures authorized by subsection (a) or (b) for reporting or threshold purposes shall—

(1) inform the Secretary of the Senate and the Clerk of the House of Representatives that the registrant has elected to make its estimates under such procedures; and

(2) make all such estimates, in a give calendar year, under such procedures.

* * * * * * *

SECTION 3 OF THE FOREIGN AGENTS REGISTRATION ACT OF 1938

SEC. 3. EXEMPTIONS.—The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

(a) * * *

* * * * * * *

(h) Any agent of a person described in section 1(b)(2) or an entity described in section 1(b)(3) if the agent **[**is required to register and does register**]** *has engaged in lobbying activities and has registered* under the Lobbying Disclosure Act of 1995 in connection with the agent's representation of such person or entity.

○