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Lobbying Disclosure Technical Amendments Act of 1997, S. 758

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Summary

S. 758, the Lobbying Disclosure Technical Amendments Act of 1997, makes several changes to the 1995 Lobbying Disclosure Act (LDA) (P.L. 104-65). The bill makes clear (1) the definition of a “covered executive branch official”; (2) that a lobbying contact does not include communications compelled by a federal contract, grant, or loan; (3) that the official representatives of international groups such as NATO and the United Nations are public officials and therefore not required to register as lobbyists; (4) how estimates of lobbying income and expenditures may be made on the basis of the tax reporting system; and (5) the conditions under which lobbyists for foreign interests register and report under the LDA. S. 758 is expected to be considered by the House during the week of March 16, 1998.

S. 758 was introduced in the Senate on May 16, 1997. It was reported by the Senate Governmental Affairs Committee without amendment on November 5, 1997 (S.Rept. 105-147), and passed by the Senate, unamended, by unanimous consent on November 13, 1997. S. 758 has been scheduled for House consideration under suspension of the rules during the week of March 16, 1998. In the 104th Congress, a similar bill, H.R. 3534, was passed by the House, but failed to win approval in the Senate.

Definition of a Covered Executive Branch Official

Language in the LDA 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 intent of this section as originally drafted in the LDA was to cover “Schedule C” employees only. The amended language ensures that only “Schedule C” employees are the “covered executive branch employees” defined in the statute and that employees in the Senior Executive Service (SES) are not covered under this section.

Clarification of Exception to Lobbying Contact

The LDA includes certain exceptions to the definition of “lobbying contact.” One of these excepts communications “required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency.” S. 758 clarifies this definition by making explicit that the stated communications exception include “any communication compelled by a Federal contract, grant, loan, permit, or license.”

The definition of those public officials who are excepted from registration under the LDA is also clarified. At present, the act defines a public official, in part, as any national, regional, or local unit of any foreign government. S. 758 provides that individuals working for such organizations as NATO and the World Bank be included in this definition, and would insure that officials and employees of such organizations will henceforth be treated in the same manner as employees of the governments that comprise them.

Estimates Based on Tax Reporting System

Section 15 of the LDA allows certain nonprofit organizations, required by the Internal Revenue Code (IRC) to keep records of lobbying expenses for tax purposes, to report the organization’s expenditures of its “in-house lobbyists” under the LDA, based on the IRC definition of “influencing legislation.” S. 758 makes several changes in Section 15, to clarify the relationship between the record-keeping and reporting provisions of the LDA and the IRC. Another section of the LDA requires that when registrants elect under Section 15 to use the tax code definition to report lobbying expenses, the registrants must use that definition in its entirety. The report of the Senate Governmental Affairs Committee emphasizes that, “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.”

Foreign Agents Registration Act (FARA) Exemption Clarification

S. 758 amends Section 5 of the LDA to clarify the conditions under which lobbyists for foreign commercial interests, and lobbyists for foreign governmental or political interests, register and report under either the LDA, the FARA (as amended by the LDA), or may be exempt entirely from coverage under either statute. The amended language makes clear that any foreign agent lobbying on behalf of a foreign private or commercial interest, but not a foreign government or political party, who registers under the LDA would be exempt from the requirements of the FARA. Under Section 5, such lobbyists may elect to register under the LDA instead of the 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.