

Calendar No. 36

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-12

LOBBYING DISCLOSURE IMPROVEMENT ACT

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 264

TO AMEND THE LOBBYING DISCLOSURE ACT OF 1995
TO REQUIRE CERTAIN DISCLOSURES BY REGISTRANTS
REGARDING EXEMPTIONS UNDER THE FOREIGN AGENTS
REGISTRATION ACT OF 1938, AS AMENDED



APRIL 19, 2023.—Ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

39-010

WASHINGTON : 2023

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Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 264]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 264), to amend the Lobbying Disclosure Act of 1995 to require certain disclosures by registrants regarding exemptions under the Foreign Agents Registration Act of 1938, as amended, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 264, *the Lobbying Disclosure Improvement Act*, amends the Lobbying Disclosure Act (LDA) of 1995. It would improve oversight of lobbyists for foreign persons and entities by requiring LDA registrants to indicate whether they believe a Foreign Agents Registration Act (FARA) provision exempts them from registering under FARA.¹

¹ On September 28, 2022, the Committee approved S. 4893, the Lobbying Disclosure Improvement Act. That bill is substantially similar to S. 264. Accordingly, this committee report is, in many respects, similar to the committee report for S. 4893. See S. Rept. 117-212.

II. BACKGROUND AND THE NEED FOR LEGISLATION

FARA exempts lobbyists who are agents of foreign persons or organizations (but not foreign governments or political parties, or the equivalent) from registering under that law if they are properly registered under the LDA.² However, the standard by which the Department of Justice (DOJ) applies the exemption has often lacked clarity, particularly the threshold by which it is determined whether lobbying activities primarily benefit a foreign government as opposed to a foreign individual or organization.³ Additionally, some lobbyists for whom the exemption should not apply are incentivized to improperly claim the exemption because the requirements for LDA registration are much less stringent than those for FARA.⁴

Currently, there is no way for FARA enforcement officials to easily identify LDA registrants who believe the exemption applies to them.⁵ The bill would simply require LDA registrants to indicate, as part of their registration, whether they believe the FARA exemption applies. This would help DOJ officials narrow the pool of LDA registrants they examine for potential violations, while not imposing any meaningful additional burden on registrants.

III. LEGISLATIVE HISTORY

Chairman Gary Peters (D–MI) introduced S. 264, the *Lobbying Disclosure Improvement Act*, on February 2, 2023, with Senator Chuck Grassley (R–IA). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 264 at a business meeting on March 29, 2023. During the business meeting, S. 933 was ordered reported favorably by a roll call vote of 12 yeas and 0 nays with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, Scott, and Hawley voting in the affirmative, and with Senators Carper, Johnson, and Marshall voting yea by proxy, for the record only.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides that the Act may be cited as the “Lobbying Disclosure Improvement Act.”

Section 2. Registrant disclosure regarding foreign agent registration exemption

This section amends the LDA by adding a new requirement that LDA registrants indicate whether they believe section 3(h) of FARA exempts them from registering under FARA.

² 22 U.S.C. § 613(h)

³ *Enhancing the Foreign Agents Registration Act of 1938: Hearing before the House Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties*, 117th Cong. (April 5, 2022) (Testimony of Dylan Hedtler-Gaudette, Government Affairs Manager, Project On Government Oversight), available at <https://docs.house.gov/meetings/JU/JU10/20220405/114580/HHRG-117-JU10-Wstate-Hedtler-GaudetteD-20220405.pdf>.

⁴ Congressional Research Service, *The Foreign Agents Registration Act (FARA): A Legal Overview* (Dec. 4, 2017).

⁵ Project on Government Oversight, *Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short* (Dec. 16, 2014) available at https://docs.pogo.org/report/2014/pogo-fara-report-20141216.pdf?_ga=2.243251271.49320974.1668452543-1746055107.166845254.

V. 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 impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

APRIL 5, 2023.

S. 264, Lobbying Disclosure Improvement Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

S. 264 would require lobbyists to disclose whether they are claiming an exemption from the Foreign Agents Registration Act. CBO estimates that implementing the bill would not significantly increase the administrative costs of the House of Representatives or the Senate over the 2023–2028 period. Any spending would be subject to the availability of appropriated funds.

Failure to disclose the newly required information could increase collections of civil fines, which are recorded in the budget as revenues. CBO estimates that those collections would not be significant in any year or over the 2023–2033 period because of the relatively small number of cases likely to be affected.

S. 264 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring registrants under the Lobbying Disclosure Act to indicate whether they are claiming an exemption under the Foreign Agents Registration Act. CBO estimates that the cost of the mandate would not exceed the private-sector threshold established in UMRA (\$198 million in 2022, adjusted annually for inflation).

S. 264 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Andrew Laughlin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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 brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 2—ORGANIZATION OF CONGRESS

* * * * *

CHAPTER 26—DISCLOSURE OF LOBBYING ACTIVITIES

* * * * *

SEC. 1603—REGISTRATION OF LOBBYISTS

(a) * * *

(b) Contents of registration

Each registration under this section shall contain—

(1) * * *

* * * * *

(6) the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official or a covered legislative branch official in the 20 years before the date on which the employee first acted as a lobbyist on behalf of the client, the position in which such employee served; **[and]**

(7) for any listed lobbyist who was convicted in a Federal or State court of an offense involving bribery, extortion, embezzlement, an illegal kickback, tax evasion, fraud, a conflict of interest, making a false statement, perjury, or money laundering, the date of the conviction and a description of the offense.

No disclosure is required under paragraph (3)(B) if the organization that would be identified as affiliated with the client is listed on the client's publicly accessible Internet website as being a member of or contributor to the client, unless the organization in whole or in major part plans, supervises, or controls such lobbying activities. If a registrant relies upon the preceding sentence, the registrant must disclose the specific Internet address of the web page containing the information relied upon. Nothing in paragraph (3)(B) shall be construed to require the disclosure of any information about individuals who are members of, or donors to, an entity

treated as a client by this chapter or an organization identified under that paragraph **[.]**; and

(8) a statement as to whether the registrant is exempt under section 3(h) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 613(h)).

* * * * *

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