



STATE ETHICS COMMISSION

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December 19, 2024

From: Jeremy Farris, Director, State Ethics Commission; Amelia Bierle, Deputy Director, State Ethics Commission
To: State Ethics Commissioners
Re: Needed amendments to Lobbyist Regulation Act

The Lobbyist Regulation Act (“LRA”), NMSA 1978, §§ 2-11-1 to -10 (1977, as amended through 2023), needs amendment. In fact, New Mexico has one of the least effective lobbyist regulation statutes in the country,¹ a fact which is confirmed by even a cursory read of the statute and further supported by its poor ranking among state comparisons (see Appendix). The LRA does not require meaningful disclosure of expenditures and activities connected with lobbying; it contains no provisions that serve as guardrails against conflicts of interest; and, perhaps worst of all, it *creates* dark-money problems. While the Commission has endorsed some targeted amendments to the LRA during the Commission’s initial years—including bills introduced by Senator Steinborn to require more meaningful disclosure—the Commission has concentrated its legislative efforts on other statutes—namely, the State Ethics Commission Act, the Governmental Conduct Act, the Campaign Reporting Act, and the Financial Disclosure Act. Considering how deficient the LRA is, it also merits the Commission’s attention. As part of its 2024 Annual Report, therefore, we recommend that the Commission endorse for recommendation to the Governor and the Legislature a set of targeted amendments that would improve the LRA.

We stress that the recommended amendments that follow are only a start. They do not purport to place New Mexico on par with other jurisdictions that effectively regulate lobbying. Rather, they are marginal but effective improvements. Most new regulations in the area of government ethics and transparency are reactions to political scandals; outside of a political scandal, incremental reforms make legislative success more likely.² In what follows, we (1) review the purposes of lobbyist regulation in a democratic polity; (2) identify the major gaps, shortcomings, and problems with the LRA; and (3) recommend amendments that address only the most significant gaps and problems in the LRA.

¹ See OpenSecrets, *State Lobbying Disclosure: A Scorecard* (June 28, 2022) available at <https://www.opensecrets.org/news/reports/layers-of-lobbying/lobbying-scorecard> (showing New Mexico is in the bottom quintile across the 50 states with respect to disclosure requirements related to lobbying).

² See OECD, *Lobbyists, Governments and Public Trusts, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying*, at 35 (Nov. 27, 2014), www.oecd-ilibrary.org/lobbyists-governments-and-public-trust-volume-3_5jz43jthxf0x.pdf?itemId=%2Fcontent%2Fpublication%2F9789264214224-en&mimeType=pdf (reporting that among most OECD jurisdictions, the lobbyist regulation reforms have been ad hoc and largely in response to political scandals, and that building a consensus outside of a scandal is more likely with an incremental approach).

I. The purpose of laws regulating lobbyists

Lobbying is an important part of New Mexico's democratic process, offering lawmakers access to specialized knowledge and perspectives that can lead to better-informed public policies. However, lobbying also carries risks, such as the potential for undue influence that may compromise fairness, transparency, and public trust. Laws regulating lobbyists can help balance these benefits and risks, ensuring that lobbying serves the interests of all New Mexicans.

A key purpose of lobbying regulations is to ensure *that all New Mexicans have a fair opportunity to be heard by their government*, preventing practices that give certain groups disproportionate influence. By promoting equitable access to the policymaking process, lobbying regulations can help prevent the concentration of influence in the hands of a few, upholding a level playing field for all voices.

Public confidence in government depends on both real and perceived impartiality. Regulations can play a critical role in reducing the risk of real and perceived corruption, which can undermine trust in government. By setting standards for lobbyist conduct, these regulations can help assure New Mexicans that policy decisions are made based on merit, not undue private influence.

Effective policymaking is grounded in a diversity of voices. Transparency requirements can bring lobbying activities into public view, allowing arguments to be openly debated and judged on their merits. In this way, lobbying regulations can promote a policymaking process that is fair, transparent, and representative of the people's interests. In addition, *transparency enables New Mexicans to understand how their government operates.* Disclosure requirements can reveal who is attempting to influence policies, the methods they use, and the interests they represent. This visibility enables New Mexicans to hold both government officials and lobbyists accountable, enhancing public oversight and democratic engagement.

Finally, *lobbying regulations can improve public policy by encouraging constructive, fact-based input from knowledgeable advocates.* By allowing lobbyists to provide well-informed perspectives while limiting the potential for undue influence, these regulations help policymakers consider a range of informed viewpoints. This can support better decision-making that reflects the needs and insights of diverse communities across New Mexico.

Lobbying regulations play a vital role in promoting fairness, transparency, public trust, and informed decision-making, helping to ensure that lobbying is a positive force in New Mexico's democratic governance.

II. Major gaps and shortcomings in the LRA

A. Ambiguity in Funding Sources and Expenditure Beneficiaries Undermines Transparency

- a. ***Sources of Expenditures:*** A critical shortcoming in Section 2-11-6(A) is its failure to require lobbyists or their employers to disclose the specific clients on whose behalf an expenditure is made. While the LRA requires expenditures to be categorized broadly—such as meals and beverages, entertainment, or other expenditures—it does not mandate disclosure of the specific clients behind those expenditures. This lack of specificity leaves the true drivers of lobbying activities hidden from public view, limiting transparency and accountability.

The LRA currently requires “each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures... to file an expenditure report with the secretary of state.” § 2-11-6(A). This report must “include a sworn statement that sets forth: the cumulative total of all individual expenditures of less than one hundred dollars (\$100) made or incurred by the employer or lobbyist... separated into the following categories: meals and beverages; other entertainment expenditures; and other expenditures.” § 2-11-6(A). Additionally, the report must disclose “each individual expenditure of one hundred dollars (\$100) or more made or incurred by the employer or lobbyist,” specifying the amount and providing a description of the expenditure. § 2-11-6(A). These expenditures must also be categorized as outlined above. Although this framework provides some visibility into the nature and scale of expenditures either by a lobbyist or the lobbyist's employer, it stops short of revealing whose interests these expenditures serve.

Some transparency is achieved through the expenditure reporting form, which includes an optional field allowing lobbyists or their employers to voluntarily disclose on whose behalf an expenditure is made³. However, this disclosure is not mandated by statute. Furthermore, voluntary disclosure practices vary widely, with some lobbyists naming their employers, others identifying themselves⁴, and many leaving the field blank⁵—all of which are entirely permissible under the existing legal framework.

Upon investigation, a common voluntary disclosure is for the lobbyists to report that the expenditure is on their own behalf⁶ or to leave the field blank⁷.

³ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/0282c07e-e38b-4447-b271-ccd5df3056e5.pdf>

⁴ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/bca1805d-d39c-4a33-af40-931c070a7a48.pdf>

⁵ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/887ffcd0-3e66-4954-9fc7-42f7239b3db0.pdf>

⁶ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/bca1805d-d39c-4a33-af40-931c070a7a48.pdf>

⁷ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/8ad39edd-8dd2-4e75-8d97-22d0e0cc7f16.pdf>

This lack of specificity creates a transparency problem, especially when lobbyists represent multiple organizations, each with distinct and potentially conflicting agendas. Without requiring the identification of specific clients, the public cannot discern which client's—or clients'—interests are represented by the expenditure. Ultimately, this ambiguity allows lobbyists to make expenditures that may support or oppose a candidate or issue without indicating whose agenda is behind them, preventing the public from fully understanding or holding accountable the true sources of influence shaping public policy.

One potential solution to this issue would be to amend the LRA to require lobbyists to disclose which entity each expenditure is made on behalf of. However, this approach has a critical limitation: a lobbyist could create or be employed by an intermediary organization, such as an LLC, that represents multiple clients. This practice is evident in existing lobbyist expenditure reports^{8,9,10}. Under such an arrangement, the lobbyist could simply report that the expenditure is on behalf of the LLC without identifying the underlying clients whose interests the expenditure ultimately serves. In effect, this “nesting” problem would allow lobbyists to comply with a requirement to disclose the immediate entity on whose behalf an expenditure is made while still obscuring the true sources of influence.

To achieve meaningful transparency, any amendment would need to go further than simply identifying the intermediary organization and instead require the disclosure of any underlying clients whose interests are represented. Without this level of detail, the LRA would continue to allow lobbyists to shield the true sources of influence, limiting public transparency and accountability in New Mexico's campaign finance system.

- b. ***Beneficiaries of Expenditures:*** Another significant gap that arises from Section 2-11-6(A) is its failure to require disclosure of the specific beneficiaries¹¹ of lobbyist expenditures, regardless of amount. It only mandates that lobbyists or their employers report the expenditure by broad category, and for expenditures of \$100 or more, indicate the amount spent and a description of the expenditure. This omission creates a notable gap in

⁸ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/519837c8-5271-444e-aea8-2302a62a3adf.pdf>

⁹ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/d77066b0-52e7-4967-9bf2-fc4bfe4dacd6.pdf>

¹⁰ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/a8ad4be0-8f39-4819-96ec-8782293b6819.pdf>

¹¹ For the purposes of this memorandum, a beneficiary of a lobbyist's effort refers to a legislator or public official who has received a political contribution or has been the subject of an expenditure made in support of or in relation to their official capacity or political activities.

transparency by leaving the specific beneficiaries of lobbying efforts obscured.

This lack of specificity is rooted in the LRA's current requirements, which requires "each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures... to file an expenditure report with the secretary of state." § 2-11-6(A). The expenditure report "shall include a sworn statement that sets forth: the cumulative total of all individual expenditures of less than one hundred dollars (\$100) made or incurred by the employer or lobbyist" separated into the following categories: meals and beverages; other entertainment expenditures; and other expenditures. § 2-11-6(A). The LRA also requires that for "each individual expenditure of one hundred dollars (\$100) or more made or incurred by the employer or lobbyist" must include both the amount spent and a description of the expenditure. § 2-11-6(A). These expenditures must also be categorized as outlined above. While these requirements ensure a basic level of reporting, they fail to address the critical issue of identifying specific beneficiaries.

This gap is partially offset by a feature of the reporting form, which includes an optional field for identifying the beneficiaries of expenditures. However, because this disclosure is not mandated by statute, it is inconsistently applied. Voluntary disclosure is more common for expenditures of \$100 or more due to the specific requirements of the LRA. For these expenditures, the LRA mandates that the amount spent, and a description of the expenditure be provided, resulting in individual transactions being reported as line items. This level of detail makes it easier for lobbyists or their employers to voluntarily disclose the beneficiary of the expenditure.

In contrast, expenditures under \$100 are reported differently. These smaller expenditures are aggregated into broad categories such as "meals and beverages" or "other entertainment expenditures" and reported as cumulative totals. Because they are grouped together rather than listed individually, voluntary disclosure of beneficiaries are often described vaguely as "multiple" or "various," offering little insight into the beneficiaries of the funds. This lack of specificity is especially concerning because these cumulative totals often exceed \$500, masking patterns of influence, such as repeated small transactions directed at the same official. This aggregated reporting creates a critical transparency gap.

Without a clear identification of beneficiaries, the public cannot fully understand or evaluate the true scope of lobbyist spending. This deficiency undermines transparency and accountability essential to New Mexico's campaign finance system. Addressing this gap through mandatory disclosure of recipients would provide greater transparency and enable a more complete assessment of how lobbying efforts shape public policy in New Mexico.

B. Lack of Transparency in Identifying True Sources of Political Contributions

Sources of Political Contributions: A third gap in Section 2-11-6(A) is its failure to require disclosure of the true source of funds for political contributions. The LRA requires “each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures... to file an expenditure report with the secretary of state.” § 2-11-6(A). The required expenditure report “shall include a sworn statement that sets forth: each political contribution made, and whether the contribution is from the lobbyist’s employer or the lobbyist on the lobbyist’s own behalf, identified by amount, date and name of the candidate or ballot issue supported or opposed.” § 2-11-6(A).

This statutory language only requires disclosure of the immediate source of contributions—such as the lobbyist or the lobbyist’s LLC, which is their employer—leaving the original source of funds obscured. For example, a lobbyist could create or be employed by an intermediary organization, such as an LLC, that pools money from clients. This approach is reflected in current reports detailing lobbyist’s political contributions^{12, 13, 14}. The lobbyist makes political contributions on behalf of the LLC’s clients, but under Section 2-11-6(A), only the lobbyist’s name or the LLC’s name must be reported. The true contributors—whether corporate entities, advocacy organizations, or individual donors—are never disclosed, obscuring the actual financial influencers. And, on their campaign contribution reports, the candidate only reports the contribution as coming from the lobbyist or the lobbyist’s LLC.

The required expenditure report includes a field for lobbyists to specify on whose behalf a contribution is made. However, it is common for lobbyists to leave this field blank¹⁵. In such cases, it becomes entirely unclear whether the blank field indicates that the contribution is made on the lobbyist’s own behalf or on behalf of their employer. A more precise statute would provide clearer reporting requirements and enhance overall transparency.

Thus, section 2-11-6(A) creates a dark-money problem, whereby the public cannot view who is *really* contributing to political campaigns. First, the statute allows lobbyists to obscure the original source of funds by funneling contributions through intermediary organizations, such as LLCs, leaving voters and regulators unable to identify the true financial influencers behind political contributions. Second, the statute’s lack of clarity

¹² See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/7193d059-12c1-4538-835f-4730307edcac.pdf>

¹³ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/1c0ba66c-5ab4-43b2-9704-bfadf389dfd3.pdf>

¹⁴ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/2eaa1e74-567a-4fbc-9502-ac03f3fdc00d.pdf>

¹⁵ See Lobbyist Expenditure Report. Accessed from the New Mexico Campaign Finance Information System (CFIS), available at <https://login.cfis.sos.state.nm.us/ReportsOutput/LAR/b41ccbc7-4362-4524-8e20-6bd087a69e35.pdf>

leads to inconsistent reporting practices, with frequent omissions regarding whether contributions are made on the lobbyist's own behalf or on behalf of their employer. Addressing these issues through clearer statutory language would enhance reporting practices, improve transparency, and ensure voters have the information needed to evaluate the sources of political influence.

C. The LRA requires no disclosures related to the subject matter of lobbying

Subject Matter of Lobbying: Another substantial gap in the LRA is the absence of any requirement to disclose the specific subject matter of lobbying activities. The only provision in the LRA that tangentially addresses the subject matter of lobbying is Section 2-11-6(A). This section requires that "the expenditure report shall include a sworn statement that sets forth: each political contribution made, and whether the contribution is from the lobbyist's employer or the lobbyist on the lobbyist's own behalf, identified by amount, *date and name of the candidate or ballot issue supported or opposed.*" (Italics added for emphasis.)

The LRA remains silent on requiring any disclosure related to the subject matter connected to expenditures. Without a requirement to disclose subject matter, expenditures filed under the LRA reveal only the financial side of lobbying activities—such as expenses on meals or entertainment—but provide no insight into the purpose or goals behind these expenditures. For example, while lobbyists must report expenditures for categories like "meals and beverages," they are not required to indicate whether these funds are being used to support or oppose legislation on issues such as healthcare, education, or environmental policy.

This gap prevents the public from understanding the specific legislative or regulatory issues that lobbyists are attempting to influence, ultimately obscuring the true impact of lobbying on state governance. In addition, without subject matter disclosure, it becomes challenging for voters to hold their representatives accountable or assess how lobbying activities align with or diverge from public interests. For a transparent democracy, it is essential that citizens are informed not only about the monetary aspects of lobbying but also about the policy issues that lobbying activities seek to impact.

III. Proposals for targeted statutory amendments that address the LRA's major shortcomings

A. Amending 2-11-6(A) to close a dark-money loophole and create meaningful disclosure related to lobbying

To address the aforementioned problems and ensure meaningful disclosure related to lobbying activities, this proposal includes two key components: (1) a new definition of "Beneficial Client" to capture the ultimate sources of lobbying activities, and (2) amended reporting requirements in Section 2-11-6(A) to improve the clarity and

specificity of disclosures. Modeled after successful reforms in New York^{16,17}, Texas¹⁸, and Colorado^{19,20} these changes aim to close critical transparency gaps, ensure greater accountability in lobbying activities, and provide the public with a clearer understanding of how financial influence shapes the legislative process.

2-11-2. Definitions.

- A. Beneficial Client: The specific individual or organization on whose behalf and at whose request or behest Lobbying is conducted.
- B. Contractual Client: The individual or organization that retains the services of a Lobbyist for the benefit of itself or another.
- C. Beneficiary: The individual or individuals who directly benefited from an expenditure, or otherwise gained from the expenditure.
- D. Payee: The vendor, service provider, or entity to whom payment was made for the expenditure.
- E. Legislation: A bill, resolution, amendment, nomination, or other matter pending in either house of the legislature; any matter that is or may be the subject of action by either house or by a legislative committee, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in a constitutional convention or that may be the subject of action by a constitutional convention.

2-11-6. Expenditure report to be filed; contents; reporting periods.

- A. Each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures or makes political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state using an electronic reporting system approved by the secretary of state in accordance with

¹⁶ See New York State Joint Commission on Public Ethics, *Chapter 1: Lobbying Overview and Definitions* (2019), available at <https://ethics.ny.gov/system/files/documents/2019/01/chapter-1-lobbying-overview-and-definitions2019.pdf>

¹⁷ See New York Legislative Law Article 1-A, available at https://ethics.ny.gov/system/files/documents/2022/10/coelig_-legislative-law-1a.pdf

¹⁸ See Texas Government Code, Title 3 Legislative Branch, Subtitle A Legislature, *Chapter 305: Registration of Lobbyists, Subchapter A General Provisions; Registrations*: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.305.htm>

¹⁹ See Colorado Secretary of State Lobbying Guidance Manual, Page 24: https://www.sos.state.co.us/pubs/lobby/files/guidanceManual.pdf?utm_source=chatgpt.com

²⁰ See the Colorado General Assembly, the Lobbyist Transparency Act, 2019 Regular Session, House Bill 19-1248: https://leg.colorado.gov/sites/default/files/2019a_1248_signed.pdf

Section 2-11-7 NMSA 1978. The expenditure report shall include a sworn statement that sets forth:

~~(1) the cumulative total of all individual expenditures of less than one hundred dollars (\$100) made or incurred by the employer or lobbyist during the covered reporting period separated into the following categories:~~

~~(a) meals and beverages;~~

~~(b) other entertainment expenditures; and~~

~~(c) other expenditures;~~

(2)(1) each individual expenditure of one hundred dollars (\$100) or more made or incurred by the employer or lobbyist during the covered reporting period, identified by:

(a) the date on which the expenditure was made;

(b) the payee of the expenditure;

(c) the beneficiary of the expenditure;

(d) the contractual client;

(e) the beneficial client;

(f) the lobbyist shall disclose the purpose of the expenditure, including:

a. identification of the legislation, including specific bill numbers where applicable, connected to the expenditure;

b. identification of the stance taken by selecting one of the following: supporting, opposing, amending, or monitoring, in connection with the specific lobbying effort tied to the expenditure.

(g) indicating the amount spent and a description of the expenditure.

~~The list shall be separated into the following categories:~~

~~(a) meals and beverages;~~

~~(b) other entertainment expenditures; and~~

~~(c) other expenditures;~~

(3)(2) each political contribution made, and whether the contribution is from the lobbyist's employer beneficial client or the lobbyist on the lobbyist's own

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behalf, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

We believe these incremental amendments to the Lobbyist Regulation Act would go a long way toward addressing the transparency gaps in lobbying in state government.

Appendix

State Lobbying Disclosure Comparison

State	Total Score (max: 20)	Compensation (max: 5):	Lobbyist/Client ID (max: 5):	Timely Disclosure (max: 5):	User Friendly Transparency Site (max: 5):
Washington	19	5	4	5	5
Maine	18	5	4	5	4
Colorado	18	5	3	5	5
Wisconsin	17.5	5	4	3.5	5
Vermont	16.75	5	3	4	4.75
New York	16.5	5	4	3.75	3.75
Connecticut	16.5	5	4	4	3.5
Texas	16.25	5	3.5	5	2.75
Oregon	16.25	5	3.5	3	4.75
South Carolina	16	5	4	2	5
New Jersey	16	5	3	4	4
Rhode Island	15.75	4	4	4	3.75
Mississippi	15.75	4	4	3	4.75
Michigan	15.75	5	4	2	4.75
Alaska	15.75	5	4	4	2.75
California	15.5	5	4	2.5	4
Kentucky	14.5	5	4	4	1.5
Louisiana	14	2	3	5	4
Georgia	14	2	3	5	4
Florida	14	5	3	3	3
Nebraska	13.5	5	4	3	1.5
Iowa	13	5	4	1	3
Pennsylvania	12.5	4	4	2.5	2
Hawaii	12	4	4	3	1
Montana	11.75	3	4	3.75	1
Missouri	11.75	0	3	5	3.75
Massachusetts	11	5	4	1	1
Maryland	11	4	4	1	2
Idaho	11	0	3	3	5
Delaware	11	0	3	3.5	4.5
Oklahoma	10.75	0	3	4	3.75
North Carolina	10.5	3	4	2	1.5
Minnesota	10.5	3	4	2	1.5
Illinois	10.5	0	4	5	1.5
Tennessee	10.25	2	4	2	2.25
New Hampshire	10.25	4	3	2.5	0.75
Indiana	10	3	4	2	1

Appendix

Virginia	9.5	4	3	1	1.5
Kansas	9.5	0	3	4	2.5
Ohio	9	0	3	2	4
New Mexico	8.25	0	4	2	2.25
Arkansas	7.75	0	3	4	0.75
Wyoming	7.5	0	3	1	3.5
Nevada	7.5	0	3	3.5	1
Arizona	7.5	1	4	2	0.5
Alabama	7.5	0	4	2.5	1
West Virginia	7	0	4	2	1
Utah	7	0	3	2.5	1.5
South Dakota	7	0	4	1	2
North Dakota	6	0	4	1	1

Source: OpenSecrets State Lobbying Disclosure Scorecard. States were ranked as of June 27, 2022 based on four categories: (1) if lobbyist compensation is disclosed, (2) the quality of disclosure of lobbyist and client identities, (3) the timeliness of disclosure and (4) how easily the public can access disclosed information.