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TAXPAYERS PAYING TO PAY MORE IN TAXES: INADEQUACIES  
IN DISCLOSURE REQUIREMENTS FOR TAXPAYER-FUNDED  
LOBBYING IN ILLINOIS

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*Taxpayer-funded lobbying in Illinois is on the rise. Units of local Illinois government, from cities and townships to school boards and park districts, use taxpayer money to send lobbyists to the Illinois General Assembly to support and oppose legislation. Current lobbying disclosure requirements in Illinois exempt government units from many of the reporting requirements placed on private lobbying groups. Put simply, taxpayers in Illinois are funding political lobbying efforts with limited knowledge of what their money is being used to accomplish, and the ways of gaining access to that information are often complex. This Note explores the concept of taxpayer-funded lobbying, provides an overview of the practice in Illinois, and examines the current disclosure requirements in Illinois. It then analyzes the problem of competing interests between units of local government that contract for lobbying services and the taxpayers who fund such efforts as well as how the deficiencies in current reporting requirements exacerbate it. Finally, this Note argues that increased lobbying disclosure requirements should be implemented for units of local Illinois government and provides several possible solutions.*

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## I. INTRODUCTION

Since 2015, the Village of Schaumburg, Illinois has spent more than \$200,000 in taxpayer money on “Legislative Consultants.”<sup>1</sup> Every year, the Village publishes its “Legislative Actions Plans” in which it outlines the current state of Illinois’s state-level political climate, the Village’s legislative goals for the year, its planned “communication tactics” and lobbying efforts, and a ranked list of the Village’s legislative “priorities.”<sup>2</sup> The Village’s website also provides

1. Adam Schuster, Alec Mena & Travis Nix, *Waste Watch: Nearly \$100M of Waste in Illinois State and Local Government*, ILL. POL’Y 11 (2018), <https://files.illinoispolicy.org/wp-content/uploads/2018/10/Waste-Watch-finale-2.pdf> [hereinafter *Waste Watch*]; see also *Legislative Participation*, VILLAGE OF SCHAUMBURG, [http://schaumburg-prod.civica.granicusops.com/depts/general/legislative\\_participation.htm](http://schaumburg-prod.civica.granicusops.com/depts/general/legislative_participation.htm) (last visited Oct. 29, 2019).

2. *Legislative Participation*, supra note 1; see also *2018 Legislative Action Plan*, VILLAGE OF SCHAUMBURG 1–2 (2018), <http://schaumburg-prod.civica.granicusops.com/documents/General%20Government/2018%20VOS%20Legislative%20Action%20Plan.pdf>.

a list of “Bills of Interest” currently being considered in the Illinois General Assembly (“ILGA”) which would affect the Village, along with short descriptions of their substance and the Village’s stances on each (*e.g.*, support or oppose).<sup>3</sup> Interestingly, the Village notes that while it still utilizes more “traditional approach[es]” to legislative influence (such as direct communication from the mayor to the ILGA), “a formal legislative action program,” including the contracting of lobbyists, allows the Village “to establish an even greater presence and provide a better means for communicating [its] legislative initiatives to those willing to take action.”<sup>4</sup>

Similar to the Village of Schaumburg, state governments across the country allow local units of government, from cities and townships to school boards and park districts, to allocate taxpayer money to public interest groups and to directly pay private lobbying groups.<sup>5</sup> In Illinois, the level of forthright reporting done by the Village of Schaumburg is not legally required and is not the norm for units of local Illinois government using taxpayer money to fund state-level lobbying.<sup>6</sup> Limited reporting requirements, combined with the fact that local units of Illinois government spend millions of taxpayer dollars each year,<sup>7</sup> heighten concerns about which groups and whose money is used to influence the state’s legislature. Put simply, taxpayers in Illinois are funding political lobbying efforts with limited knowledge of what their money is being used to accomplish, and the ways of gaining access to that information are often complex.

This Note argues that increased lobbying disclosure and reporting requirements should be implemented for units of local Illinois government that contract for lobbying services to influence state-level legislation. Part II reviews the concept of taxpayer-funded lobbying generally and provides an overview of the practice in Illinois, with a focus on the amount being spent by units of local Illinois government and the current reporting and disclosure requirements. Part III analyzes the problems of competing interests between units of local government that contract for lobbying services and the taxpayers who fund such efforts, as well as the lack of competition government lobbyists face at the Statehouse. Part

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3. 2018 Legislative Action Plan, *supra* note 2, at 4.

4. *Id.* at 1.

5. *Limiting Public Funds for Lobbying*, NAT’L CONF. ST. LEGISLATURES (Sept. 30, 2019), <http://www.ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx>.

6. 25 ILL. COMP. STAT. 170 / 3(a) (2018) (exempting “unit[s] of local government” and schools districts from the registration and disclosure requirements of the Lobbyist Registration Act); *see also Governments Lobbying State Government: More than 110 Local Governments and Public Agencies Spent over \$6 Million on Lobbying Contracts*, ILL. CAMPAIGN FOR POL. REFORM 7 (2009), <http://prev.dailyherald.com/pdf/lgl2009-post.pdf> (noting that information about Illinois local government spending on lobbying services had to be obtained using Freedom of Information Act requests) [hereinafter *Governments Lobbying State Government*].

7. *See Governments Lobbying State Government*, *supra* note 6, at 3 (“Local governments and public agencies in Illinois spent more than \$6 million in Fiscal Year 2008 on contracts with lobbyists attempting to influence the governor, state legislators and other state government officials.”); Jake Griffin, *Suburban Districts Spending Millions on Lobbying Organizations*, DAILY HERALD (May 30, 2018, 5:31 AM), <https://www.dailyherald.com/news/20180530/suburban-districts-spending-millions-on-lobbying-organizations> (reporting that, in 2017, “93 suburban school districts paid nearly \$2.2 million to four statewide administrative lobbying organizations”).

III also discusses the deficiencies in current reporting and disclosure requirements in Illinois in comparison to current requirements in other states. Part IV surveys several possible solutions to the information access problem and recommends that taxpayer-funded lobbying face heightened reporting and transparency requirements.

## II. BACKGROUND

Taxpayer-funded lobbying is not a practice unique to Illinois. Government use of public funds to lobby other levels of government is conducted at state legislatures across the country in high dollar amounts.<sup>8</sup> Below is a general definition of “taxpayer-funded lobbying,” a survey of the practice in Illinois, and the current state of reporting requirements for units of local government in Illinois that engage in lobbying.

### A. *Taxpayer-Funded Lobbying: Definition and a Brief Historical Background*

Taxpayer-funded lobbying “occurs when one level of government (or quasi-government) lobbies another level of government.”<sup>9</sup> “For example, state governments lobby the federal government for funding, and local governments lobby state governments for resources.”<sup>10</sup> State governments across the country allow local units of government, from cities and townships to school boards and transit authorities, to allocate money to interest groups and to directly pay private lobbying groups to advocate for them at their respective state legislatures.<sup>11</sup>

The practice of local governments using taxpayer money to fund lobbying efforts is fairly prevalent in the United States.<sup>12</sup> San Antonio’s director of Government & Public Affairs noted that “[i]ntergovernmental relations is one of those under-the-radar-activities for any city . . . . How a city relates to and is governed by states and the federal government is crucially important to people in the community, whether they realize it or not.”<sup>13</sup>

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8. See, e.g., Greg Harrison, *Legislative Priority: Tax-Funded Lobbying Disclosure*, TEX. SCORECARD (Dec. 28, 2016), <https://texasscorecard.com/state/legislative-priority-tax-funded-lobbying-disclosure/> (“Local government entities across [Texas] spend millions of taxpayer dollars every legislative session hiring lobbyists—unbeknownst to the taxpayers footing the bill—to advocate for and against reforms in the legislature.”); Jacob Resneck, *Last Year, Local Governments Shelled Out \$2.6 Million for ‘Ears on the Ground’ in Alaska’s Capital*, ALASKA PUB. MEDIA (Jan. 15, 2019), <https://www.alaskapublic.org/2019/01/15/last-year-local-governments-shelled-out-2-6-million-for-ears-on-the-ground-in-alaskas-capital/> (“At least \$2.6 million in [Alaskan] public money went to state lobbyists in 2018.”).

9. Jason Clemens et al., *State-Level Lobbying and Taxpayers: How Much Do We Really Know?*, PAC. RES. INST. 18 (2010), [https://www.pacificresearch.org/wp-content/uploads/2017/06/TPFL\\_NoApp.pdf](https://www.pacificresearch.org/wp-content/uploads/2017/06/TPFL_NoApp.pdf).

10. *Id.*

11. *Limiting Public Funds for Lobbying*, *supra* note 5.

12. See *id.* (providing a state-by-state overview of “each state’s statutory provisions discussing restrictions on the use of public funds to lobby”).

13. Mike Maciag, *Gov2Gov: The Lobbying That Falls Under the Radar*, GOVERNING (2016), <http://www.governing.com/topics/politics/gov-federal-lobbying-spending.html>.

Early state court cases on the issue often ruled that local governments were prohibited from engaging in taxpayer-funded lobbying, but they held so only “upon the absence of specific statutory authorization for such use of public funds”—not on the grounds that the practice was prohibited in its own right.<sup>14</sup> Starting in the 1940s, courts began trending toward allowing taxpayer-funded lobbying at the state level.<sup>15</sup> The issue was often considered in connection with the use of public money to campaign.<sup>16</sup> While the latter was usually held to be an impermissible use of taxpayer money, taxpayer-funded lobbying was deemed proper.<sup>17</sup> The distinction rested on the fear that public money to fund elections posed a far greater threat to the democratic process than the use of public funds to fund lobbying efforts:

Since the legislative process contemplates that interested parties will attend legislative hearings to explain the potential benefits or detriments of proposed legislation, public agency lobbying, within the limits authorized by [state law] . . . in no way undermines or distorts the legislative process. By contrast, the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leave[s] to the “free election” of the people . . . does present a serious threat to the integrity of the electoral process.<sup>18</sup>

Today, despite some legislative efforts in various states to ban the practice (including a few successful ones),<sup>19</sup> taxpayer-funded lobbying “continues to be virtually unquestioned from a legal perspective.”<sup>20</sup>

While taxpayer-funded lobbying is widely regarded as legally permissible, concerns about the appropriateness of the practice have prompted states to enact restrictions on their local governments.<sup>21</sup> Restrictions on taxpayer-funded lobbying differ across states; currently, only “[a]bout a dozen states have restrictions on state *agencies* lobbying the legislature.”<sup>22</sup> Illinois is one of these states, with

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14. David Morgan, Note, *The Use of Public Funds for Legislative Lobbying and Electoral Campaigning*, 37 VAND. L. REV. 433, 436 (1984) (citing *Stuart v. Atlanta*, 163 S.E. 493 (Ga. 1932)).

15. *Id.* at 438–49.

16. *Id.* at 441–42.

17. *Id.* at 443–51.

18. *Stanson v. Mott*, 551 P.2d 1, 9–10 (Cal. 1976); *see also* Morgan, *supra* note 14, at 446–47.

19. *See, e.g.*, Tim Carpenter, *Senate Bill Outlaws Public Financing of Lobbying*, TOPEKA CAP. J. (Feb. 9, 2013, 7:37 PM), <https://www.cjonline.com/news/state/2013-02-09/senate-bill-outlaws-public-financing-lobbying> (discussing proposed Kansas legislation “to outlaw publicly financed lobbying in Kansas”); Karn Dhingra, *Should Taxpayer Dollars Be Used to Lobby State Lawmakers?*, VICTORIA ADVOC. (Mar. 26, 2017), [https://www.victoriaadvocate.com/news/business/should-taxpayer-dollars-be-used-to-lobby-state-lawmakers/article\\_6653f4ab-cc0b-51110-9c15-bdcd40c5b48c.html](https://www.victoriaadvocate.com/news/business/should-taxpayer-dollars-be-used-to-lobby-state-lawmakers/article_6653f4ab-cc0b-51110-9c15-bdcd40c5b48c.html) (discussing proposed Texas legislation to “ban cities, counties and school districts from spending public money to hire lobbyists”); Kyle Pfannenstiel, *Bill to Ban Public-Funded Lobbyists Passes Committee*, IDAHO CITY FREE PRESS (Jan. 26, 2018), <http://www.idahocountyfreepress.com/news/2018/jan/26/bill-ban-public-funded-lobbyists-passes-committee/> (discussing proposed Idaho legislation “that would ban state agencies, universities and public schools from lobbying”).

20. Alan N. Fernandes, *Ethical Considerations of the Public Sector Lobbyist*, 41 MCGEORGE L. REV. 183, 194 (2009).

21. *See id.*; *see also infra* Section III.C.3.

22. Chuck DeVore, *Government Spends Millions to Lobby Government—Time to End the Practice*, FORBES (Sept. 29, 2018, 9:21 AM), <https://www.forbes.com/sites/chuckdevore/2018/09/29/government-spends->

the Illinois Lobbyist Registration Act stating that “[i]t is a violation of this Act for a person registered or required to be registered under this Act to accept or agree to accept compensation from a State agency for the purpose of lobbying legislative action.”<sup>23</sup> This restriction limits Illinois state agencies, such as the Department of Public Health, from engaging lobbyists.<sup>24</sup> It does not, however, limit local units of government, such as townships and villages, from engaging in taxpayer-funded lobbying at the ILGA.<sup>25</sup>

*B. The Practice of Taxpayer-Funded Lobbying in Illinois: Prevalence and the Extent of Funds Spent*

The trend of hiring lobbyists to represent units of local Illinois government is on the rise. While many units of local government continue to influence state government using “traditional approach[es],”<sup>26</sup> and “the vast majority of local governments in Illinois do not hire lobbyists,”<sup>27</sup> “the roster of governments contracting for help includes cities, villages, school districts, counties, community colleges, transit agencies, state universities, and local convention centers.”<sup>28</sup>

In 2009, “115 units of [Illinois] government entered into more than 150 lobbying contracts” with private lobbying entities in Illinois.<sup>29</sup> In the same year, a study found that seventy-two lobbying firms were contracted by units of local Illinois government to represent their legislative interests in Springfield; thirty-eight of these firms hired additional firms (“subcontractors”) to assist them in meeting client needs.<sup>30</sup>

Between 2009 and 2018, these numbers trended upward.<sup>31</sup> According to a Freedom of Information Act (“FOIA”) request submitted to the Illinois Secretary of State, 189 units of Illinois government and taxpayer-funded organizations were listed in the Secretary of State’s database as having engaged in state-level lobbying activity in 2018.<sup>32</sup> Cross-referencing the results of this FOIA request with information in the Secretary of State’s online database (a database discussed in depth below) revealed that all of these 2018 exempted entities together entered into approximately 229 contracts with hired lobbyists to represent them on the

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millions-to-lobby-government-time-to-end-the-practice/#37677a03d99f (emphasis added); see also *Limiting Public Funds for Lobbying*, *supra* note 5.

23. 25 ILL. COMP. STAT. 170 / 11.3 (2018).

24. See generally *id.*

25. See generally *id.*

26. 2018 Legislative Action Plan, *supra* note 2, at 1.

27. *Governments Lobbying State Government*, *supra* note 6, at 7.

28. *Id.*

29. *Id.* at 8.

30. *Id.* at 10, 15.

31. See *infra* Figure 1.

32. The FOIA request was sent to the Illinois Secretary of State on March 5, 2019 and responded to on March 8, 2019. It requested “[a] list of all entities registered as lobbying client entities under the ‘exempt’ status, including, but not limited to, townships, municipalities, cities, and school boards.” Letter from author to Ill. Sec’y of State (Mar. 5, 2019) (on file with author) [hereinafter *March 5, 2019 FOIA Request to the Ill. Sec’y of State*]; Letter from Ill. Sec’y of State to author (Mar. 8, 2019) (on file with author) [hereinafter *Response to the March 5, 2019 FOIA Request to the Ill. Sec’y of State*].

state level.<sup>33</sup> Approximately ninety-one lobbying entities were found to have engaged in lobbying activities on behalf of these exempted entities; fifty-eight of these firms subcontracted additional firms to assist their legislative efforts.<sup>34</sup> A summary of these data points follows:

FIGURE 1

	Total Count of Active Entities	Units of Illinois government which engaged in lobbying at the ILGA	Lobbying entities contracted by units of Illinois government to lobby at the ILGA	Lobbying firms representing exempt entities which subcontracted additional firms to assist them
2009	1,811 <sup>35</sup>	115 <sup>36</sup>	72 <sup>37</sup>	38 <sup>38</sup>
2018	1,964 <sup>39</sup>	189 <sup>40</sup>	91 <sup>41</sup>	58 <sup>42</sup>

According to this data, the number of units of local Illinois government using taxpayer money to contract lobbying services is increasing at a higher rate than that at which the total count of active lobbying entities is increasing.<sup>43</sup>

The more staggering data concerns the *amount* of Illinois taxpayer dollars being spent on lobbying efforts by units of local Illinois government. The same 2009 study that reported on the number of local governments contracting for lobbying services also found that “[l]ocal governments and public agencies in Illinois spent more than \$6 million in Fiscal Year 2008 on contracts with lobbyists attempting to influence the governor, state legislators and other state government officials.”<sup>44</sup>

Illinois Sunshine, a resource sponsored by Reform Illinois that compiles and organizes data about political spending in Illinois,<sup>45</sup> conducted a similar

33. This number was arrived at using the Illinois Cyberdrive database and using the *Response to the March 5, 2019 FOIA Request to the Ill. Sec’y of State*, *supra* note 32. From the list of exempt entities provided by the Secretary of State, each government entity was input into the “Client Entity Search” function under 2018. The results of these searches yielded the names of the entities contracted by the units of local government to lobby on their behalf; the names of the lobbying entities were aggregated into a list, along with any lobbying entities subcontracted by that firm. A spreadsheet with the names of all these entities is available with the author.

34. *Id.*

35. *Registered Entity & Exclusive Lobbyist Count Results 2009*, OFF. OF THE ILL. SEC’Y OF STATE, <https://www.ilsos.gov/lobbyistsearch/> (select “Count of Registered Entities & Exclusive Lobbyists,” select “Submit,” select “2009” from the drop-down menu, select “Submit”) (last visited Oct. 29, 2019).

36. *Governments Lobbying State Government*, *supra* note 6, at 8.

37. *Id.* at 10.

38. *Id.* at 15.

39. *Registered Entity & Exclusive Lobbyist Count Results 2018*, OFF. OF THE ILL. SEC’Y OF STATE, <https://www.ilsos.gov/lobbyistsearch/> (select “Count of Registered Entities & Exclusive Lobbyists,” select “Submit,” select “2018” from the drop-down menu, select “Submit”) (last visited Oct. 29, 2019).

40. *Response to the March 5, 2019 FOIA Request to the Ill. Sec’y of State*, *supra* note 32.

41. See the process for arriving at this number in explanation at *supra* note 33.

42. *Id.*

43. See *supra* Figure 1.

44. *Governments Lobbying State Government*, *supra* note 6, at 3.

45. *About*, ILL. SUNSHINE, <https://illinois sunshine.org/about/> (last visited Oct. 29, 2019).

study but focused on only the ten most populous counties in the state (Champaign, Cook, DuPage, Kane, Lake, McHenry, McLean, Peoria, Will, and Winnebago).<sup>46</sup> This report found that these ten counties alone spent a combined \$6.2 million on lobbying between 2005 and 2010—more than \$2 million of which was used on state-level lobbying.<sup>47</sup>

Breaking down these spending amounts further, between 2005 and 2010, Will County spent \$500,857.96 on lobbying Illinois;<sup>48</sup> in 2018 alone, it spent \$80,000 (about 16% of its entire spending between 2005 and 2010).<sup>49</sup> Between 2005 and 2010, DuPage County spent \$715,999.96 on lobbying in Illinois;<sup>50</sup> in 2018 alone, it spent \$282,000 (39% of its entire spending between 2005 and 2010).<sup>51</sup> Between 2005 and 2010, Cook County spent \$329,992.00 on lobbying in Illinois;<sup>52</sup> in 2018 alone, it spent \$312,000.00 (94.5% of its entire spending between 2005 and 2010).<sup>53</sup> A summary of these spending patterns is summarized in the table below:

FIGURE 2

	Amount Spent on Lobbying Services by Cook County	Amount Spent on Lobbying Services by DuPage County	Amount Spent on Lobbying Services by Will County
2005–2010	\$329,992.00 <sup>54</sup>	\$715,999.96 <sup>55</sup>	\$500,857.96 <sup>56</sup>
2018	\$312,000.00 <sup>57</sup>	\$282,000.00 <sup>58</sup>	\$80,000 <sup>59</sup>

As with the number of lobbyists being contracted by local government, the amount being spent on these lobbying services is trending upward.<sup>60</sup>

46. *Illinois Government Sector Lobbying*, BALLOTPEdia, [https://ballotpedia.org/Illinois\\_government\\_sector\\_lobbying](https://ballotpedia.org/Illinois_government_sector_lobbying) (last visited Oct. 29, 2019).

47. *Id.*

48. *Illinois Counties Lobbying, 2010*, BALLOTPEdia, [https://ballotpedia.org/Illinois\\_counties\\_lobbying\\_2010](https://ballotpedia.org/Illinois_counties_lobbying_2010) (last visited Oct. 29, 2019) (reporting the responses to FOIA requests submitted by the Sunshine Review “to all 102 counties in Illinois,” with a focus on “10 of the most populous counties in the state”).

49. *Will County, IL*, OPEN SECRETS, <https://www.opensecrets.org/lobby/clientsum.php?id=D000058623&year=2018id=D000058623&year=2018> (last visited Oct. 29, 2019).

50. *Illinois Counties Lobbying, 2010*, *supra* note 48.

51. Letter from Sally Karner, FOIA Officer, to author (Mar. 13, 2019) (on file with author).

52. *Illinois Counties Lobbying, 2010*, *supra* note 48.

53. Cook County initially requested an extension in delivering its responses to FOIA requests within the statutorily mandated time requirements. *See* Email from Rachel Dailey, Admin. Assistant, Off. of the President of Cook Cty., to author (Mar. 13, 2019, 14:09 CST) (on file with author) (“We are extending the time to respond to your requests . . . because there is a need for consultation, which shall be conducted with all practicable speed, among two or more components of a public body having a substantial interest in the subject matter of the request. 5 ILCS 140/3(e)(vii).”).

54. *Illinois Counties Lobbying, 2010*, *supra* note 48.

55. *Id.*

56. *Id.*

57. *See* Email from Rachel Dailey, *supra* note 53.

58. *Lobbyists for DuPage County*, CTY. OF DUPAGE, ILL., <https://www.dupageco.org/lobbyists/> (last visited Oct. 29, 2019).

59. *Will County, IL*, *supra* note 49.

60. *See supra* Figure 2.



These ten counties account for only about 10% of all counties in Illinois.<sup>61</sup> Further, the reported spending amounts do not include the amounts spent by other types of local government units within the counties that may contract for lobbying services (e.g., cities, townships, school boards, park districts, etc.).<sup>62</sup> Of the Illinois municipalities that responded to FOIA requests submitted by the Illinois Policy Institute, thirty spent taxpayer money on “intergovernmental affairs and lobbying,” totaling more than \$2 million between 2015 and 2018.<sup>63</sup> For example, the Village of Schaumburg (located in Cook County) spent more than \$200,000 in Schaumburg taxpayer money on “Legislative Consultants”;<sup>64</sup> the Village of Arlington Heights (located in Cook County) spent \$616,536;<sup>65</sup> and the City of Evanston (located in Cook County) spent \$454,465 of taxpayer money.<sup>66</sup>

Moreover, within municipalities reside special districts that also use taxpayer money to lobby the state legislature.<sup>67</sup> Special districts are “political subdivisions” of local government “created . . . to insulate certain activities from traditional political influence . . . [or] to allocate functions to entities reflecting particular expertise”;<sup>68</sup> for example, transit authorities are special districts.<sup>69</sup> In Illinois, “[p]ark districts are the largest form of special districts, accounting for nearly 4 percent of all property tax collections.”<sup>70</sup> Between 2015 and 2018, the top twenty park districts in Illinois “collectively spent more than \$500,000 on lobbying” efforts.<sup>71</sup> For example, the Village of Northbrook Park District (located in Cook County) spent more than \$100,000 in taxpayer money on lobbying<sup>72</sup> and the Village of Itasca Park District (located in DuPage County) spent more than \$70,000 in taxpayer money on lobbying.<sup>73</sup>

This data illustrates several things. First, the use of taxpayer money by local Illinois governments is on the rise.<sup>74</sup> Both the number of local governmental entities contracting with lobbyists and the number of lobbyists representing these units of local government have increased in the past decade.<sup>75</sup> The amount of money spent on these services is also on the rise.<sup>76</sup> Second, this data can be dif-

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61. *Illinois Counties Lobbying, 2010*, *supra* note 48.

62. *Illinois Government Sector Lobbying*, *supra* note 46.

63. *Waste Watch*, *supra* note 1, at 10–11 (excluding “spending on bar associations, chambers of commerce and public safety professional organizations”).

64. *Id.* at 11; *see also Legislative Participation*, *supra* note 1.

65. *Waste Watch*, *supra* note 1, at 11.

66. *Id.*

67. *Id.* at 17 (“Collectively, special districts account for over 10 percent of statewide property tax extensions. Park districts are the largest form of special districts, accounting for nearly 4 percent of all property tax collections.”).

68. *Special District*, BLACK’S LAW DICTIONARY (11th ed. 2019).

69. *Id.*

70. *Waste Watch*, *supra* note 1, at 17.

71. *Id.*

72. *Id.*

73. *Id.*

74. *See supra* Figures 1 & 2.

75. *See supra* Figure 1.

76. *See supra* Figure 2.

ficult to obtain, often requiring taxpayers to rely on compilations by policy interest groups (who themselves report trouble obtaining consistent data).<sup>77</sup> This second issue is explored in further depth in the following discussion.

C. *Registration and Disclosure Requirements under the Illinois Lobbyist Registration Act*

The Illinois Lobbyist Registration Act<sup>78</sup> (“the Act”) requires:

[A]ny natural person who, for compensation or otherwise, undertakes to lobby, or any person or entity who employs or compensates another person for the purposes of lobbying, [to] register with the Secretary of State as provided in the Act, unless that person or entity qualifies for one or more . . . exemptions.<sup>79</sup>

One of the specific exemptions from this registration requirement the Act provides is for “unit[s] of local government or . . . school district[s].”<sup>80</sup> Accordingly, under the Act, units of local government are allowed to lobby and hire private lobbyists to lobby the ILGA and the Illinois executive branch without being required to register as a lobbying entity.<sup>81</sup> But, because many local government units contract their lobbying efforts out to private firms,<sup>82</sup> the Lobbyist Registration Act does not provide them with a *complete* exemption from the registration and disclosure requirements.<sup>83</sup>

In practice, “[a]ll businesses, organizations, associations and individuals that are required to register as lobbying entities must do so electronically” on the Secretary of State’s website (colloquially referred to as “Cyberdrive”).<sup>84</sup> Private lobbying firms, which may contract with a local government unit, are required to register on Cyberdrive by providing their contact information and the names of their lobbyists, designate an “authorized agent” to act on their behalf when dealing with the Secretary of State, and pay registration fees.<sup>85</sup> Private firms are

77. See, e.g., *Waste Watch*, *supra* note 1, at 20–22 (“While wasting taxpayer dollars is a serious problem, hiding public spending from taxpayers is even worse . . . Far too many municipalities and counties do not provide financial information online, and several governments that received Freedom of Information Act, or FOIA, requests from the Institute either could not reply because they did not keep sufficient records or replied with data that were disorganized and impossible to decipher.”); *Illinois Counties Lobbying, 2010*, *supra* note 48 (“Only two counties did not request an extension under the Illinois Freedom of Information Act. . . . During the course of making requests, certain counties requested that the scope of the request be limited. For example, . . . [m]ost counties did not accept a county-wide request: instead of releasing information for all county agencies and departments, counties would only do one-per FOIA.”).

78. 25 ILL. COMP. STAT. 170 (2018).

79. *Id.* § 170 / 3(a).

80. *Id.* § 170 / 3(a)(1.4).

81. *Id.*

82. *Governments Lobbying State Government*, *supra* note 6, at 3 (identifying “115 units of government with contract lobbyists between July 1, 2007 and June 30, 2008”).

83. See *supra* Section II.D.

84. *Lobbyist Registration: Annual Registration Guide*, OFF. OF THE ILL. SEC’Y OF STATE 3 (2018), [http://www.cyberdriveillinois.com/publications/pdf\\_publications/ipub31.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/ipub31.pdf) [hereinafter *Annual Registration Guide*]; see also *Cyberdrive*, OFF. OF THE ILL. SEC’Y OF STATE, <http://www.cyberdriveillinois.com/> (last visited Oct. 29, 2019).

85. *Annual Registration Guide*, *supra* note 84, at 4.

required to submit bimonthly expenditure reports itemizing the amounts spent on any public officials, the location where the money was spent (*e.g.*, at a restaurant or at an event), and on which client's behalf the money was spent.<sup>86</sup> Private firms must also notify the public official on whose behalf the expenditure was made that such expenditure will be reported to the Secretary of State.<sup>87</sup> Firms must re-register annually.<sup>88</sup>

Individual lobbyists, whether working independently as contracted lobbyists or as employees of lobbying firms, must also register themselves in the Cyberdrive system.<sup>89</sup> Similar to a firm's registration, lobbyists must provide their basic contact information and pay annual registration fees.<sup>90</sup> Registered lobbyists are also required to provide identification photos of themselves and complete yearly state-mandated ethics training.<sup>91</sup> Beginning in 2017, registered lobbyists are also required to complete sexual harassment training and provide a "written anti-sexual harassment policy."<sup>92</sup>

To create a cross-referenceable and searchable database and to comply with the Lobbyist Registration Act, lobbying firms must "claim" (identify) in the Cyberdrive system each of their individual lobbyists, their clients, and any other firms with which they may contract to assist them in client lobbying services.<sup>93</sup> Before a firm is able to claim a nonexempt client in the system, the client must be registered as an entity in Cyberdrive (whether or not it intends to personally lobby), provide contact information, select from a list the policy topics it intends to influence through lobbying, and create its own profile in the Cyberdrive system.<sup>94</sup> The lobbying firm is then able to search the database for the client's profile and claim its clients and its lobbyists, thus linking the entities together in the system and allowing for cross-searches and cross-references within the Cyberdrive database.<sup>95</sup>

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86. *Illinois Lobbyists: Electronic Expenditure Filing Instructions*, OFF. OF THE ILL. SEC'Y OF STATE 4, 15 (2019), [http://www.cyberdriveillinois.com/publications/pdf\\_publications/ipub32.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/ipub32.pdf).

87. *Id.* at 5.

88. *Annual Registration Guide*, *supra* note 84, at 3.

89. *Illinois Lobbyist Ethics Training*, OFF. OF THE ILL. SEC'Y OF STATE 1 (2017), [https://www.cyberdriveillinois.com/publications/pdf\\_publications/i231.pdf](https://www.cyberdriveillinois.com/publications/pdf_publications/i231.pdf).

90. *Annual Registration Guide*, *supra* note 84, at 4–6.

91. *Illinois Lobbyist Ethics Training*, *supra* note 89, at 2; *Annual Registration Guide*, *supra* note 84, at 34.

92. Amanda Vinicky, *After Springfield Sexual Harassment Exposed, Legislation on Fast Track*, WTTW NEWS (Oct. 26, 2017), <https://news.wttw.com/2017/10/26/after-springfield-sexual-harassment-exposed-legislation-fast-track>; *Illinois Lobbyist Ethics Training*, *supra* note 89, at 3.

93. *Annual Registration Guide*, *supra* note 84, at 4, 7.

94. *Id.* at 7, 18 ("When a lobbying entity enters into an agreement to perform lobbying services on behalf of a client, the client must be registered as a lobbying entity, unless exempt from registration by the Lobbyist Registration Act. Registration must be filed prior to services requiring registration begin, but in any event not later than two business days after being employed or retained.").

95. See *Lobbying Information Search*, OFF. OF THE ILL. SEC'Y OF STATE, <https://www.ilsos.gov/lobbyistsearch/> (last visited Oct. 29, 2019). This is the user interface allowing users to search through the Cyberdrive database for lobbying entities, lobbyists, and clients; it allows users to cross-reference and cross-search the results. Additionally, this is the platform where lobbyists and their registered agents access their profiles to update bi-monthly expenditure reports and annual registration forms. These reports are accessible to the public using this search platform. The forms are located under the profile of each nonexempt lobbying entity.

When a lobbying firm takes on an exempt entity, the registration and claiming process is different.<sup>96</sup> The private firm must still claim the exempt entity as its client, but since the exempt client does not itself have to register, the private firm claims the client by merely typing in the name of the entity under the firm's profile.<sup>97</sup> This listing creates a pared down profile for the entity and is viewable in the Cyberdrive database with only its name and the identifier "EXEMPT" appearing on its profile.<sup>98</sup> The only information about the exempt entity in the system is its name and basic contact information.<sup>99</sup> Thus, the exempt client is not required to complete any of the registration requirements explained above—this means no ethics training, no listing of an authorized agent, and, importantly, no bimonthly expenditure reports.

*D. Practical Effects of the Registration Exemptions in the Illinois Lobbyist Registration Act*

While an exempt entity is not completely immune from registration requirements, in that any private firm the entity contracts to represent it must claim the entity in the private firm's registration,<sup>100</sup> an exempt entity, unlike a nonexempt client or firm, is not required to pay annual registration fees, identify an authorized agent or exclusive lobbyists, report its bimonthly expenditures made on officials, complete ethics and anti-sexual harassment training, list its legislative goals, or provide information about which state government actors it intends to lobby.<sup>101</sup> A unit of local government can use taxpayer money to lobby state government, and the only information that is readily available to the taxpayer through Cyberdrive is its address, phone number, and the lobbying firms with which it has contracted.<sup>102</sup> To obtain lobbying spending information, a taxpayer must file a FOIA request (to which some groups have claimed trouble getting responses)<sup>103</sup> or rely on their local government to publish this information voluntarily.<sup>104</sup>

Of further concern is the effect of the exemption on the cross-referencing ability of the Cyberdrive system. As explained in the previous section, an exempt entity has a limited profile in the Cyberdrive system that exists only because the private firm it contracted with for representation was required to claim it by

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96. *Annual Registration Guide*, *supra* note 84, at 7.

97. *Id.* at 7, 46.

98. *See, e.g., Lobbyist Information Search: Village of Schaumburg*, OFF. OF THE ILL. SEC'Y OF STATE, <https://www.ilsos.gov/lobbyistsearch/> (Select "Lobbying Entity Search," select "Submit," select "2019" from the drop-down menu, select "Begins with," enter "Village of Schaumburg," select "Submit," click "VILLAGE OF SCHAUMBURG.") (displaying no Authorized Agent or Contractual Firm(s) information) (last visited Oct. 29, 2019).

99. *See, e.g., id.* (displaying only an address and phone number for the Village of Schaumburg).

100. *See supra* Section II.C.

101. *See supra* Section II.C.

102. *See supra* Section II.C.

103. *See, e.g., Governments Lobbying State Government*, *supra* note 6, at 3 ("Ten percent of the units of government queried during the ICPR investigation failed to comply in a timely fashion under FOIA.").

104. *See, e.g., Legislative Participation*, *supra* note 1 (displaying information about the amount spent by the Village of Schaumburg on "legislative consultants").

merely listing the exempt entity's name and basic contact information.<sup>105</sup> Thus, the exempt entity itself does not have a profile onto which it can login and claim the "contractual firms" that it hired.<sup>106</sup> Because of this, the exempt entity and the private lobbying firm are not cross-referenced in the system to the same extent as nonexempt clients and their hired lobbying firms.<sup>107</sup> Locating the exempt entity's limited profile using the "Lobbying Entity" search function in Cyberdrive will not reveal to the user which firms the exempt entity is using to conduct its state-level lobbying initiatives, as it would for nonexempt clients.<sup>108</sup>

A user who wishes to find out which lobbying firms an exempted entity has contracted to represent it has two options: 1) the user may search for the exempt client using the "Client Entity Search" (rather than the "Lobbying Entity Search") function of Cyberdrive;<sup>109</sup> or 2) the user may visit the Lobbyist Activities page on Cyberdrive,<sup>110</sup> download the periodically updated "Lobbyist List," and search this nearly 150-page document for the name of the exempt group.<sup>111</sup> Both of these processes are more time consuming and involve additional steps than what are required for nonexempt clients; they also require the user to know that the different search features produce different results depending on the nature of the entity being searched or that the Lobbyist List even exists.<sup>112</sup> Further, this Lobbyist List, unlike the live database on Cyberdrive, is not updated in real time. In fact, as of March 2019, the most current version of the Lobbyists List available from the Secretary of State was from March 25, 2018—nearly a full year behind.<sup>113</sup> If the lobbying list has not been updated, the user cannot link a private lobbying firm to an exempt lobbying client group using the list. Thus, even the knowledgeable Cyberdrive user is limited in the information he or she can gather about the lobbying activities of exempt entities.

In summary, the important (and obvious) limitation of the current registration and disclosure requirements, as well as the Cyberdrive system, is that the database and search processes are not intuitive. One might expect a cross-referencing database to cross reference *all* the entities and their connections within it in a *single* search query. Instead, parties interested in linking various lobbying entities are required to conduct several searches through different search tools

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105. See *supra* Section II.C.

106. See, e.g., *Lobbyist Information Search: Village of Schaumburg*, OFF. OF THE ILL. SEC'Y OF STATE, *supra* note 98 (displaying no Authorized Agent or Contractual Firm(s) information).

107. See *id.*

108. See *id.*

109. These different search options are available on the Cyberdrive webpage. *Lobbying Information Search*, *supra* note 95.

110. *Lobbyist Activities*, OFF. OF THE ILL. SEC'Y OF STATE, <http://www.cyberdriveillinois.com/departments/index/lobbyist/home.html> (last visited Oct. 29, 2019).

111. See generally *Secretary of State: Lobbyist List*, OFF. OF THE ILL. SEC'Y OF STATE (Mar. 15, 2019), <http://www.cyberdriveillinois.com/departments/index/lobbyist/lobbyistlist.pdf>.

112. See *supra* notes 105–08.

113. *Secretary of State: Lobbyist List*, OFF. OF THE ILL. SEC'Y OF STATE (Mar. 25, 2018) (no longer available through the Secretary of State).

within the system.<sup>114</sup> And the one document that does contain all connections within a single source is not updated in real-time and can lag months behind.<sup>115</sup>

### III. ANALYSIS

This Part discusses the competing interests of taxpayers and the local governments using taxpayer money to contract lobby groups as well as the lack of competing interests in government lobbying through the lens of public choice theory. It then discusses the deficiencies in reporting and disclosure requirements in Illinois and the difficulty of obtaining spending information. Finally, it compares Illinois's disclosure and reporting requirements to those of other states that allow their local governments to lobby.

#### A. *Competing Special Interests Between Taxpayers and Units of Local Government*

There is often a disconnect between the interests of local government units lobbying state government and the interests of the taxpayer.<sup>116</sup> A real-life example of these competing interests is useful for context and is illustrated well in education funding reform, as discussed by Professor Dorothy Brown.<sup>117</sup> This Section will discuss Professor Brown's study on school funding reform, identify and explain the public choice and economic theories of legislation, and then apply the public choice and related economic theories of legislation to examples in Illinois lobbying.

##### 1. *Professor Brown's School Funding Reform Study: Overview of the Relevant Actors, Their Often-Competing Interests, and the Resulting Legislative Outcome*

In one of her school funding case studies, Professor Brown analyzed education funding reform under a model in which, if reform was successful, "every school district [would be] guaranteed a certain minimum level of funding, regardless of the amount of property taxes generated in the school district."<sup>118</sup> In her model, education funding reform "is defined as increased funding for property-poor school districts, by a comparable reduction in the funding for property-rich school districts."<sup>119</sup> After defining the various interest groups and explaining their policy preferences and ability to lobby for those preferences, she applied this model to an actual school funding reform initiative that took place in New

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114. See *supra* text accompanying notes 100–13.

115. See *supra* text accompanying notes 100–13.

116. See, e.g., Dorothy A. Brown, *The Invisibility Factor: The Limits of Public Choice Theory and Public Institutions*, 74 WASH. U. L.Q. 179, 206 (1996) ("The failure of the legislature to tie any tax increase to accountability suggests that taxpayer input was not taken into account. Taxpayers were unable to outbid the rival teachers' lobby or the school district lobby for increased funding.").

117. See generally *id.*

118. *Id.* at 184.

119. *Id.*

Jersey.<sup>120</sup> Finally, Professor Brown explained how the outcome in New Jersey was predictable under public choice theory, specifically the economic theory of legislation.<sup>121</sup>

To begin her analysis, Professor Brown first identified the major special interest groups that were likely to take a policy position on the question of funding reform: “(i) property-poor school districts; (ii) property-rich school districts; (iii) middle-wealth school districts; and (iv) all other taxpayers.”<sup>122</sup> She then summarized what each special interest group stood to gain or lose under a new and successful funding regime, as well as the resources they have to lobby (“bid”) for their preferences.<sup>123</sup> For instance, property-poor districts would gain a great deal from education funding reform—increased educational opportunities and higher paid teachers with better benefits.<sup>124</sup> Despite this, “a question still exists as to whether parents in property-poor school districts have any funds to expend for a bid [for education funding reform].”<sup>125</sup> Property-rich districts, on the other hand, are in the reverse situation: they have the resources to make a winning bid for education funding reform, but they “stand to lose as resources flow from their districts to the property-poor districts.”<sup>126</sup> Middle-wealth districts sit between the two: “[t]he amounts expended on their children’s education may stay the same, decrease, or increase.”<sup>127</sup> Accordingly, middle-wealth districts often desire no change in education funding reform and have heavy incentive to bid for the status quo.<sup>128</sup> Last are the remaining other taxpayers who “stand to lose a great deal if their taxes are increased in order to pay for the education funding reform legislation.”<sup>129</sup> These taxpayers, no matter where they reside, are assumed to be unfriendly to the idea of increased taxes (no matter where the money goes), yet their tax dollars are being used by the districts to make the bids.<sup>130</sup>

Following this summary of the terms of successful education-funding reform, the key players with special interests, their policy preferences, and their ability to fund bids for these preferences, Professor Brown applied this frame-

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120. *Id.* at 190–210.

121. *Id.* at 204–08.

122. *Id.* at 184.

123. *Id.* at 184–89.

124. *Id.* at 184–86 (“Those who will reap the benefits include the schoolchildren, parents, teachers, and the property-poor school districts. Parents and children stand to gain through increased educational opportunities. Teachers stand to gain salary and benefit increases, and school districts stand to gain as their budgets will increase due to the reform. As a result, they all have a high stake in the reform’s enactment.”).

125. *Id.* at 185.

126. *Id.* at 186.

127. *Id.* at 187.

128. *Id.* (“Middle-wealth districts may win or lose from education funding reform. The amounts expended on their children’s education may stay the same, decrease, or increase. Group members want to ensure that the amounts expended on education either remain the same or increase. Accordingly, they have a high stake in the outcome.”).

129. *Id.*

130. *Id.* at 187–88.

work to New Jersey's long and difficult experience with education funding reform.<sup>131</sup> After several legislative decisions and a court intervention, the resulting legislative education funding reform outcomes included increased education funding in which the legislature consistently failed "to tie any tax increase to accountability" of the state teachers who bid for the funding reform measures.<sup>132</sup> To explain why the legislation failed to include accountability measures, Professor Brown noted:

Taxpayers were unable to outbid the rival teachers' lobby or the school district lobby for increased funding. The teachers' lobby would not want any provision that makes salary increases dependent on accountability for student performance. Taxpayers, however, would want any such tax increase to be conditioned on improved student performance. The fact that none of the four legislative responses included any accountability provisions suggests that taxpayers were not a special interest group that had any role in the legislative process.<sup>133</sup>

Though the taxpayers made up the group that paid the bill for the lobbying efforts, the taxpayers were not considered to have a role in the legislative process.<sup>134</sup> "[T]he strength of the teachers' union and school districts was so strong that they did not permit any accountability language in the [legislative possibilities]."<sup>135</sup> Thus, Professor Brown's analysis provides an excellent example of the problem arising from taxpayer-funded lobbying efforts: the interests of the taxpayers and the interests of the unit of local government using taxpayer money to lobby are not always aligned.<sup>136</sup> As discussed below, this outcome can be explained, in part, by the economic theory of legislation.

## 2. *The Public Choice Theory and the Economic Theory of Legislation*

Public choice theory is an "economically-oriented" understanding of the legislative process<sup>137</sup>—it is the "application of economic methods to political questions."<sup>138</sup> According to one of the early explorers of the theory, American economist James Buchanan, it is "politics without romance."<sup>139</sup> It "attempts to offer an understanding, an explanation, of the complex institutional interactions

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131. *Id.* at 190–210.

132. *Id.* at 205–06.

133. *Id.* at 206.

134. *Id.*

135. *Id.*

136. *Id.*

137. See Edward L. Rubin, *Public Choice in Practice and Theory*, 81 CALIF. L. REV. 1657, 1658 (1993) (reviewing DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION* (1991)).

138. See Daniel A. Farber, *Democracy and Disgust: Reflections on Public Choice*, 65 CHI.-KENT L. REV. 161, 161 (1989) (noting that public choice theory "seeks to use economic methodology to analyze politics").

139. James M. Buchanan, *Politics Without Romance: A Sketch of Positive Public Choice Theory and Its Normative Implications*, in *THE THEORY OF PUBLIC CHOICE-II* 11 (James M. Buchanan & Robert D. Tollison eds., 1984).



that go on within the political sector.”<sup>140</sup> Public choice theory is considered by many to be “one of the dominant themes in contemporary legal scholarship.”<sup>141</sup>

Under the theory of public choice, the entire legislative process is viewed as “an economy”;<sup>142</sup> the participants within the legislative process are viewed as economic actors (*i.e.*, “as buyers, sellers, investors, producers, [and] entrepreneurs”).<sup>143</sup> In reality, these political marketplace participants are “voters, . . . candidates for office, . . . elected representatives, . . . leaders or members of political parties, . . . [and] bureaucrats,” all of whom have their own preferences within the marketplace.<sup>144</sup>

These actors, being viewed as participants in the economy, are presumed to share the same motives and characteristics as consumers and sellers in other economic models.<sup>145</sup> The “models of man” relied heavily upon in most economic theories (including the public choice theory) “embody the presumption that persons seek to maximize their own utilities, and that their own narrowly defined economic well-being is an important component in these utilities.”<sup>146</sup> Put more simply, actors in the economy and in the legislative process are self-interested “utility maximizers”;<sup>147</sup> “man is an egotistic, rational, utility maximizer.”<sup>148</sup> Thus, public choice theory is premised on a highly individualistic assumption about individual actors.<sup>149</sup>

Public choice theorizes that “only by organizing into special interest groups can individuals influence the political process.”<sup>150</sup> By organizing efficiently, special interest groups are able to “exert a disproportionate influence on policymaking.”<sup>151</sup> These organized interest groups participate with each other in the “political exchange.”<sup>152</sup> Within this political exchange, “[p]ublic choice theorists typically treat legislation as an economic transaction in which interest groups form the demand side, and legislators form the supply side.”<sup>153</sup> The interest groups, being self-interested utility maximizers, will often “demand . . . legislation [that is] highly biased” in favor of themselves rather than the “public good[.]”<sup>154</sup>

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140. *Id.* at 13.

141. Rubin, *supra* note 137, at 1657.

142. Buchanan, *supra* note 139, at 12.

143. *Id.*

144. *Id.* at 13.

145. Dennis C. Mueller, *Public Choice: A Survey*, in *THE THEORY OF PUBLIC CHOICE-II* 23 (James M. Buchanan & Robert D. Tollison eds., 1984) (“The public choice approach to nonmarket decision making has been . . . to make the same behavioral assumptions as general economics (rational, utilitarian man) . . .”).

146. Buchanan, *supra* note 139, at 13.

147. *Id.* at 14.

148. Mueller, *supra* note 145, at 23.

149. Buchanan, *supra* note 139, at 13.

150. Brown, *supra* note 116, at 180.

151. Michael C. Blumm, *Public Choice Theory and the Public Lands: Why Multiple Use Failed*, 18 HARV. ENVTL. L. REV. 405, 407 (1994).

152. Buchanan, *supra* note 139, at 14.

153. William N. Eskridge, Jr., *Politics without Romance: Implications of Public Choice Theory for Statutory Interpretation*, 74 VA. L. REV. 275, 285 (1988).

154. *Id.* at 285, 286.

The economic theory of legislation is a branch of economic policy theories extending out of public choice theory that further “seeks to explain legislative outcomes.”<sup>155</sup> The economic theory of legislation proposes “that legislation is not enacted for the public good. Rather, it results from a ‘legislative auction’ where the special interest group with the highest ‘bid’ wins the legislator’s services.”<sup>156</sup> Thus, under this theory, the lobby with the most collective and organized resources wins the bid.<sup>157</sup> The legislature is asked by lobbyists to enact legislation that promotes what is good for the special interests of the groups they are paid to represent.<sup>158</sup> While the special interests of a unit of local government may coincide with the public good and the interests of its residents and those to whom it is accountable, it often times does not mirror it.<sup>159</sup>

Unfortunately, the theoretical end to these economic approaches to the legislative process, which assume individualistically motivated actors, is that the laws that are passed may often be unlikely to “contribute to the overall efficiency of society by providing a collective benefit.”<sup>160</sup> Many of the laws produced are likely to be “rent-seeking” (*i.e.*, they are “laws that distribute resources to a designated group without any contribution to society’s overall efficiency”).<sup>161</sup>

### 3. *Public Choice Theory and Economic Theory of Legislation Applied to Taxpayer-Funded Lobbying*

Viewed solely under the somewhat bleak perspective of the public choice theory and economic theory of legislation, the use of taxpayer money to fund state-level lobbying efforts by units of local government is especially concerning from an accountability standpoint.

Under the public choice theory, the taxpayers in the various districts are self-interested actors; the units of local government are also self-interested players in the political economy.<sup>162</sup> The group with the most organization and resources often has the most influence on the legislature.<sup>163</sup> Organizing is not cheap:

Organizing any group includes the costs of searching for similarly situated individuals and the monitoring costs to make sure that group members contribute their fair share of those costs. Organizational costs increase with group size for several reasons. First, group members must be identified and located . . . . Second, each group member must believe that all other group members are paying their fair share of the costs . . . .<sup>164</sup>

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155. Brown, *supra* note 116, at 182.

156. *Id.*

157. *Id.* at 182–83.

158. *Id.* at 182.

159. *Id.*

160. Eskridge, *supra* note 153, at 285.

161. *Id.*

162. Buchanan, *supra* note 139, at 13.

163. Blumm, *supra* note 151, at 407.

164. Brown, *supra* note 116, at 182–83.

But units of local government are more discrete than large, diverse bodies of taxpayers; by their inherent nature, units of local government are consolidated, centralized, organized, and able to collect taxes from taxpayers. Whereas taxpayers must self-organize and raise their own revenue to fund lobbying efforts, units of local government start as organized bodies with a steady revenue stream.<sup>165</sup> Accordingly, under the public choice theory, governments are more likely to “exert a disproportionate influence on policymaking”<sup>166</sup> and “demand . . . legislation [that] is highly biased” in favor of themselves rather than the “public good[.]”<sup>167</sup>

The outlook gets worse when additionally viewed under the economic theory of legislation. Under the economic theory of legislation, the organized special interest group that is able to pay the highest bid “wins the legislator’s services.”<sup>168</sup> The lobby group with the most collective and organized resources will win the legislative bid.<sup>169</sup> The organizational powers and inherent revenue-collecting capabilities of local government units often enable them to offer the highest bids for self-serving legislation.<sup>170</sup>

When local governments engage in lobbying at the state level, the “ironic connection” between public choice theory and classical republicanism is particularly evident.<sup>171</sup> At the heart of classical republicanism is public and civic virtue.<sup>172</sup> Public leaders in government are “expected to suppress their private wants and interest and inculcate disinterestedness.”<sup>173</sup> Disinterestedness can be defined as “superior to regard of private advantage; not influenced by private profit.”<sup>174</sup> This “demand[.]” of virtue on public leaders is high, leading many to question the “capacity of most ordinary people to rise above self-interest.”<sup>175</sup> Thus, republicanism “sometimes seems nearly utopian in its aspiration for the political process.”<sup>176</sup> It embraces the idea that government should be led by selfless individuals seeking only the good of the citizens whom they were elected to represent.<sup>177</sup>

Compare classical republicanism’s conception of the requirements on those who govern with the underlying assumptions of public choice theory. Under public choice theory, public officials and the individual units of local government they oversee, being actors in the political “economy,”<sup>178</sup> are assumed to be self-

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165. *Id.*

166. Blumm, *supra* note 151, at 407.

167. Eskridge, *supra* note 153, at 285–86.

168. Brown, *supra* note 116, at 182.

169. *Id.* at 182–83.

170. *Id.*

171. Farber, *supra* note 138, at 173.

172. Gordon S. Wood, *Classical Republicanism and the American Revolution*, 66 CHI.-KENT L. REV. 13, 23–24 (1990).

173. *Id.* at 23.

174. *Id.* at 24 (quoting JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (London 1755)).

175. *Id.* at 24, 26.

176. Farber, *supra* note 138, at 173.

177. *Id.*

178. Buchanan, *supra* note 139, at 13.

interested “utility maximizers.”<sup>179</sup> It is stipulated that their goals are self-motivated and “narrowly defined” to serve their own interests.<sup>180</sup> It is nearly the opposite of classical republicanism:

Where public choice theorists see self-interest behind every statute, republicans hope to find a quest for the public good . . . . Public choice sees politics as a machine, with preferences as the input and decisions as the output. For republicans, however, preferences are shaped by politics; dialogue and reason are the energizing forces behind political decisions.<sup>181</sup>

At the outset, these two theories “seem irreconcilable: one seemingly based on a glumly pessimistic appraisal of politics while the other sometimes seems nearly utopian in its aspiration for the political process.”<sup>182</sup> There are, however, two ways in which the theories coexist: 1) through the legislative process and 2) in the legislative areas where the public good and the interest of the government leader overlap.<sup>183</sup>

The first way to reconcile public choice theory with republicanism is to recognize the “capacity of dialogue to transform [individualistic preferences]” through the legislative process.<sup>184</sup> Politics and political debate can shape preferences at the legislature;<sup>185</sup> “dialogue and reason are the energizing forces behind political decisions.”<sup>186</sup> With this understanding, it is not entirely accurate to assume that units of local government hold their views uncompromisingly and are able to convince their state legislators of these unwavering preferences. The legislative and political processes, both within the unit of local government and at the state legislature, have the power to compromise individual preferences with the public good.<sup>187</sup>

The second way to reconcile public choice theory with classical republicanism is by emphasizing those policy areas in which the virtuous, civically minded public good and the private interests of the actors in the political marketplace overlap.<sup>188</sup>

It is unrealistic to draw a sharp line between personal preferences and political values, placing the latter in a higher sphere. Most people’s personal preferences and political values are connected . . . . The very difference

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179. *Id.* at 14.

180. *Id.* at 13.

181. DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION* 45 (1991).

182. Farber, *supra* note 138, at 173; *see also* FARBER & FRICKEY, *supra* note 181, at 45 (“[W]here public choice theory risks cynicism, republicanism can verge dangerously on romanticism.”).

183. FARBER & FRICKEY, *supra* note 181, at 45–46 (“Contemporary republicans admit that the political process is subject to rent-seeking and other flaws of the kind identified by public choice theory. They may overestimate, however, the extent to which public deliberation can break the link between prior preferences and political outcomes. More generally, they overplay the contrast between political and personal life.”).

184. *Id.* at 46 (arguing that the political process does have the capacity to reconcile public choice theory and classical republicanism, but that classical republicans often “overestimate” the value of the political process).

185. *Id.* at 45.

186. *Id.*

187. *Id.* at 45–46.

188. *Id.* at 46.

between a personal interest and a public value is often in the eye of the beholder.<sup>189</sup>

If leaders in government are concerned with reelection and public support, it is intuitively in their best interest to pursue that which is in the best interest of their constituents. Given these two points, it is very likely that taxpayer-funded lobbying will not always produce unwanted results for the taxpayers. Units of local government will often use taxpayer money to lobby for legislation that is good for the taxpayer, and the legislative process will often serve to temper the preferences of government and to protect the taxpayers when interests are not aligned.<sup>190</sup>

#### 4. *Public Choice Theory and Economic Theory of Legislation in Practice: School Funding Reform and Other Taxpayer-Funded Lobbying Efforts*

Public choice theory and the economic theory of legislation (though not without their respective shortcomings, as explained by Professor Brown)<sup>191</sup> predicted the legislative outcome that occurred in the New Jersey education reform funding context.<sup>192</sup> The teachers' lobby, a discrete group with the ability to generate and use public funds to finance their lobbying efforts, successfully lobbied for increased funding without accountability requirements.<sup>193</sup> In New Jersey, taxpayers financed an effort to use more of their money in ways many of them did not find acceptable.<sup>194</sup>

When units of local government lobby the state legislature, they are often requesting new or increased funding (be it for education or special projects), lobbying to prevent the state legislature from requiring them to have to implement or pay for a program, or trying to stop the state from implementing tax reductions.<sup>195</sup>

In the case of requests by units of local government for increased funding, the increased-funding revenue comes from the taxpayers (for example, in education the revenue comes from property taxes).<sup>196</sup> Similarly, in a request to preserve funding, the unit of local government may lobby to oppose tax reductions.<sup>197</sup>

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189. *Id.* (providing the following hypotheticals: "In seeking government price supports, is the owner of a Wisconsin dairy farm seeking a merely personal reward, or upholding the traditional values of the family farm? In supporting affirmative action, is a minority contractor seeking racial justice, or just a spot at the public trough?").

190. *See id.* at 47.

191. Brown, *supra* note 116, at 208–10 (noting that, in some aspects of education funding reform in New Jersey, results were the "opposite" of what public choice theory predicted, and that "basic assumptions of public choice theory must be re-examined in light of such analysis").

192. *Id.* at 204–08.

193. *See supra* Section III.A.1.

194. *See supra* Section III.A.1.

195. *See, e.g., Waste Watch, supra* note 1, at 12; *see also* Greg Bishop, *Report: Local Governments Across Illinois Spent Millions on Lobbying, Waste*, CENTER SQUARE (Oct. 16, 2018), [https://www.thecentersquare.com/illinois/report-local-governments-across-illinois-spent-millions-on-lobbying-waste/article\\_c00a4072-3f2a-5e93-a563-7b07c2d1f1af.html](https://www.thecentersquare.com/illinois/report-local-governments-across-illinois-spent-millions-on-lobbying-waste/article_c00a4072-3f2a-5e93-a563-7b07c2d1f1af.html).

196. *See generally* Brown, *supra* note 116.

197. Bishop, *supra* note 195.

Thus, while both the unit of local government conducting the lobbying and the taxpayer paying for the lobbying may both desire and benefit from the programs in need of funding, the unit of local government is, in essence, using taxpayer money to lobby for an increased tax burden on the taxpayer.<sup>198</sup> “[T]here is almost always a separation between the resources collected (taxes and other revenues) and the programs and services the resources are used to finance.”<sup>199</sup> Accordingly, “[g]overnments can collect revenues from their citizens regardless of the efficacy, nature, or even support for the programs and services provided. There is simply little or no mechanism for citizens to avoid paying the taxes used to finance the services they disagree with or don’t use.”<sup>200</sup> Critics of taxpayer-funded lobbying in California have summarized the issue succinctly:

Through the first six months of this year, cities, counties, schools and other special districts have spent \$24.3 million on influencing Sacramento lawmakers. And it is a safe bet that these governments are not spending this taxpayer money to promote tax cuts for average citizens. In fact, in many cases, they are spending tax dollars to advance their objective of wringing even more out of already beleaguered taxpayers . . . [L]ocal governments want to make sure they get a share of the “spoils” in our very high-tax state. And sometimes they seek more than a share of state revenue, they want special exemptions to allow them to increase local taxes beyond what state law allows.<sup>201</sup>

In Illinois, one state representative reported that he is lobbied by local government to oppose tax reductions and caps.<sup>202</sup> “To think that taxpayer money in my district or any other district in the state of Illinois is being used to pay a lobbyist to lobby against a property tax reduction is just absolutely outrageous . . . [a] [c]omplete waste of money.”<sup>203</sup> It is clear that there are many instances where the predictions of public choice theory and the economic theory of legislation are not tempered by classical republicanism: units of local government are using taxpayer money to lobby for initiatives that the taxpayers do not want.

#### B. *Lack of Competing Interests Between Government-Funded Lobbyists*

Next is the concern about lack of competing interests among the units of local government lobbying at their state legislatures. Local governments that lobby their respective state legislatures are usually not lobbying for the *existence* of some benefit (*e.g.*, funding)—they are lobbying for a *piece* of it.<sup>204</sup> Stated differently, “governments may compete with one another for a slice of available resources, but they don’t compete for the existence of the resources in the first

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198. Clemens et al., *supra* note 9, at 18.

199. *Id.*

200. *Id.*

201. Jon Coupal, *Taxpayers Pay for Lobbying in Sacramento*, ORANGE COUNTY REG. (Aug. 19, 2017, 12:06 AM), <https://www.ocregister.com/2017/08/19/taxpayers-pay-for-lobbying-in-sacramento/>.

202. Bishop, *supra* note 195 (quoting State Rep. David McSweeney of Barrington Hills, Illinois).

203. *Id.*

204. Clemens et al., *supra* note 9, at 18.

place.”<sup>205</sup> In fact, among government lobbying groups, “the competition between governments for these resources can often create pressure to *increase* them.”<sup>206</sup>

Nongovernment groups, on the other hand, often face the obstacle of both 1) lobbying for the creation of a government benefit and then 2) lobbying for a piece of that benefit. If nongovernment groups are successful in their first task, they likely receive only a portion of the benefit, having to split the remainder among other private groups.<sup>207</sup> Research on this topic demonstrates that private sector lobbyists, unlike public-sector lobbyists, face far more constraints in the political economy, specifically competition.<sup>208</sup> Unlike in the public sector, this competition “imposes discipline.”<sup>209</sup> Private-sector lobbyists are constrained to requesting pieces of a static, set resource fund; they should not expect the state legislature to increase the total size of that resource fund.<sup>210</sup>

Additionally, local governments lobbying their state legislatures face very little competition from “issue-specific” taxpayer organizations.<sup>211</sup> When taxpayers organize against government spending, they do so via “general taxpayer protection associations and small government advocacy groups.”<sup>212</sup> Local governments “don’t tend to compete with other organizations whose aim is to negate the funding available to the governments.”<sup>213</sup> It is unlikely that taxpayers will organize to lobby against their specific local governments to cut spending on local projects.<sup>214</sup> In terms of lack of competition, taxpayer-funded lobbying essentially exists in a “loophole” in the political marketplace.<sup>215</sup>

*C. Deficiencies in Reporting and Disclosure Requirements of Taxpayer-Funded Lobbying in Illinois and an Overview of the Disclosure Requirements in Other Jurisdictions*

There are many deficiencies in the lobbying disclosure requirements for units of local Illinois government. As noted in a report by the Illinois Campaign for Political Reform, “[p]ublic disclosure requirements under the Illinois Lobbyist Registration Act are minimal compared with the regulation of lobbyists at the federal level and in many other states.”<sup>216</sup> Beyond comparison with other state governments, “[e]ven some of the local governments in Illinois impose more strict disclosure requirements on lobbyists working to influence decisions of local officials.”<sup>217</sup>

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205. *Id.*

206. *Id.* (emphasis added).

207. *Id.* at 7.

208. *Id.*

209. *Id.*

210. *Id.* at 7, 18.

211. *Id.* at 18.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.* at 19.

216. *Governments Lobbying State Government*, *supra* note 6, at 4.

217. *Id.*

Because units of local government are not required to register or disclose their lobbying activities to the same extent as private lobbying groups and lobbying clients, it can be difficult for taxpayers to keep track of what their tax money is being used to do at the ILGA.<sup>218</sup> Given the predicted outcomes of public choice theory and the economic theory of legislation, there is cause to be concerned that Illinois taxpayer money is being used to lobby for policies and laws that taxpayers do not approve.<sup>219</sup> Below is an example of when conflicting interests between taxpayers and government lobbying efforts arose in Illinois, followed by a discussion of how different jurisdictions in the United States have adapted their laws to deal with taxpayer-funded lobbying.

1. *Township Consolidation: An Example of the Taxpayers' and Local Governments' Interests Clashing*

In 2017, Illinois legislators introduced the Township Modernization and Consolidation Act (“HB 3133”) in the Illinois House of Representatives.<sup>220</sup> The bill provided that “all townships in a county may be dissolved by referendum” and have their “property, assets, personnel, contractual obligations, liabilities, tax levies, records, and rights and duties [transferred] from the township to county.”<sup>221</sup> HB 3133 was one of several similar measures introduced in Illinois, a state with almost 2,000 more units of local government than Texas.<sup>222</sup> During the time of this legislative session, there were increased reports that “rising property taxes and ballooning state debt” were factors driving legislators to “push to reduce the number of townships and eliminate layers of local government.”<sup>223</sup> Consolidation legislation of this nature was being supported by both sides;<sup>224</sup> the lieutenant governor’s office at the time “recommended that co-terminus cities/townships should merge to reduce the size and cost of government.”<sup>225</sup> Taxpayers in several districts that were already allowed to consolidate were starting to vote to do so.<sup>226</sup> DuPage County, for example, “eliminated multiple units of

218. 25 ILL. COMP. STAT. 170 / 3(a) (2018).

219. See *supra* Section III.A.

220. Township Modernization and Consolidation Act, H.B. 3133, 100th Gen. Assemb. (Ill. 2017).

221. *Id.*

222. Greg Bishop, *Consolidation Measures Could Cut a Few of Illinois' Nearly 7,000 Units of Government*, CENTER SQUARE (Jan. 2, 2019), [https://www.thecentersquare.com/illinois/consolidation-measures-could-cut-a-few-of-illinois-nearly-units/article\\_c1646dd2-b82b-5f93-91a6-e40c6c6deade.html](https://www.thecentersquare.com/illinois/consolidation-measures-could-cut-a-few-of-illinois-nearly-units/article_c1646dd2-b82b-5f93-91a6-e40c6c6deade.html); see, e.g., Brendan Bakala, *Illinois House Passes Bill to Allow Residents to Dissolve Townships*, ILL. POL’Y (Mar. 30, 2017), <https://www.illinoispolicy.org/illinois-house-passes-bill-to-allow-residents-to-dissolve-townships/>; Deborah Kadin, *Township, Municipal Consolidation Bill Clears Illinois House*, OAKPARK.COM (Mar. 30, 2017, 4:17 PM), <https://www.oak-park.com/News/Articles/3-30-2017/Township,-municipal-consolidation-bill-clears-Illinois-House/>.

223. Ryan Voyles, *Should Illinois Townships Go Away? Legislation Would Make It Easier to Do Exactly That*, HERALD & REV. (May 20, 2018), [https://herald-review.com/news/local/should-illinois-townships-go-away-legislation-would-make-it-easier/article\\_c6eb4406-c54b-5d02-bb81-0405d5bb5ccd.html](https://herald-review.com/news/local/should-illinois-townships-go-away-legislation-would-make-it-easier/article_c6eb4406-c54b-5d02-bb81-0405d5bb5ccd.html).

224. *Id.*

225. Kadin, *supra* note 222.

226. *Id.* (“Since 2014, two cities having co-terminus boundaries with their townships have approved mergers. The city of Evanston city and its township merged in March 2014 after a series of referendums and General Assembly legislation. The township was dissolved on May 1, 2014.”).



local government, while consolidating the services of others, since the passage of a 2013 consolidation law that only applied to DuPage County.”<sup>227</sup>

Despite this seemingly broad-based support for HB 3133, “[o]fficials representing more than 100 township governments filed their opposition to the consolidation-friendly House Bill 3133.”<sup>228</sup> Of the 341 individuals or organizations that filed witness slips opposing HB 3133, “at least 220 were representing various Illinois township governments themselves.”<sup>229</sup>

HB 3133 is an example of the public choice theory and the economic theory of legislation’s prediction playing out in Illinois politics.<sup>230</sup> HB 3133 did not mandate government consolidation—it provided taxpayers the option to consolidate their local governments.<sup>231</sup> Here, local governments lobbied to preserve their own interests in the face of seemingly strong support to give taxpayers the opportunity to decide how they would be locally governed.<sup>232</sup>

## 2. *Federal Lobbying Disclosure Requirements*

The use of taxpayer money to lobby other levels of government is not just a local practice. In 2015, “localities and their associations collectively spent \$71 million in federal lobbying.”<sup>233</sup> They split this spending between state governments contracting with private lobbying firms and state governments employing their own dedicated lobbyists.<sup>234</sup>

While much of the fight against using taxpayer money to lobby the federal government occurs in state politics,<sup>235</sup> there are several federal laws that affect the practice by both the states and the federal government.<sup>236</sup> Entities that lobby on behalf of state and local governments “are subject to the registration requirements under the Lobbyist Disclosure Act.”<sup>237</sup> Under the Lobbying Disclosure Act (the “LDA”), a lobbying entity must register separately for each client from which it makes more than \$3,000 for lobbying services.<sup>238</sup> Every quarter, the lobbying firm must file reports for each client, listing, in part, the firm’s income,

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227. Vincent Caruso, *More than 100 Township Governments File in Opposition to Township Consolidation Bill*, ILL. POL’Y (Apr. 12, 2018), <https://www.illinoispolicy.org/more-than-100-township-governments-file-in-opposition-to-township-consolidation-bill/>.

228. *Id.*

229. *Waste Watch*, *supra* note 1, at 12.

230. *See* discussion *supra* Section III.A.2–3.

231. Township Modernization and Consolidation Act, H.B. 3133, 100th Gen. Assembly (Ill. 2017).

232. *See supra* text accompanying notes 220–29.

233. Maciag, *supra* note 13.

234. *Id.*

235. *Id.* (“Three residents of Williamson County, Texas, won a lawsuit against the county in 2008 . . . . A judge ordered the Texas Association of Counties to stop using county-paid dues for lobbying, so the group now funds the expenses using other sources of revenue.”)

236. *See, e.g.*, Lobbying Disclosure Act, 2 U.S.C. § 1601 (2018).

237. *Restrictions on Government Entities Lobbying the Federal Government*, PUB. CITIZEN 3 (2010), <https://www.citizen.org/wp-content/uploads/govt-lobbying-govt.pdf> (last visited Oct. 29, 2019); *see also* Lobbying Disclosure Act, 2 U.S.C. § 1601 (2018).

238. *Lobbying Disclosure Act Guidance*, OFF. OF THE CLERK, U.S. HOUSE OF REP. 6 (Jan. 31, 2017), <https://lobbyingdisclosure.house.gov/ldguidance.pdf>.

general issue areas lobbied, specific issues lobbied, and the federal official that the firm contacted.<sup>239</sup> Importantly, “[a] client that is a state or local government or instrumentality must be disclosed as such on the quarterly activity report.”<sup>240</sup> These reports are done electronically and are searchable by the public on the website of the Office of the Clerk for the U.S. House of Representatives.<sup>241</sup>

Besides these disclosure and registration requirements, Congress also created a prohibition on the use of federal funds for lobbying activity.<sup>242</sup> To avoid violating this law, states and local governments that lobby the federal government must be sure to keep any federal money separate from any money used to lobby the federal government.<sup>243</sup>

### 3. *Survey of Other States’ Publicly-Funded-Lobbying Disclosure Requirements*

Only a few states have laws that directly prohibit the use of public funds to lobby.<sup>244</sup> While state laws that directly prohibit the use of public funds to lobby the state most often deal with state level agencies’ use of public funds, “some laws also relate to local governments’ use of public funds to lobby a state’s legislature.”<sup>245</sup> Below is a survey of a few selected states’ disclosure requirements for taxpayer-funded lobbying.

In Georgia, there are no statutes prohibiting the use of taxpayer money for lobbying efforts.<sup>246</sup> “In fact, lobbyists who represent a state, county, municipal, or public agency, department, commission, or authority [in Georgia] are exempt from annual registration fees.”<sup>247</sup> A similar lack of prohibitions on taxpayer-funded lobbying can be found in several other states and localities, including Arkansas, California, Delaware, and the District of Columbia.<sup>248</sup>

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239. *Id.* at 15, 18.

240. *Id.* at 15.

241. See *Search Past Filings*, OFF. OF THE CLERK, U.S. HOUSE OF REP., <http://disclosures.house.gov/ld/ldsearch.aspx> (last visited Oct. 29, 2019).

242. *Changes to Both Hatch Act and Anti-Lobbying Act You Should Be Aware of*, GOV’T AFF. INST. GEO. U., <https://gai.georgetown.edu/changes-to-both-hatch-act-and-anti-lobbying-act-you-should-be-aware-of/> (last visited Oct. 29, 2019).

243. *Id.*

244. *Limiting Public Funds for Lobbying*, *supra* note 5 (“A handful of states have statutes that prohibit agencies from using public funds to retain a lobbyist. This could mean that agencies have no designated representative to communicate with the legislature, but often this means that an agency may only use full-time employees in dealing with the legislative branch.”).

245. *Id.*

246. *Id.*

247. *Id.*; see GA. CODE ANN. § 21-5-71(f)(1) (2019) (“Each person registering under this Code section shall pay the registration fees set forth in paragraph (2) of this subsection; provided, however, that a person who represents any state, county, municipal, or public agency, department, commission, or authority shall be exempted from payment of such registration fees.”).

248. *Limiting Public Funds for Lobbying*, *supra* note 5; see e.g., Coupal, *supra* note 201 (“Through the first six months of this year, cities, counties, schools and other special districts have spent \$24.3 million on influencing Sacramento lawmakers. And it is a safe bet that these governments are not spending this taxpayer money to promote tax cuts for average citizens. In fact, in many cases, they are spending tax dollars to advance their objective of wringing even more out of already beleaguered taxpayers.”).

In Kansas, on the other hand, “[e]very person registered as a lobbyist shall file a detailed report listing the amount of public funds paid to hire or contract for the lobbying services on behalf of a governmental entity or any association of governmental entities that receive public funds.”<sup>249</sup> Under the Kansas Code section dedicated specifically to the use of public funds in lobbying on behalf of government entities and for “any association of government entities that receive public funds,” the required reports must be filed with the Kansas Secretary of State under direction of the governmental ethics commission.<sup>250</sup> These reports must be filed annually and be “open to public inspection upon request.”<sup>251</sup>

The state of Washington has a comparatively stricter set of laws for the use of taxpayer money to fund state level lobbying efforts by units of local Washington government. The Washington Public Disclosure Act of 1972 requires that “[e]ach state agency, county, city, town, [and] municipal corporation . . . that expends public funds for lobbying shall file quarterly statements detailing lobbying expenses and related information.”<sup>252</sup> The law’s “broad reporting requirements . . . with special requirements and restrictions for state and local agencies” are “administered by a five-member Public Disclosure Commission with the assistance of a full-time staff.”<sup>253</sup> Disclosures must be reported quarterly to the Public Disclosure Committee and include “detailed records concerning the amount of time employees spend on in-person lobbying, showing what issues were lobbied, who the conversation was with and what lobbying expenditures were incurred.”<sup>254</sup> Failure to comply with the disclosure requirements “may result in enforcement and a monetary penalty”.<sup>255</sup>

A state agency director who knowingly fails to file . . . when required shall be subject to a personal civil penalty of \$100 dollars per statement. A state agency official, officer or employee who is responsible for, or knowingly directs or spends public funds in violation of [the reporting requirements]

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249. *Limiting Public Funds for Lobbying*, *supra* note 5; see KAN. STAT. ANN. § 46-295(a) (2018) (“Every person who is registered as a lobbyist shall file with the secretary of state a detailed report listing the amount of public funds paid to hire or contract for the lobbying services on behalf of: (1) A governmental entity; or (2) any association of governmental entities that receive public funds. The report shall include a listing of the amount of public funds paid to hire or contract for the lobbying services of such lobbyist and which association of governmental entities that receive public funds hired such lobbyist on a form and in the manner prescribed and provided by the governmental ethics commission. Each report required to be filed by this section is a public record and shall be open to public inspection upon request. A report shall be filed on or before January 10, 2017, and on or before January 10 of each subsequent year for the reporting period containing the preceding calendar year.”).

250. KAN. STAT. ANN. § 46-295(a) (2018).

251. *Id.*

252. See WASH. REV. CODE ANN. § 42.17A.635 (2019) (“Each state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district that expends public funds for lobbying shall file with the commission . . . quarterly statements providing . . . (c) A listing of expenditures incurred by the agency for lobbying including but not limited to travel, consultant or other special contractual services, and brochures and other publications, the principal purpose of which is to influence legislation . . .”).

253. *Public Agency Lobbying*, U. WASH., <https://www.washington.edu/staterelations/public-agency-lobbying/> (last visited Oct. 29, 2019).

254. *Id.*

255. *Id.*

may be personally subject to penalties equal to the amount of public funds spent.<sup>256</sup>

Concerns about the propriety of using public money to fund lobbying by units of local government is a current concern for taxpayers in states across the country. In early 2019, the Colorado House introduced the “End Taxpayer-funded Lobbying Act.”<sup>257</sup> The proposed legislation would “prohibit[] a state agency from expending any public funds to undertake, on behalf of the agency, lobbying of the general assembly, any of the staff agencies of the general assembly, or any member of the general assembly.”<sup>258</sup> In Arizona, Governor Doug Ducey signed a 2016 Executive Order that “terminates state contracts with professional lobbyists and ends the long-standing practice of state government entities spending significant public dollars on contract lobbyists.”<sup>259</sup> The governor cited concerns that lobbyist cronyism allowed “government entities [to use] public dollars to protect their own interests at the expense of taxpayers, small business people and regular citizens who can’t afford their own lobbyist.”<sup>260</sup>

In Texas, the pushback against taxpayer-funded lobbying is especially present.<sup>261</sup> At the end of 2016, Texas Scorecard, a branch of the nonprofit “Empower Texans” research, reporting, and advocacy group, reported that “[l]ocal government entities across [Texas] spend millions of taxpayer dollars every legislative session hiring lobbyists—unbeknownst to the taxpayers footing the bill—to advocate for and against reforms in the legislature.”<sup>262</sup> Some estimates put the amount of money spent by local government on lobbying in Texas at more than \$41 million in 2017.<sup>263</sup> Like Illinois, Texas “does not maintain a database on lobbyist expenditures by local governments.”<sup>264</sup>

Over the years, there have been multiple attempts at the Texas State Legislature to pass bills “that would ban cities, counties and school districts from

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256. *Id.*

257. *HB19-1079 End Taxpayer-funded Lobbying Act*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/bills/hb19-1079> (last visited Oct. 21, 2019) (“The bill prohibits a state agency from expending any public funds to undertake, on behalf of the agency, lobbying of the general assembly, any of the staff agencies of the general assembly, or any member of the general assembly. The bill also prohibits the agency from contracting with any lobbying firm or any other private organization or entity that provides lobbying services for the purpose of lobbying on its behalf the general assembly, any of the staff agencies of the general assembly, or any member of the general assembly.”).

258. *Id.*

259. News Release, PUBLIC FUNDS FOR CONTRACT LOBBYISTS REVOKED UNDER EXECUTIVE ORDER, OFF. GOVERNOR DOUG DUCEY (June 29, 2016), <https://azgovernor.gov/governor/news/2016/06/public-funds-contract-lobbyists-revoked-under-executive-order>.

260. *Id.* (“An analysis by the Governor’s Office identified approximately \$1 million in public funds spent on professional lobbyists since Fiscal Year 2015, but inconsistent reporting practices and a lack of accountability may shield additional dollars of public spending on lobbyists.”).

261. James Drew, *Debate Intensifies over Texas Cities Using Tax Dollars to Lobby Legislature*, HOUS. CHRON. (Aug. 22, 2017, 8:53 PM), <https://www.houstonchronicle.com/news/politics/texas/article/Debate-intensifies-over-Texas-cities-using-tax-11951361.php> (providing an overview of proposed policy reforms, as well as some specific dollar amounts spent by local units of government on lobbying efforts).

262. Harrison, *supra* note 8.

263. DeVore, *supra* note 22.

264. Drew, *supra* note 261.

spending public money to hire lobbyists.”<sup>265</sup> Supporters of such legislative efforts believe “governments should not spend public money to join associations that hire lobbyists because that lobbying could oppose the taxpayers’ interest.”<sup>266</sup> Opponents of these attempts cite the value of publicly-funded lobbying: educating public officials about issues they might not otherwise have the time to study.<sup>267</sup> The debate continues in Texas with multiple interest groups seeking to educate Texas citizens about the issue and push for a legislative ban.<sup>268</sup>

#### IV. RECOMMENDATION

Illinois falls somewhere in the middle on the spectrum of the various reporting requirements mandated in other states for local government units.<sup>269</sup> There is not a total lack of reporting requirements in Illinois.<sup>270</sup> Exempt entities do not have to create a profile in Cyberdrive with expenditure reports and registration information, but their names are connected to their private lobbyists in Cyberdrive.<sup>271</sup> It is possible to trace the connections between units of local government, hired lobbyists, and their subcontracted lobbying firms, but the process is not intuitive and the cross-referencing capability of Cyberdrive is limited.<sup>272</sup> Finally, while citizens have a right to access local spending on lobbying and some local governments readily publish this information online, citizens must often turn to the FOIA process to access spending information.<sup>273</sup>

Remedies to these information gap problems should be analyzed on two axes: accessibility and transparency. Applying this framework to the above problems, for example, the FOIA request process offers citizens a wealth of spending information, but the FOIA process can be daunting, time consuming, and require multiple attempts and long periods of time before results trickle back.<sup>274</sup> The

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265. Dhingra, *supra* note 19.

266. *Id.*

267. *Id.*

268. See, e.g., *2018 Legislative Priority: End Taxpayer-Funded Lobbying*, REPUBLICAN PARTY OF TEX. (2018), <https://www.texasgop.org/end-taxpayer-funded-lobbying/> (“The Solution: Ban political subdivisions with taxing authority from hiring lobbyists, from paying dues to an association of similarly-situated entities which lobbies, and from automatically deducting union dues.”); *Speaking Freely: Taxpayer Funded Lobbying*, TEX. PUB. POL’Y FOUND. (Dec. 7, 2017), <https://www.texaspolicy.com/speaking-freely-taxpayer-funded-lobbying/> (“The bottom line: governments—but especially Texas local governments—have no business using taxpayer dollars to lobby for more taxpayer dollars. It’s time to end taxpayer-funded lobbying in Texas and make sure that ‘taxpayers do not fund special interests in Austin.’”); Michael Quinn Sullivan, *Taxpayers Funding Anti-Taxpayer Lobbyists*, EMPOWER TEXANS (Sept. 26, 2007), <https://empowertexans.com/articles/taxpayers-funding-anti-taxpayer-lobbyists/> (“Most egregious was the hearing on tax and expenditure limits held during the legislative session this spring. Lobbyist after lobbyist came forward representing taxing entities, speaking out against taxpayer protections. Is that how you expected your local taxes to be spent?”).

269. See *supra* Section III.C.3.

270. See *supra* Section II.C.

271. See *supra* Section II.C.

272. See *supra* Section II.C.; see also *supra* Section III.C.

273. See *supra* Section II.D.

274. See, e.g., *Governments Lobbying State Government*, *supra* note 6, at 3 (“Ten percent of the units of government queried during the ICPR investigation failed to comply in a timely fashion under FOIA.”); *Waste*

Cyberdrive system, on the hand, is extremely accessible for anyone with internet access, and it allows data on all lobbying entities in Illinois to be held in one location, but the information available is very limited for exempt entities.<sup>275</sup> Lastly, housing lobbying spending information on each unit of local governments' website falls in the middle. Though individual websites provide easy access to information, one must visit nearly 200 of these websites for an overall picture of Illinois lobbying spending. Moreover, while the local government websites that provide lobbying spending information exhibit high levels of transparency, not all of these websites provide such information.<sup>276</sup>

Below is a survey of the stricter disclosure requirement bill that was proposed in Illinois, the benefits such a bill could bring, its failures to adequately address transparency and accessibility concerns, and recommendations for how to improve such a bill.

*A. Illinois's Failed HB 5522: Benefits That Could Have Been*

To combat the concerns and issues outlined above, Illinois should work to enact disclosure requirements with a fuller list of required reporting information for units of local government using taxpayer money to fund their lobbying efforts. Illinois ought to adopt stricter disclosure requirements such as those suggested in Illinois House Bill 5522 ("HB 5522"). HB 5522, proposed in 2016, was introduced in the ILGA House as follows:

Amends the Open Meetings Act. Requires a unit of local government or school district with an operating budget of \$1 million or more to *maintain an Internet website and post to that website, for the current calendar or fiscal year, the following information*: (1) information about elected and appointed officials; (2) notice of and materials prepared for meetings; (3) procedures for requesting information from the unit of local government or school district; (4) annual budget; (5) ordinances; (6) procedures to apply for building permits and zoning variances; (7) financial reports and audits; (8) information concerning employee compensation; (9) *contracts with lobbying firms*; (10) taxes and fees imposed by the unit of local government or school district; (11) rules governing the award of contracts; (12) bids and contracts worth \$25,000 or more; (13) a debt disclosure report; and (14) public notices.<sup>277</sup>

HB 5522 not only required local Illinois governments to openly disclose their lobbying contracts on a publicly accessible website, it additionally created a right for "any citizen who is a resident of the unit of local government or school district [to] bring a mandamus or injunction action to compel the unit of

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*Watch*, *supra* note 1, at 10–11 (implying that not all governments responded to the Illinois Policy Institute's FOIA requests).

275. *See supra* Sections II.C–D.

276. *See, e.g., Legislative Participation*, *supra* note 1.

277. H.B. 5522, 99th Gen. Assemb. (Ill. 2016) (emphasis added).

local government or school district to comply with the Internet posting requirements.”<sup>278</sup>

HB 5522 required each unit of local government (maintaining over a specified budget amount) to establish its own website containing the required information.<sup>279</sup> In practice, such a requirement would likely resemble the lobbying information webpage currently maintained by the Village of Schaumburg as explored in Part I.<sup>280</sup> Curious citizens interested in discovering their local governments’ lobbying payroll would have open access to those lobbying contracts, and, if these contracts were not available, they could have a court order the local government to post the contracts. This would make access to information easier than it is now in Illinois and even easier than in states like Kansas where government spending on lobbying is required to be reported in detail but only needs to be “open to public inspection” upon request.<sup>281</sup>

### B. *The Shortcomings of HB 5522*

At first glance, this proposal seems to fall on the high ends of both the transparency and accessibility spectrums. Governments would be required to make lobbying contract information available without being asked, solving the current issue where such preemptive open disclosure is not required. Despite this, one concern is that contracts between lobbyists and their local government clients often do not state the exact issues on which the lobbyists are hired to work (*i.e.*, which pieces of legislation they will be working to support or oppose).<sup>282</sup> For example, one of DuPage County’s lobbying contracts states the description of its lobbyist’s work as “[c]onsulting service as a lobbyist representing DuPage County before the Illinois General Assembly and the Executive Branch of State Government.”<sup>283</sup> Though citizens would be able to determine how much their government is spending, they still would have a difficult time learning on what exactly their money is being spent.

The accessibility concern also seems to be alleviated upon first inspection: all the lobbying contract (and therefore spending) information would be accessible on a public website. The accessibility issue this would not resolve is centralization. If a person wanted a big-picture sense of local government spending, they would be required to visit the lobbying contract disclosure websites of all units of local government.

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278. *Id.*; see also *Waste Watch*, *supra* note 1, at 21 (discussing HB 5522).

279. *Id.*

280. See *supra* text accompanying notes 1–4.

281. KAN. STAT. ANN. § 46-295(a)–(b) (2018).

282. See, e.g., *Awarding Resolution to All-Circo, Inc. for Consulting as a Lobbyist*, LEG-P-0225-18 [DUPAGE COUNTY, ILL.] (Aug. 28, 2018) (displaying the lobbying contract with the County of DuPage and All-Circo, Inc.).

283. *Id.*

C. *A More Effective Version of HB 5522*

A more effective version of HB 5522 would require units of local government spending taxpayer money on lobbying efforts to upload the data required under HB 5522 into Cyberdrive. This would provide taxpayers a better scope of taxpayer-funded lobbying and the ability to view expenditures made by their city, county, school district, and any other local unit of government in a single database.

To reap the full benefits of such a law, Illinois ought to also improve the Cyberdrive system to consistently and fully cross-reference all entities registered within it. Users should not have to toggle between multiple types of search queries to link together various entities, nor should users have to rely on often outdated compilations of client-entity relationships. Such requirements and updates would fix many of the current accessibility gaps in the current reporting requirements.

Additionally, such a bill should require disclosures beyond the lobbying contract between the unit of local government and the lobbying entity. Currently, nonexempt clients are required to choose from a list of policy topics they intend to influence at the ILGA (e.g., housing, elections, appropriations, budget, revenue, etc.).<sup>284</sup> Government clients should be required to disclose at least this. Such disclosure would give taxpayers a better sense of what their taxes are being used for besides the vague description of “consulting” that contracts such as the County of DuPage’s state.<sup>285</sup> Such a requirement would better solve some of the current transparency issues in disclosure requirements.

V. CONCLUSION

The use of taxpayer money to fund lobbying efforts is prevalent at every level of government in the United States.<sup>286</sup> While some states have taken measures to curb the practice, millions of taxpayer dollars are still being spent at the state-level by units of local government on private lobbying contracts.<sup>287</sup> This raises a host of concerns about transparency and accessibility—what is this money being used to support or oppose, who is being hired with this money, are the lobbying efforts really in the best interest of the taxpayer, and how can this information be accessed. Some legislative models predict that local governments will oftentimes use taxpayer money to lobby for legislation that taxpayers might not support; moreover, units of local government have the revenue-generating capabilities and inherent structural organization to be a more effective voice in a state legislature.<sup>288</sup>

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284. *Annual Registration Guide*, *supra* note 84, at 19.

285. *See, e.g., Awarding Resolution to All-Circo, Inc. for Consulting as a Lobbyist*, *supra* note 282.

286. *See supra* Section III.C.

287. *See supra* Section III.C.

288. *See supra* Section III.A.



In Illinois, the disclosure methods and requirements for taxpayer-funded lobbying are inadequate.<sup>289</sup> Units of local government are required to report less information to the taxpayers in the Secretary of State's online database than are private, nongovernment clients.<sup>290</sup> Further, the online database is limited in its cross-referencing ability and is not always intuitive to use.<sup>291</sup> Local government spending on lobbying is on the rise in Illinois—local governments are hiring more lobbyists.<sup>292</sup> Government spending in Illinois is public record—units of local government are required to share their lobbying spending with taxpayers upon request.<sup>293</sup> Unfortunately, not all local governments are forthright with this information on their websites; taxpayers must often resort to FOIA requests, which require an understanding of the FOIA request process, patience, and sometimes denials.<sup>294</sup>

Any solution to this problem in Illinois should consider both transparency and accessibility issues.<sup>295</sup> More in-depth information needs to be available in an organized and centralized system, easily accessible to the taxpayers.<sup>296</sup> Taxpayer-funded lobbying can be of great benefit to the taxpayer, but it must be accountable to the taxpayer.

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289. *See supra* Sections II.C–D, III.C.

290. *See supra* Sections II.C–D.

291. *See supra* Sections II.C–D.

292. *See supra* Section II.B.

293. *See supra* Section II.B.

294. *See supra* Section II.B.

295. *See supra* Part IV.

296. *See supra* Part IV.

