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2006

GENERAL INFORMATION CONCERNING THE NEW LOBBYING LAW AND THE REGISTRATION AND REPORTING REQUIREMENTS FOR GOVERNMENTAL AFFAIRS AGENTS

How has the lobbying law in New Jersey changed?

What is considered to be lobbying in New Jersey and who qualifies as a governmental affairs agent?

What activity is not considered to be lobbying (exemptions from the lobbying law)?

Once you meet the qualifications of a governmental affairs agent, what forms must be filed, and when?

These questions will be answered in a general way in the pages that follow. Please contact the Compliance staff at the telephone numbers listed above if you have any specific questions concerning lobbying in New Jersey.

SUMMARY OF THE NEW LOBBYING LAW

1. The name of the lobbying law has been changed from the "Legislative Activities Disclosure Act of 1971" to the "Legislative and Governmental Process Activities Disclosure Act" (hereafter, Lobbying Law), and the term "legislative agent" has been changed to "governmental affairs agent."
2. The definition of "governmental affairs agent" includes not only those who seek to influence legislation and regulations but also those who seek to influence governmental processes.
3. The scope of lobbying activity that is now subject to reporting has been expanded significantly to include "governmental process" lobbying. A governmental process includes:
 - Promulgating executive orders;
 - Rate setting;
 - Public contracting;
 - Issuing, denying, modifying, renewing, revoking or suspending permits, licenses, or waivers;
 - Bidding procedures;
 - Imposing or modifying fines and penalties;
 - Purchasing procedures;
 - Financial assistance, grant, and loan processing; and,
 - Rendering of administrative determinations.

Representation of clients by attorneys in the regular course of routine litigation or administrative proceedings **does not** constitute influencing governmental processes.

Also, making communications involving collective negotiations **does not** constitute influencing governmental processes.

Record-keeping for governmental process lobbying began on January 1, 2006, and is reportable on the quarterly activity reports beginning on April 10, 2006 and the annual financial report due on February 15, 2007.

4. Contingent Fees Banned-A governmental affairs agent is prohibited from entering into a fee arrangement contingent upon the success of any attempt to influence any legislation, regulation, or governmental process. This law took effect on June 16, 2004, and applies to any agreements entered into after that date.
5. "Grassroots" lobbying activity (a communication directed to the public rather than to a legislator or regulator) is subject to annual financial reporting. Expenditures undertaken to communicate with the general public about legislation or regulations are reportable on the annual financial report by agents. Note that if an individual engages in grassroots lobbying activity exclusively (and engages in no other lobbying activity or benefit passing) no registration as a governmental affairs agent is required of that individual. Record-

keeping begins on January 1, 2006 for this activity and is reportable on the annual financial report due on February 15, 2007.

6. The Governor, legislators, and heads of principal departments in the Executive Branch are prohibited from lobbying for one year after leaving office.

7. Annual registration fees for governmental affairs agents were raised by \$100; therefore, the annual fee for registration as an agent is now \$425. This fee is renewable annually on November 15th of each year.

8. The Commission is directed to conduct random audits of the records of governmental affairs agents. Examples of records and documents include, but are not limited to: checks, bank statements, contracts, receipts, disbursements, and records of other transactions. Records must be kept for three years after the calendar year in which they were made.

9. There is a new restriction on gifts. No lobbyist or governmental affairs agent may give gifts totaling more than \$250 per year to a legislator or to legislative staff or to an officer or staff member of the Executive Branch. The \$250 per year limit includes gifts to each member of the immediate family of a public official including a spouse, child, parent, or sibling residing in the same household. This “gift ban” law has been in effect since April 13, 2004.

PART II

What is considered to be “lobbying” in New Jersey and who qualifies as a governmental affairs agent?

First, what is considered to be lobbying in New Jersey?

Lobbying occurs when there is an attempt to influence legislation, regulations, or governmental processes by communicating with, or providing a benefit to, a State official covered by the Lobbying Law.

What does it mean to influence legislation, regulations, or governmental processes, in general?

“Influence legislation” means to make any attempt, whether successful or not, to secure or prevent the initiation of any legislation, or to secure or prevent the passage, defeat, amendment, or modification of legislation.

“Influence regulation” means to make any attempt, whether successful or not, to secure or prevent the proposal of any regulation or to secure or prevent the consideration, amendment, issuance, promulgation, adoption, or rejection of a regulation.

“Influence a governmental process” means to make any attempt, whether successful or not, to assist a represented entity or group to make communications regarding a governmental process.

Lobbying activity that takes place before the introduction of a bill or the proposal of a regulation is reportable.

Who is considered to be a governmental affairs agent?

A governmental affairs agent is defined as a person who is **compensated to influence legislation, regulations, or governmental processes by communicating with** (for more than 20 hours in a calendar year), or **providing a benefit to**, a State official covered by the Lobbying Law.

The preparation time of an agent is reportable as lobbying activity and is part of the calculation in determining when 20 hours has been reached.

NOTE: EXPERTS OR EMPLOYEES MAKING COMMUNICATIONS IN THE COMPANY OF A GOVERNMENTAL AFFAIRS AGENT FOR THE SOLE PURPOSE OF PROVIDING TECHNICAL OR EXPERT ADVICE ARE **NOT** GOVERNMENTAL AFFAIRS AGENTS. RATHER, THESE PERSONS ARE CONSIDERED TO BE SUPPORTING THE ACTIVITIES OF THE GOVERNMENTAL AFFAIRS AGENT AS SUPPORT PERSONNEL. THESE SUPPORT PERSONS DO NOT HAVE TO REGISTER; IF, HOWEVER, THEIR ACTIVITIES SUPPORTING THE GOVERNMENTAL AFFAIRS AGENT EXCEED 450 HOURS IN A CALENDAR YEAR, THE SUPPORT PERSONNEL COSTS MUST BE REPORTED IN THE ANNUAL REPORT OF FINANCIAL ACTIVITY FILED BY THE GOVERNMENTAL AFFAIRS AGENT.

Let's take a look at each of the component parts of the definition of a **governmental affairs agent**.

“Compensation” means: money or other thing of value, including the reimbursement of expenses in excess of \$100 in a three-month period. Uncompensated lobbying services are generally not reportable unless there is an "intangible" financial benefit being gained by the governmental affairs agent (i.e., promise of future employment).

“Communicating with” means any communication, oral or in writing.

“Communicating” does not, in general, include a communication on a **routine, ministerial** matter.

Routine, ministerial matters include scheduling a meeting, requesting the status of an administrative matter, requesting forms or procedures, applying for a permit or license as required by law, responding to an audit, and other similar types of activities.

“Providing a benefit to” means making any expenditure for entertainment, food and beverage, travel and lodging, honoraria, gifts, loans, or other things of value.

“State Official Covered by the Lobbying Law” includes the Governor, the Governor's staff, the Legislature, legislative staff, or any officer or staff member of the Executive Branch.

PART III

What activities are not considered to be lobbying?

The provisions of the Lobbying Law (with regard to influencing legislation, regulations, and governmental processes) do not apply to the following activities:

- Publication of a news item or editorial in the ordinary course of business;
- Acts of a government employee in carrying out his or her official duties;
- Acts of bona fide religious groups acting for the purpose of protecting the public's right to practice religion;
- Acts of a political party;
- Acts of a person testifying on legislation or regulations who is uncompensated and makes no other communication in connections with his/her testimony;
- Communicating with or providing a benefit to a State official covered by the law if it constitutes a "personal expression" (paid for out of his/her own funds, not be reimbursed in any way, and not incident to his/her employment); and,
- Communicating on a routine, ministerial matter.

What is a routine, ministerial matter?

Communicating with a State official covered by the Lobbying Law on a routine, ministerial matter is not considered to be lobbying. "Routine, ministerial" matters include:

- Scheduling a meeting;
- Requesting the status of an administrative matter;
- Requesting forms or procedures;
- Requesting information concerning requirements to comply with existing laws or regulations;
- Applying for a permit or license as required by law;
- Participating in an inspection as required by law;
- Responding to an audit conducted pursuant to law;
- Sales communications for the sole purpose of selling goods or services;
- Inquiries about the delivery of services or materials pursuant to an existing contract;
- Providing advice or performing services pursuant to an existing contract;
- Preparing documents and materials in response to a request for proposal or to participate at a bid conference after bid Specifications have been established;
- Responding to a subpoena;
- Responding to a public emergency or condition involving public health or safety; and,
- Providing a response to a detailed request for specific information.

Note: If a governmental affairs agent communicates with one of the following State officials, it is presumed to be a communication to influence legislation, regulations, or governmental processes: the Governor, the Governor's staff, the Governor's Chief of Staff, or a Commissioner, Deputy Commissioner, Assistant Commissioner, Division Director, Chief of Staff, Executive Director, policy advisor, or a person in an analogous position in a principal department in the Executive Branch of State Government, or in any authority, board, commission or other agency or instrumentality in or of such a principal department, or to a person empowered by law to issue, adopt, or promulgate regulations. This presumption is rebuttable. Exceptions to this rebuttable presumption of a communication to influence legislation, regulations, or governmental processes are the attorney-client privilege and communications for collective negotiations.

The provisions of the Lobbying Law do not apply to the participation in a task force, advisory board, or working group that is specifically established pursuant to statute or established by the head of a principal department in State government who has statutory authority to convene the group and where the following conditions have been met: the individual has been nominated or invited to participate; and, the individual receives no separate compensation for his or her services.

For governmental process lobbying, these activities **do not** constitute lobbying:

Attorney-Client Privilege-Any communications, matters, or acts of an attorney falling within the attorney-client privilege while engaging in the practice of law to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; and, any communications by an attorney representing a client in the regular course of a routine litigation or administrative proceeding with the State or in the course of a quasi-judicial civil or administrative proceeding with the State.

Collective Negotiations-Any communications, matters, or acts involving collective negotiations, or the interpretation or violation of collective negotiation agreements, of a labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

PART IV

Assuming you have met the definition of a governmental affairs agent, here are the forms that must be filed:

NOTICE OF REPRESENTATION (FORM NR)

The Notice of Representation is a basic form that makes public your representation of a client. If this is the first time that you are representing a client as a governmental affairs agent, you will accompany the form with 2 photos (2" x 2") and the \$425 fee. The fee is assessed to the person, and is renewable each year in November. A photo ID badge will be mailed to you after your Notice of Representation is filed with ELEC. In general, the badge must be worn when lobbying. If a person qualifies as a governmental affairs agent

he/she must register with ELEC within 30 days of accepting a client or prior to making a communication with, or providing a benefit to, a State official covered by the Lobbying law (whichever is earlier).

QUARTERLY FILING (FORM Q-4)

Agents must file a quarterly report of their lobbying activity with ELEC on the Quarterly Report of Activities. The Quarterly Report (Form Q-4) is filed on the 10th of April, July, October, and January of each year.

ANNUAL REPORT

Two kinds of financial activity are reported annually if over \$2,500 has been raised or spent: Benefit passing of over \$25 a day or \$200 per year to both legislative and executive branch officials; and, general communication costs of lobbying.

Reporting of benefit passing gives the public critical information about potential sources of undue influence on public officials. Reporting of communication costs gives the public a general idea of the overall expense of lobbying activity.

Benefit passing covers: meals, entertainment, gifts, and travel and lodging for public officials. There is a record-keeping exemption for passing a benefit of \$5 or less.

There is a personal expression exemption that allows an agent to pass benefits without reporting providing that the agent uses his or her own "personal funds."

Agents have to provide "a written benefit notice" to all public officials that have received a benefit from them; the notice must be given before the annual report is filed.

Communication costs cover: salaries of agents and their support personnel such as legal, technical, & clerical staff; travel and lodging costs for agents; and, costs such as printed materials, postage, telephone, fax, receptions, direct mail pieces, newspaper ads, and TV/radio broadcasts.

The Annual Report is filed on February 15th of each year. The report covers the prior calendar year. For example, the February 15, 2007 report covers financial activities from January 1, 2006 to December 31, 2006. Lobbying activity must be reported for the calendar year in which it was performed regardless of when it was billed.

NOTICE OF TERMINATION (FORM NT)

The Notice of Termination must be filed within 30 days of ceasing activities as a governmental affairs agent. This Form NT is used to terminate all your activities as a governmental affairs agent, in which case you must surrender your badge at the time Form NT is filed.

Or, if you are simply terminating your representation of a particular client, Form NT is filed to terminate that client and you may keep your badge.

You must also file Form NT when you change employment and you cease being an agent for a particular employer and become an agent for another employer. If your registration fee of \$425 has been paid for the year, we will issue you a new badge with a new number. No additional fee is charged during that year for the change in employer.