



State of New Jersey

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### **GENERAL INFORMATION CONCERNING THE REGISTRATION AND REPORTING REQUIREMENTS FOR GOVERNMENTAL AFFAIRS AGENTS, REPRESENTED ENTITIES, AND PERSONS COMMUNICATING WITH THE GENERAL PUBLIC**

*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?*

*Is “grassroots lobbying” (communicating with the general public) a reportable activity?*

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.

## **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 high level State official. Also, communication with the general public is considered to be lobbying (“grassroots lobbying”).**

*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 high level State official.**

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 INDIVIDUAL ACTIVITIES SUPPORTING THE GOVERNMENTAL AFFAIRS AGENT EQUAL 450 OR MORE 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, lodging, honoraria, gifts, loans, or other things of value.

“High Level State Official” means the Governor, the Governor’s Chief of Staff, the Governor’s staff, the Legislature, and legislative staff, and high level Executive Branch officials such as a Commissioner, Deputy Commissioner, Assistant Commissioner, Division Director, Chief of Staff, and Executive Director. A “high level” State official also includes a policy advisor or a person in an analogous position to the titles listed as high level State officials, or to a person empowered by law to issue, adopt, or promulgate administrative rules. For example, if a person’s name or title is listed in the “Fitzgerald’s Legislative Manual,” that person or the person holding that title is likely to be a high level State official. In general, it is a rebuttable presumption that a communication made to a high level State official is a lobbying communication.

Note that all committees and commissions established by the Legislature or by either House are included as part of the Legislature. Similarly, all authorities, boards, commissions, or other agencies or instrumentalities in or of a principal department of the Executive Branch of State government are included as part of the Executive Branch.

Communications made to lower level State officials are considered to be routine and ministerial, and therefore are not lobbying communications. In general, “routine and ministerial” means communications that are not seeking preferential treatment or the alteration of a decision. Where the communication is intended to obtain service, information, or assistance, and where no discretion is being exercised, no lobbying has occurred. Specific examples of routine and ministerial communications are detailed below.

### **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 high level State official 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.

Communicating with any State official 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.

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.

**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 an entity (Represented Entity). If this is the first time that you are representing an entity 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 employment, retainer, or engagement as a Governmental Affairs Agent or prior to making a communication with, or providing a benefit to, a high level State official (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 10<sup>th</sup> of April, July, October, and January of each year.

**ANNUAL REPORT (Forms L1-L, L1-A, L1-G, L-2, L-3)**

A Governmental Affairs Agent or Represented Entity who or which receives receipts in excess of \$2,500 or makes expenditures of more than \$2,500 in any calendar year for the purpose of communication with, or providing a benefit

to, a State official covered by the "Legislative and Governmental Process Activities Disclosure Act" for the purpose of influencing legislation, regulations, or governmental processes, or for the purpose of communication with the general public ("grassroots lobbying") must file an Annual Report with the New Jersey Election Law Enforcement Commission (the Commission). Also, a person other than a Governmental Affairs Agent or Represented Entity who makes expenditures or receives contributions in excess of \$2,500 for the purpose of communication with the general public ("grassroots lobbying") must file an Annual Report. In general, the communication costs of lobbying as well as the costs of benefit passing are reportable on the Annual Report.

Reporting of communication costs gives the public a general idea of the overall expense of lobbying activity. 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.

Reporting of benefit passing gives the public critical information about potential sources of undue influence on public officials. Benefit passing covers: meals, entertainment, gifts, 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 must provide "a written benefit notice" to all public officials that have received a benefit from them; the notice must be given no later than February 1st.

The Annual Report is filed on February 15<sup>th</sup> of each year. 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 (Form NT) must be filed within 30 days of ceasing activities as a Governmental Affairs Agent. 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 entity, Form NT is filed to terminate that entity 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.

#### ***Is "grassroots lobbying" (communicating with the general public) a reportable activity?***

"Grassroots" lobbying activity (a communication directed to the public rather than to a legislator or regulator) is subject only to annual financial reporting. Accordingly, a Represented Entity or Governmental Affairs Agent that engages in grassroots lobbying must include these costs in their Annual Reports. If communicating with the general public is the only type of lobbying engaged in by a person or group, no Notice of Representation, Quarterly Report, or Notice of Termination is required; rather, only the Annual Report of Communication with the General Public (Form L1-G) must be filed if the person or group makes expenditures or receives contributions for the purpose of communicating with the general public in excess of \$2,500 in a calendar year.