



Chapter 1: Lobbying Overview and Definitions

Lobbying is any attempt to influence government decision-making. Every year, Lobbyists and Clients spend millions of dollars trying to influence State and local governments. Money, time, and other resources devoted to lobbying efforts must be calculated to determine whether the \$5,000 annual lobbying threshold has been met or is reasonably anticipated to be exceeded in any calendar year during the biennial period.

Legislative Law Article 1-A, also known as the “**Lobbying Act**”, requires the registration and reporting of individuals and organizations that either spend more or anticipate spending more than the lobbying threshold on efforts to influence the passage or defeat of any legislation or resolution and other government activities. Lobbyists and Clients are required to publicly disclose their identities, activities and expenditures by filing reports at regular intervals with the Joint Commission on Public Ethics (“JCOPE”).

In addition, Lobbyists and Clients are subject to certain ethics provisions in the Lobbying Act and must comply with random audits conducted by JCOPE. These audits are conducted year-round by the Commission, and allow the Commission to verify the accuracy of Filings drawn by random statistical selection.

Finally, every individual identified as a Lobbyist must complete regular ethics training at least once in any three-year period during which they are registered as a Lobbyist.

Who is subject to the Lobbying Act?

The Lobbying Act applies to Lobbyists, Public Corporations, and Clients, including the individuals employed by them, who in any calendar year during a biennial period either reasonably anticipate incurring, expending, or receiving, or actually incur, expend, or receive more than \$5,000 in combined reportable compensation and expenses for Lobbying Activities on a state and/or local level.

Are there requirements under the Lobbying Act other than filing Reports?

In addition to the registration and reporting requirements, Filers are also required to:

- Retain documents to substantiate the finances listed in the reports for three years;
- Refrain from giving/receiving Compensation on a contingent basis as these are prohibited by the law;
- Adhere to the gift rules in the Lobbying Act and Part 934 of JCOPE’s regulations; and
- All Lobbyists are required to complete a mandatory online ethics training (See Chapter 1. Lobbying Overview and Definitions “Mandatory Ethics Training” section for more information).

Lobbying Definitions

Lobbyist

A person or organization who engages in Lobbying Activity and includes Retained, Employed, and Designated Lobbyists. While Lobbyist includes officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the Education Law, the term does not include any other officer, director, trustee, employee, counsel or agent of the State, or any Municipality or subdivision thereof when discharging their official duties.

Retained Lobbyist

A person or organization engaged to lobby for the benefit of an unaffiliated Client.

Employed Lobbyist

A person who lobbies on behalf of the organization by which they are employed.

Designated Lobbyist

A person who lobbies on behalf of a Client as a board member or officer, whether compensated or uncompensated, but does not offer services to other Clients as a Retained Lobbyist. Designated Lobbyist may also include an elected official who Lobbies on behalf of a Public Corporation.

Public Official

1. The governor, lieutenant governor, comptroller, or attorney general;
2. Members of the State legislature;
3. Officers and employees of the legislature;
4. State officers and employees; and
5. Municipal officers and employees.

No individual shall be deemed a Public Official solely based on service on an Advisory Board.

Client

A person or organization on whose behalf Lobbying Activity is conducted. A Client can retain, employ, or designate any person or organization to carry on Lobbying Activity on behalf of itself or another.

Public Corporation

A municipal corporation, including counties, cities, towns, villages and school districts, a district corporation, and a public benefit corporation as defined in section sixty-six of the General Construction law.

Responsible Party

The Lobbyist or Client's Chief Administrative Officer, or a designee, who is responsible for filing the Statements or Reports required under the Lobbying Act.

State agency

A department, board, bureau, commission, division, office, council, committee or officer of the State, whether permanent or temporary, a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings.

A State agency does not include the judicial branch or agencies created by interstate compact or international agreement.

State Officers and Employees

- 1) Heads of State departments and their deputies and assistants, other than members of the board of regents of the university of the State of New York who receive no compensation or are compensated on a per diem basis;
- 2) Officers and employees of statewide elected officials;
- 3) Officers and employees of State departments, boards, bureaus, divisions, commissions, councils, or other State agencies; and
- 4) Members or directors of public authorities (other than multi-state authorities), public benefit corporations and commissions at least one of whose members is appointed by the governor, and employees of such authorities, corporations, and commissions.

No individual shall be deemed a State Officer and Employee solely based on service on an Advisory Board.

Lobbying Organization

Any company, firm, entity, or other organization that utilizes Employed or Designated Lobbyists to Lobby on its behalf, or incurs Lobbying Expenses on its own behalf.

Municipality

Any jurisdictional subdivision of the state, including but not limited to:

- counties, cities, towns, villages, improvement districts and special districts with a population of more than 5,000;

CHAPTER 1: LOBBYING OVERVIEW AND DEFINITIONS

- industrial development agencies in jurisdictional subdivisions with a population of more than 5,000;
- public authorities;
- public corporations, except for those types of entities referenced in paragraphs (1) and (2) of this section with a population of 5,000 or less; and
- school districts of any size.

Reportable Business Relationship

A relationship in which a Lobbyist or Client of a Lobbyist pays, has paid or promises Compensation, and is or was in exchange for goods, services or anything of value, the total value of which exceeds \$1,000 annually (within 12 consecutive months), to be performed or provided by, or intended to be performed or provided by:

- any Statewide elected official, State officer, State employee, member of the legislature or legislative employee, or
- any entity in which the Lobbyist or the Client knows or has reason to know the Statewide elected official, State officer, State employee, member of the legislature or legislative employee is a proprietor, partner, director, officer or manager of a non-governmental entity, or owns or controls 10% or more of the stock of a non-governmental entity. This threshold is reduced to 1% in the case of a corporation whose stock is regularly traded on an established securities exchange.

See Chapter 6 - Reportable Business Relationships for more information.

Lobbying Activity

Lobbying Activities include both Direct Lobbying and Grassroots Lobbying. Reporting requirements under the Lobbying Act are not necessarily triggered by engaging in Lobbying Activity alone, but rather when the following criteria have both been satisfied:

An attempt to influence an activity described below, and

The cumulative Compensation and Expenses received, expended or incurred, or reasonably anticipated to be received, expended or incurred, for any such activities must exceed \$5,000 in any calendar year during a biennial period.

The term "**Lobbying**" or "**Lobbying Activity**" shall mean and include any attempt to influence:

- (i) the passage or defeat of any legislation or resolution by either house of the state Legislature, including but not limited to, the introduction or intended introduction of such legislation or resolution, or approval or disapproval of any legislation by the governor;

CHAPTER 1: LOBBYING OVERVIEW AND DEFINITIONS

- (ii) the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;
- (iii) the adoption or rejection of any rule or regulation having the force and effect of law by a state agency;
- (iv) the outcome of any rate making proceeding by a state agency;
- (v) any determination:
 - (A) by a public official, or by a person or entity working in cooperation with a public official related to a governmental procurement, or
 - (B) by an officer or employee of the unified court system, or by a person or entity working in cooperation with an officer or employee of the Unified Court System related to a governmental procurement;
- (vi) the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any other state actions related to Class III gaming as provided in 25 U.S.C. § 2701, except to the extent designation of such activities as "lobbying" is barred by the federal Indian Gaming Regulatory Act, by a public official or by a person or entity working in cooperation with a public official in relation to such approval, disapproval, implementation or administration;
- (vii) the passage or defeat of any local law, ordinance, resolution, or regulation by any Municipality or subdivision thereof;
- (viii) the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a Municipality;
- (ix) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law ordinance, resolution, or regulation; or
- (x) the outcome of any rate making proceeding by any Municipality or subdivision thereof.

Lobby Day

Select days used by organizations, often annual, when lay members of an organization meet with Public Officials at various levels to advocate on issues relevant to the organization.

Reportable Compensation and Reportable Expenses

All Compensation and Expenses associated with Lobbying Activity should be accounted for using accrual basis accounting, *i.e.*, costs are reported in the period in which they are incurred.

CHAPTER 1: LOBBYING OVERVIEW AND DEFINITIONS

Reportable Compensation

Any salary, fee, gift, payment, benefit, loan, advance, or any other thing of value paid, owed, given, or promised to the Lobbyist by the Client, or employer, in exchange for Lobbying or services that are otherwise in furtherance of Lobbying Activity, including year-end or other bonuses, but not fringe benefits.

Reportable Expenses

Any cost of Lobbying Activity that is incurred by or reimbursed in connection with a Lobbying Activity that is not Lobbyist Compensation.

Types:

- 1) **Non-lobbying staff salaries** – Compensation paid to those professional and clerical employees who do not engage in Lobbying Activity must be reported as an Expense.
 - (a) Salaries of non-lobbying staff should be reported in the aggregate.
 - (b) Filers should have a good faith methodology that demonstrates how the allocation of non-lobbying staff time was reached.
- 2) **Aggregated** – Expenses of \$75 or less may be reported as a single aggregate total.
- 3) **Itemized** – Expenses valued at more than \$75 must be itemized – reporting the payee, the nature of the expense, and the value.
- 4) **Reimbursed** – Lobbyist should report the aggregate value of all Expenses (regardless of value of the individual Expenses) that were reimbursed by the Client.

Reportable Expenses may include items which, in and of themselves, do not constitute lobbying, but when used as part of a lobbying effort become reportable expenses. Examples reviewed under the definition are non-inclusive and practitioners are encouraged to request Commission clarification prior to completing their reports.

Reportable expenses may include, but are not limited to, the following:

- Advertising, telephone, electronic advocacy, food, beverages, tickets, entertainment, parties, receptions or similar events, advocacy rallies, consultant services, expenses for non-lobbying support staff, and courier services when said expenses are part of a lobbying effort.

Statutory Exceptions to Lobbying Activities

The following activities are not Lobbying Activities

Non-lobbying legal services

Services by persons engaged in drafting, advising clients on or rendering opinions on proposed legislation, rules, regulations or rates, municipal ordinances and resolutions, executive orders, Procurement Contracts, or tribal-state compacts, memoranda of understanding, or any other tribal-state agreements or other written materials related to Class III gaming as provided in 25 U.S.C. § 2701, when such professional services are not otherwise connected with state or municipal legislative or executive action on such legislation, rules, regulations or rates, municipal ordinances and resolutions, executive orders, Procurement Contracts, or tribal-state compacts, memoranda of understanding, or any other tribal-state agreements or other written materials related to Class III gaming as provided in 25 U.S.C. § 2701.

If an organization or firm provides both Lobbying and non-lobbying legal services to a Client, the Statement of Registration should only identify as Individual Lobbyists those persons who performed Lobbying services, however, all services related to the Lobbying Activity provided by the organization or firm are reportable expenses.

News gathering and publication

Newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities in connection with proposed legislation, rules, regulations or rates, municipal ordinances and resolutions, executive orders, tribal-state compacts, memoranda of understanding or other tribal-state agreements related to Class III gaming as provided in 25 U.S.C. §2701, or Procurement Contracts by a State Agency, Municipal Agency, Local Legislative Body, the State legislature, or the Unified Court System, are limited to the publication or broadcast of news items, editorials or other comments, or paid advertisements.

Contacts with the media

Communications with a professional journalist or newscaster, including an editorial board or editorial writer of a newspaper, magazine, news agency, press association or wire service, relating to news, as these terms are defined in section seventy-nine-h of the civil rights law, and communications relating to confidential and non-confidential news as described in subdivisions (b) and (c) of section seventy-nine-h of the civil rights law respectively and communications made pursuant to community outreach efforts for broadcast stations required by federal law.

Local lobbying by IRC Section 6033(a) religious organizations

Any attempt by a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a federal income tax return under paragraph 2(A)(i) of section 6033(a) of Title 26 of the United States Code or a religious order that is exempt from filing a federal income tax return under paragraph (2)(A)(iii) of such section 6033(2) to influence passage or defeat of a local law, ordinance, resolution or regulation or any rule or regulation having the force and effect of a local law, ordinance or regulation.

CHAPTER 1: LOBBYING OVERVIEW AND DEFINITIONS

Licenses and Permitting

Applications for licenses, certificates, and permits authorized by statutes or local laws or ordinances. This exception includes applications for special permits, variances, and revocable consents.

Participation at certain public proceedings

Persons who participate as witnesses, attorneys or other representatives in public proceedings of a State or Municipal Agency with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation.

Adjudicatory Proceedings

Persons who attempt to influence a Public Official in an adjudicatory proceeding, as defined by section one hundred two of the state administrative procedure act.

Response to requests for information/comments

Persons who prepare or submit a response to a request for information or comments by the State legislature, the governor, or a State Agency or a committee or officer of the legislature or a State Agency, or by the Unified Court System, or by a legislative or executive body or officer of a Municipality or a commission, committee or officer of a municipal legislative or executive body.

This exception applies only if the person did not urge the requesting party to make the request.

Prohibitions in the Lobbying Act

- Pursuant to section 1-k, which prohibits contingent retainers, no Client may pay and no Lobbyist may receive Compensation in which the amount or rate is contingent on the outcome or terms of any Attempt to Influence a Lobbying Activity. "Compensation" includes any fee, bonus, stock option, equity inducement or other form of remuneration. Violations may result in civil penalties of up to \$10,000 and a Class A misdemeanor.
- It is presumptively impermissible for a Lobbyist or Client to offer or give a Gift to any Public Official. (Definitions of "gift" can be found in the Lobbying Act.) Any Lobbyist, Public Corporation, or Client who violates this prohibition may be subject to civil penalties of up to \$25,000 or three times the value of the gift and/or a class A misdemeanor for a first violation, and a class E felony for a second violation within five years of the first. Any Lobbyist convicted of or pleading guilty to such a felony may be barred from acting as a Lobbyist for a period of one year from the date of the conviction.
- A person or organization required to file a Statement or Report pursuant to the Lobbying Act is prohibited from engaging in Lobbying Activities concerning a governmental procurement during the restricted period as defined in section 1-c(m) of the Act by contacting:

- (i) A person within the procuring entity who has not been designated pursuant to section 139-j of the State Finance Law to receive communications relative to the Governmental Procurement; or
- (ii) A person in a State Agency other than the State Agency conducting the Governmental Procurement.

A first-time violation of this provision may subject the person or organization to a civil penalty of up to \$10,000. Subsequent violations of this provision within four years of the initial violation may subject the person or organization to a civil penalty fine of up to \$25,000.

Mandatory Ethics Training for Registered Lobbyists and Individual (Additional) Lobbyists

The Lobbying Act requires all registered Lobbyists to complete a mandatory online ethics training. This applies to both the principal and additional Lobbyists who are registered with JCOPE. The “**Ethics for Lobbyists**” course takes approximately 30 minutes to complete and can be accessed from any personal computer with an Internet connection.

Such training must be completed by a registered Lobbyist once every three years, as follows:

- (i) Complete the training within 60 days of initial registration;
- (ii) Complete the training again within three years of the date the Lobbyist first or subsequently completed the training, if such Lobbyist is still registered to lobby at such time; and/or
- (iii) If there is a lapse in a Lobbyist’s registration, complete the training again within 60 days of re-registration to lobby or three years from the date such Lobbyist last completed such training, whichever is later.

Ethics for Lobbyists covers information provided in the Lobbying Act, the Public Officers Law, JCOPE regulations and advisory opinions, and the Election Law. The training also includes best practices for meeting the various statutory requirements. More information is available at the Ethics for Lobbyists Training page located from the “**Education**” main navigation menu on the JCOPE website.