

Am I ...

Lobbying?

An overview of the New York State Lobbying Act



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What is lobbying?

Lobbying is an attempt to influence a specific list of governmental decisions or actions. “*Lobbying*” and “*Lobbying Activities*” are collectively defined in the Lobbying Act, and include any attempt to influence:

- (a) the passage or defeat of legislation;
- (b) the adoption, modification or rescission of an executive order;
- (c) the adoption, modification or rescission of a state agency regulation; or
- (d) a decision related to a governmental procurement.

Lobbying can occur at the State or local level. Anyone who engages in such activity is a “*Lobbyist*” under the law. However, not all Lobbying must be reported. (See below).

A Client is the person or organization on whose behalf and at whose request Lobbying Activity is conducted. A Client can either retain an outside Lobbyist to assist it in its Lobbying efforts, or it can utilize one or more individuals within the Client’s own organization to Lobby on its behalf. In the latter case, the organization would be both a Lobbyist and a Client.

Every year millions of dollars are spent on Lobbying in New York. Clients retain or employ Lobbyists to influence government policies on topics ranging from energy and natural resources, to education, healthcare, labor issues, veteran affairs, transportation and other issues affecting special interests and members of the public.

When must Lobbying be reported?

For Lobbying to be reportable, two things must occur: (1) a Lobbyist has engaged in Lobbying Activity; and (2) such Lobbyist incurs, expends or receives (or reasonably anticipates incurring, expending or receiving) more than \$5,000 in compensation and expenses related to Lobbying Activities in a calendar year.

The \$5,000 threshold must be computed cumulatively across all Lobbying Activities. In other words, if a Lobbyist has or reasonably anticipates having compensation and expenses adding up to more than \$5,000 across all Lobbying Activities (including all Clients), then the Lobbyist must file reports disclosing such activity. Similarly, any Client that spends more than \$5,000 on lobbying in a calendar year must file reports disclosing such activity.

Commonly Disclosed Reportable Expenses

- Advertisements
- Buses for lobby events
- Consulting
- E-Advocacy
- Flyers
- Legislative bill tracking
- Legislative research
- Lobbyist filing fees
- Lodging
- Meals for lobby day events
- Phone/Cell phone, Internet
- Photocopies
- Postage
- Posters
- Social events
- Travel reimbursement
- Web maintenance

Direct vs. Grassroots Lobbying

Lobbying can occur in two forms: Direct Lobbying or Grassroots Lobbying.

Direct Lobbying involves direct contact between a Lobbyist and the government official the Lobbyist is seeking to influence. Face-to-face meetings, telephone calls, distribution of written materials, e-mails, and social media interactions all fall under the umbrella of Direct Lobbying.

Grassroots Lobbying is indirect and involves soliciting another to make direct communication with a Public Official. It often occurs through advertisements, rallies, receptions, social media or grassroots communications. For more information about Direct and Grassroots Lobbying, see the Commission's regulations at 19 NYCRR Parts 943.6 and 943.7.



Grassroots Lobbying

Grassroots Lobbying is essentially an attempt to advance a position by generating support and action from the public.

In order for a communication to be considered Grassroots Lobbying, it must take a clear position on a specific “government action” and urge the public or a segment of the public to contact a Public Official in support of that position.

For more information about Grassroots Lobbying, see 19 NYCRR Part 943 of the Commission's regulations and Advisory Opinion 16-01 at www.jcope.ny.gov.

Procurement Lobbying

Procurement Lobbying is an attempt to influence a government contract or purchasing decision. The procurement in question must be for more than \$15,000 for the Lobbying to be considered reportable under the Lobbying Act.

A State or local government agency will often issue a Request for Proposal (“RFP”) describing what commodity it seeks to purchase. Vendors respond to the RFP by submitting a bid for consideration. Once a State entity posts an RFP, Lobbying Activity is restricted until the State or local agency has selected a vendor.

What are some restrictions on Lobbyists, Clients, and Lobbying?

Gifts to Public Officials

Lobbyists and Clients of Lobbyists are prohibited from giving gifts to Public Officials.



Public Officials generally include the four statewide elected officials (Governor, Lieutenant Governor, Comptroller and Attorney General), members and employees of the Legislature, and officers and employees of State agencies, boards, departments, and commissions. Officers and employees of local municipalities with a population of over 5,000 also qualify as Public Officials under the Lobbying rules. For a more detailed definition of “Public Official,” see 19 NYCRR Part 934.2(q) of the Commission’s regulations.

Generally, a gift is anything valued at more than \$15; however, some items so valued may not be gifts. For a list of exclusions and other rules, see the Commission’s regulations at 19 NYCRR Parts 933 and 934. The gift restrictions are in place to avoid creating the appearance that a gift is being offered to either influence the Public Official or to reward them for performing their public duties.

Contingent Retainers

Clients are prohibited from retaining or employing any Lobbyist when the Lobbyist’s compensation is based on the success or failure of the Lobbying Activity. The amount of compensation or payment a Lobbyist receives must not be dependent (or contingent) upon

the results a Lobbyist has with respect to influencing a Public Official. Similarly, a Lobbyist may not accept a contingent retainer. For more information about the contingent retainer prohibition, see 19 NYCRR Part 943.5(c)(2) and (3).

What are my reporting obligations under the Lobbying Act?

Registration and Reporting of Lobbying Activities

As a Lobbyist, if your Lobbying efforts exceed, or you reasonably anticipate they will exceed, the \$5,000 threshold, you will be required to register with JCOPE and fill out Bi-Monthly reports that disclose the amount of money earned and expenses reimbursed for attempting to influence government actions.

Calculating the \$5,000 Threshold

You (as a Lobbyist or Client) will have reached the \$5,000 threshold if you incur, expend, or receive, or reasonably anticipate incurring, expending, or receiving, more than \$5,000 in combined reportable compensation and expenses for Lobbying Activities on a State and/or local level per calendar year.

- Money paid to an external Lobbyist, internal spending (salaries, business costs associated with in-house Lobbying) and expenses of purchases towards things like advertising are to be included in the calculation. Reportable expenses also generally include items such as postage and electronic advocacy listed on page 1.
- Remember, the threshold is cumulative across all Lobbying Activities engaged in by a Lobbyist or Client.



Filing Requirements

Once an individual or entity has determined that its attempts to influence government decision-making qualify as Lobbying under the Lobbying Act, registration and reporting may be required.

Lobbyist Statement of Registration

The Lobbyist Statement of Registration describes anticipated Lobbying efforts within a two-year (biennial) period. A separate Statement of Registration is required for each Client. The registration includes, but is not limited to:

- An executed Lobbying Agreement form, as provided by the Commission, or copy of a signed Lobbying agreement/contract (or written authorization to lobby if no contract exists), detailing the start and termination dates of the Lobbying Activity and the amount of compensation a Lobbyist will be paid by the Client;
- Name of the Principal Lobbyist;
- Client name and contact information;
- Names of the individuals who are authorized to Lobby;
- Subject matter for anticipated Lobbying;
- Targets of the expected Lobbying, including the person, organization, entity, or legislative body before which you expect to lobby;
- \$200 filing fee.

Bi-Monthly Reporting

A Lobbyist must file Bi-Monthly reports every other month. These filings report the actual activity undertaken by and the compensation and expenses reimbursed to the Lobbyist during that time period. Bi-Monthly reporting is required even when no compensation or expenses have occurred during the required reporting period. There is no filing fee

required for submitting a Bi-Monthly report.

Client Reporting Requirements

Clients must file a Client Semi-Annual Report (“CSA”) twice a year. This requirement includes those Clients who Lobby on their own behalf. A CSA report reflects actual Lobbying Activity during the preceding six-month period. A \$50 filing fee is required for this report. Any required source of funding reporting is done as part of the Client Semi-Annual report.

Other lobby-related activities subject to disclosure under the Lobbying Act

Reportable Business Relationships

Lobbyists and Clients are required to publicly disclose information regarding business relationships where a State Person, or entity in which a State Person has Requisite Involvement, receives more than \$1,000 in annual compensation from either the Lobbyist or Client.

For more information, *see* the Commission’s regulations at 19 NYCRR Part 943.14.



Source of Funding

Organizations that devote substantial resources to Lobbying in New York may be required to disclose their funding sources. The Source of Funding Disclosure requirement provides the public greater transparency regarding which entities and individuals

are financially supporting Lobbying efforts in New York. The disclosure of Sources of Funding can be required of both Lobbyists who Lobby on their own behalf and Clients who devote substantial resources Lobbying in New York. For more information, see the Commission's regulations at 19 NYCRR Part 938.

Disbursements of Public Monies

Public monies are funds previously appropriated as part of the enacted State budget, which are designated for programs, grants or are discretionary funds and have not been allocated to specific recipients.

Lobbyists already registered with JCOPE must file separate reports disclosing the reportable compensation and expenses associated with attempts to influence a disbursement of such public monies if compensation and expenses exceed \$5,000 in a year and the public monies sought exceed \$15,000. This is in addition to the \$5,000 threshold for Lobbying.

For more information, see section 1-1 of the Lobbying Act and the Commission's regulations at 19 NYCRR Part 943.13.

JCOPE Advice and Guidance

If you want to know whether your activities are or will be considered Lobbying based on what you have read, JCOPE staff is available to answer questions and provide guidance on whether your activities require registration.

- For filing and compliance questions, call the Lobbying Help Desk at (518) 474-3973.
- For legal questions, call toll free at 1-800-873-8442 and Press 2 for the Attorney of the Day.

