

# LOBBYING OVERVIEW

The guidance provided in this Overview is applicable to Governmental Affairs Agents, Represented Entities and Persons Communicating with the General Public (“Grassroots Lobbying”).

The following abbreviations apply:

<b>Commission</b>	<b>The New Jersey Election Law Enforcement Commission</b>
<b>The “Act”</b>	Legislative and Governmental Process Activities Disclosure Act (P.L. 1971, c.183), as amended, <u>N.J.S.A. 52:13C-18</u> , et seq.
<b>Regulations</b>	The regulations promulgated under the “Act” (Citation: N.J.A.C 19:25-20.1 et seq.)

## Help

Any person who wishes to receive clarification should contact the Commission at (609) 292-8700, or toll free in New Jersey at 1 (888) 313-ELEC (3532). The Commission’s mailing address is: NJ Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625-0185.

This Overview is not intended to supersede the Act and regulations, and in the event of any inconsistency, the Act and regulations prevail. Accordingly, it is recommended that you obtain a copy of the regulations by contacting the Commission or by accessing them on the Commission’s website.

## I. Lobbying Definitions

### 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 (“grassroots lobbying”) is considered to be lobbying.

## **What does it mean to influence legislation, regulations, or governmental processes?**

“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. Included are efforts to influence the preparation, drafting, content, introduction, and consideration of any bill, resolution, amendment, report or nomination or the approval, amendment or disapproval thereof by the Governor.

“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 thereof by an officer or any authority, board, commission or other agency or instrumentality in or of a principal department of the Executive Branch of State Government empowered by law to issue, promulgate or adopt administrative rules and regulations.

“Influence a governmental process” means to make any attempt, whether successful or not, to assist a represented entity or group to engage in communication with, or to secure information from, an officer or staff member of the Executive Branch, or any authority, board, commission or other agency or instrumentality in or of a principal department of the Executive Branch of State Government, empowered by law to administer a governmental process or perform other functions that relate to the governmental process.

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

## **What is Governmental Process Lobbying?**

### ***A. Governmental Process Lobbying includes:***

1. Promulgating executive orders;
2. Rate setting;
3. Public contracting;
4. Issuing, denying, modifying, renewing, revoking or suspending permits, licenses, or waivers;
5. Bidding procedures;
6. Imposing or modifying fines and penalties;
7. Purchasing procedures;
8. Award, denial, modification, renewal or termination of financial assistance, grant, and loan processing; and,
9. Rendering of administrative determinations.

## II. Lobbying Qualifications

### 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 and travel time of an Agent is reportable as lobbying activity and is part of the calculation in determining when 20 hours has been reached.

The definition of a Governmental Affairs Agent can be further examined by reviewing the component parts of the definition.

“Compensation” means money or other thing of value. This includes being paid a salary or fee, or receiving something of value to perform lobbying services. If a person lobbies on a voluntary basis and receives no compensation or reimbursement of expenses in excess of \$100 in a three month period, that person does not meet the definition of a Governmental Affairs Agent. 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). See Advisory Opinion No. 4-1992.

“Communicating” means any communication, oral or in writing. “Communicating” does not 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 Lieutenant Governor, the Lieutenant 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.

**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.**

### III. Exemptions

#### 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:

1. Publication of a news item or editorial in the ordinary course of business;
2. Acts of a federal, state or local government employee in carrying out his or her official duties;
3. Acts of bona fide religious groups acting for the purpose of protecting the public’s right to practice religion;
4. Acts of a political party;
5. Acts of a person testifying on legislation or regulations who is uncompensated and makes no other communication in connections with his/her testimony;
6. 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 to be reimbursed in any way, and not incident to his/her employment); and

7. 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.

8. 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:

- a) The individual has been nominated or invited to participate; and
- b) The individual receives no separate compensation for his or her services.

**What is not a Governmental Process?**

1. 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/her ethical duties as a lawyer;
2. 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; or

3. 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.

An “administrative proceeding with the State” does not include attempts to influence legislation or regulation.

#### IV. Lobbying Restrictions

1. **Contingent Fees-** A Governmental Affairs Agent may not enter into an agreement whereby his/her compensation is based upon the success of any attempt to influence any legislation, regulation, or governmental process.
2. **Gift Limits-** No Governmental Affairs Agent or Represented Entity may give gifts totaling more than \$250 per year to a legislator or to a legislative staff member or to an officer or staff member of the Executive Branch. The \$250 limit includes gifts to a spouse, child, parent, or sibling residing in the same household of the public official. Exceptions to the \$250 limit are gifts received by the public official or immediate family member in the course of employment from an employer other than the State. There are other exemptions and restrictions to the gift ban that are not under the Commission’s jurisdiction (See N.J.S.A. 52:13D-24 and 52:13D-24.1). Note: the Commission recommends contacting the agency that has jurisdiction over the State official prior to any gift giving.
3. **Unregistered Governmental Affairs Agent-** No person is permitted to employ another person to serve as a Governmental Affairs Agent who is not registered according to the Act or continue to employ a person who is not registered within the time required by the Act.
4. **Representation of Adverse Interest-** No Governmental Affairs Agent may knowingly represent an interest adverse to any Represented Entity before disclosing to the Represented Entity the adverse interest and receive written consent from the Represented Entity.
5. **Introduction of Legislation for Purposes of Later Employment-** No Governmental Affairs Agent may knowingly cause, influence, or otherwise secure the introduction or amendment of any legislation for the purpose of the Agent later securing employment to prevent the passage of said legislation.
6. **One Year Post- Employment Restriction-** No person that is/was a member of the Legislature, the Governor, the Lieutenant Governor, or

the head of a principal department of the Executive Branch may register as a Governmental Affairs Agent within one year after the termination of his/her office or employment.

7. **Executive Order No.15-** No State Authority may hire, enter into, or renew a contract with a Governmental Affairs Agent unless it is authorized in advance and in writing by the Governor's office.
8. **Willful Falsification-** No person may knowingly or willfully falsify all or any part of any statement, notice or report.
9. **False Communication Relative to Legislation-** No person shall transmit, utter or publish to the Legislature or the Governor or his staff, any communication relating to any legislation or be a party to the preparation of any communication, knowing that such communication or any signature is false, forged, counterfeit, or fictitious.

## V. Reporting

Effective February 16, 2016, all lobbying forms are required to be filed electronically. This includes the Notice of Representation, Notice of Termination, Quarterly Report and a new Registration form used for activating new Governmental Affairs Agents.

Please note that in order to file electronically, all Governmental Affairs Agents will need to obtain a Registration Number and PIN. The Registration Number and PIN will take the place of the Agent's signature allowing them to file electronically.

### Registration (Form REG)

The Form REG is filed to register a new Governmental Affairs Agent. The form should be submitted prior to making any communication with, or providing a benefit to a high level State official, or within 30 days of being employed, retained or engaged as a Governmental Affairs Agent, whichever is earlier.

In addition to submitting the Registration form, an individual who is registering as a Governmental Affairs Agent for the first time must appear in person at the Commission's office in Trenton and present valid government-issued identification, two color photographs 2"x2" in size and the required annual fee (\$575) or Form ST-5 if they work for an employer with tax-exempt status. If an Agent is a voluntary filer, they are not required to submit the annual fee, however they are still required to file the requisite reporting forms required by the Commission.

Once an Agent submits all of the required documentation, and appears at the Commission's office, a name tag will be sent to the Agent after their registration has been processed. The name tag must be worn by the Agent at all times in the State House, the State House Annex, or any other State building or other

location when or where an authorized meeting of a legislative committee is being held for the purpose of influencing legislation or regulation. The Agent must also wear the name tag at any location when or where a meeting is being held at which there may be an attempt to influence a governmental process.

- The Governmental Affairs Agent must renew the name tag on or before November 15<sup>th</sup> of each year. The renewal process includes the following:
  - (1) payment of the \$575 fee (unless exemption applies); and
  - (2) all Registration and Quarterly Reports must have been filed for the prior 12-month period.

If an Agent is not a resident of the State of New Jersey, or not a corporation of the State of New Jersey or authorized to do business in New Jersey must file a Consent to Service of Process (Form L-3) along with their Registration form.

### **Notice of Representation (Form NR)**

The Notice of Representation is filed to register a new Represented Entity. The form shall be filed prior to making any communication with, or providing a benefit to a high level State official, or within 30 days of being employed, retained or engaged as a Governmental Affairs Agent, whichever is earlier.

A group of individuals, each registered with the Commission as Governmental Affairs Agents, that together represent an entity, are permitted to file one Notice of Representation specific to that Represented Entity on behalf of the whole group. When doing so, the Agent submitting the form will be required to indicate which Agent(s) will be representing the entity on whose behalf the form is filed.

If a Governmental Affairs Agent, or a group of Agents, will represent more than one Represented Entity, separate Notices of Representation will be required for each entity.

After filing the Form NR, a Governmental Affairs Agent must notify the Commission within 15 days of any changes in the information on the form or not later than the filing date of the next quarterly report whichever, comes first. Changes in information include changes in the Agent's or Represented Entity's name, address or phone number.

### **Quarterly Filing (Form Q-4)**

Each Governmental Affairs Agent is required to file with the Commission a quarterly report of their activity in attempting to influence legislation, regulation and/or governmental processes. The filing dates are as follows:

1 <sup>st</sup> Quarter	April 10 <sup>th</sup>	January 1 to March 31
2 <sup>nd</sup> Quarter	July 10 <sup>th</sup>	April 1 to June 30
3 <sup>rd</sup> Quarter	October 10 <sup>th</sup>	July 1 to September 30
4 <sup>th</sup> Quarter	January 10 <sup>th</sup>	October 1 to December 31

Each attempt to influence legislation, regulations and/or governmental processes must be reported in detail.

The Agent is required to report:

- the General Category which best represents the subject area of the lobbying communication;
- whether the item is Legislation, Regulation or a Governmental Process;
- the identifier prefix and number (if applicable);
- whether the Agent promoted, opposed, sought an amendment to, or promoted the item in part/opposed it in part;
- the name of the high level official and/or agency that was contacted;
- a detailed description of the bill, regulation or governmental process. For a regulation, the Agent should provide the New Jersey Register title;
- the full name of the Represented Entity on whose behalf the communication was made;
- and if the lobbying communication was made in reference to an item of legislation, whether the Agent sought to influence legislation from a prior session. (*For example, Governmental Affairs Agent John Doe sought to influence bill A101 from the 2014-2015 session on January 5, 2016. John Doe's 2016 first quarter report will indicate the previous session since the 2016-2017 legislative session already began.*)

### **Notice of Termination (Form NT)**

The Form NT is used to either terminate an Agent's activities on behalf of a particular Represented Entity, a Governmental Affairs Agent's association with a particular employer, or a Governmental Affairs Agent's lobbying activities completely. If an individual will no longer serve as an Agent they are required to

return their name tag to the Commission. The Form NT should be filed within 30 days after lobbying activities have ceased.

A group of individuals, each registered with the Commission as Governmental Affairs Agents, that together represented one entity, are permitted to file one Notice of Termination specific to that Represented Entity on behalf of the whole group. When doing so, the Agent submitting the form will be required to indicate which Agent(s) will be terminating activity on behalf of the entity on whose behalf the form is filed.

If a Governmental Affairs Agent, or a group of Agents, will be terminating their activities on behalf of more than one Represented Entity, separate Notices of Termination will be required for each entity.

### **Annual Financial Reporting**

A Governmental Affairs Agent or Represented Entity who raises or spends in excess of \$2,500 in any calendar year for the purpose of communicating 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 Commission. Additionally, a person other than a Governmental Affairs Agent or Represented Entity who raises or spends in excess of \$2,500 for the purpose of communication with the general public ("grassroots lobbying") must also file an Annual Report.

The report shall include, but not be limited to:

- Communication costs, including salary and other compensation paid to Agents, support personnel costs, and the costs of printed materials, postage, telephone, fax, direct mail pieces, newspaper ads, and TV/radio broadcasts and;
- Benefit passing to high level State officials, include the cost of food and beverages, entertainment, gifts, travel and lodging, honoraria, and loans for public officials. There is a record-keeping exemption for passing a benefit of \$5 or less.

### **Annual Report Forms (Forms L1-L, L1-A, L1-G, L-2, L-3)**

**Form L1-L** is filed by a Represented Entity. A Represented Entity can be any person, partnership, committee, association, trade association, corporation, labor union, or any other organization that employs, retains, designates, engages, or otherwise uses the services of a Governmental Affairs Agent to influence

legislation, regulations, governmental processes, or to communicate with the general public (“grassroots lobbying”). The form is used by a Represented Entity with in-house Agents, multiple contract Agents, or a combination of in-house and contract Agents.

**Form L1-A** is filed by a Governmental Affairs Agent or Governmental Affairs Agent firm. A Governmental Affairs Agent is the individual(s) who communicates with, or provides a benefit to the State officials covered by the Act. This form is filed by contract Agents or a contract lobbying firm.

**Form L1-G** is filed by a person whose only lobbying activity is communication with the general public (“grassroots lobbying”). “Person” includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

**Form L-2** is used by a Represented Entity or a person who communicates with general public (“grassroots lobbying”) to designate a Governmental Affairs Agent to file the Annual Report on its behalf. The Form L-2 can only be filed if the Entity employs only one outside Agent or Agent Firm and does not employ any in-house Agents.

**Form L-3** is used by an out-of-state person or entity for the purpose of consenting to service of process.

## VII. Recordkeeping

A Governmental Affairs Agent, Represented Entity, and persons or entities communicating with the general public (“grassroots lobbying”) are required to make or obtain records and documents supporting the information contained in their reports. All records must be maintained for three years. The records and documents supporting the annual report must also provide an adequate basis for auditing by the Commission. Items that must be maintained include but are not limited to checks, bank statements, contracts and receipts. A record or document of any single expenditure in an amount of \$5.00 or less may be excluded from the requirement.

## VIII. Public Inspection of Documents

Any person who completes an “Open Public Records Act” form may request to receive or examine a photocopy of a public document filed with the Commission. A photocopier is available for use by the public in the Commission’s public records room. A reasonable fee will be charged for photocopying or computer-generated data. The fee must be paid in advance of the receipt of documents. The public records room is open Monday through Friday from 9:15 a.m. to 4:45 p.m.

## IX. Filing and Other Information

The following forms are filed electronically online and can be found by visiting the Commission's website at [www.elec.state.nj.us](http://www.elec.state.nj.us).

- Registration (Form REG)
- Notice of Representation (Form NR)
- Quarterly Report of Activities (Form Q-4)
- Notice of Termination (Form NT)
- Consent to Service of Process (Form L-3)
- Form L1-L – Annual Report of Represented Entity
- Form L1-A – Annual Report of Governmental Affairs Agent
- Form L1-G – Annual Report of Communication with the General Public
- Form L-2 – Designation of Governmental Affairs Agent
- Form L-3 – Certification of Consent to Service of Process and Submission to Jurisdiction in the State of New Jersey

In order for a report to be filed “on time,” the report must be received **electronically** by the Commission by 5:00 p.m. on the filing date. If the reporting date falls on a weekend or a holiday the next business day would become the filing date. It is recommended that the filer keep a copy for his/her records.

If you have any questions regarding the information contained in this overview, please contact the Compliance staff from 9:00 a.m. to 5:00 p.m. at (609) 292-8700 or toll free within NJ at 1 (888) 313-ELEC. Also contact the Compliance staff or visit our website if you have any questions regarding the requirements of the Lobbying Act.