

# NJ May Need Updated Law to Keep Up With Shadow Lobbying

BY JEFF BRINDLE • 12/21/17 6:03pm

Just as the trend of independent spending in federal campaigns eventually made its way to state elections during the past decade, a new phenomenon called shadow lobbying has taken hold in Washington, D.C.

It, too, has implications for New Jersey.

At the federal level, both registration and reported revenues by lobbyists have dropped. It appears that the business of lobbying is becoming more secretive because lobbyist organizations are employing individuals who do not directly lobby officials even though they provide important services to the lobbying firm and enhance its potential to influence government policy.

The nature of lobbying has changed, becoming much more sophisticated. Although traditional, person-to-person lobbying remains central to the craft, new and varied methods and skills are now employed behind the scenes to help influence policy.

Firms are packing themselves with strategic planners, lawyers, political consultants, public relations professionals, pollsters, researchers, and digital experts.

The Center for Responsive Politics says the number of federal lobbyists peaked at 14,827 in 2007 and has steadily fallen to 10,963 during the current year, a 26 percent decline. Moreover, it recently found that nearly 2,100 federal lobbyists who were active in 2016 reported no lobbying activities during the first quarter of 2017, even though 58 percent of them still worked for the same employer.

“What has become more prevalent over the last decade are hordes of lobbyists deliberately moving into the shadows to avoid the consequences of registration,” [the center reported June 28](#).

“For years, our lobbying disclosure rules provided some confidence that Americans could see which forces were at work, who hired them and how much they spent to influence federal policy,” said Sheila Krumholz, executive director of the Center for Responsive Politics. “Now it appears that our disclosure system is being gamed. It’s time to revisit the rules and close the loopholes, so that disclosure is meaningful, providing comprehensive information, and not just the façade of transparency.”

The lobbyist toolbox includes social media, earned and paid media, issue advocacy, and fundraising for political campaigns. As Peter Overby of NPR maintains, “Super PACs — those groups that collect unlimited and corporate contributions — are becoming tools of lobbyists.”

Given the technological revolution, changes of this sort are inevitable. The nature of lobbying was bound to change. The question then becomes, Shouldn’t disclosure laws change as well?

Actually, it has happened before, when legislators revised the law to reflect previous expansions of lobbying activities. As the Election Law Enforcement Commission's deputy director in 1990, in "White Paper 5- Lobbying Reform," I called for the elimination of the "expressly" loophole that limited lobbyist disclosure, disclosure of efforts to influence the executive branch and disclosure of "grassroots" lobbying that depended on direct appeals to the public.

All became law.

During the current legislative session, a new bill sponsored by Senate Majority Leader Loretta Weinberg (D-Bergen) and recommended by ELEC was enacted into law. This new law requires disclosure of lobbying on behalf of local governments. Another pending proposal from ELEC would require lobbying of local government by paid professional lobbyists to be reported.

In recent years, professionals in New Jersey's lobbying community, just like their federal colleagues, have become increasingly sophisticated, suggesting that shadow lobbying has begun to filter down from the federal level to the state.

The average number of registered lobbyists also is down in New Jersey, although not at the same rate as in the federal government. Last year, there were about 935 registered lobbyists in the state. That total is 10 percent below the peak of 1,043 in 2008, compared with the 26 percent federal decline.

Although 2017 lobbying activity will not be reported until February, over \$68 million was spent by the state's lobbying professionals in 2016. More than \$10 million was spent on issue advocacy, a sign that the lobbying community is enlisting the services of public relations specialists, advertising consultants, and other skilled operatives.

Individuals who once registered as lobbyists may be choosing not to do so now because they view their duties as not entailing direct lobbying. Along with the difficult economy in recent years, this development may explain the drop in registered lobbyists in New Jersey.

If the growing sophistication of lobbying means more people are working outside the scope of current disclosure laws, it is not necessarily illegal. Lobbying is protected under the First Amendment, which guarantees the right to "petition the government for a redress of grievances."

However, if the decline in registered lobbyists at the federal and state levels is the inescapable result of so-called shadow lobbying, the result means less transparency. Voters have a right to know as much as possible about who is trying to influence the officials they elect.

Given the trend toward shadow lobbying, perhaps it may be time to take a fresh look at New Jersey's lobbying law to reform it in a way that will not only show the extent of lobbying at all levels of government but will also disclose behind-the-scenes activity that contributes to successful efforts to influence public policy.

It is in the best interest of the public to be ahead of the curve when it comes to trends that may affect the state's disclosure laws.

*Jeff Brindle is the executive director of the New Jersey Election Law Enforcement Commission. The opinions presented here are his own and not necessarily those of the commission.*