

MASSACHUSETTS

LOBBYING DISCLOSURE

These resources are current as of 7/29/2016. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

This guide summarizes key aspects of laws and regulations governing lobbying on the state level. It is not intended to provide legal advice or to serve as a substitute for legal advice.

In some jurisdictions, city, county, or special district regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

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DEFINITIONS

Massachusetts General Laws (G.L.) § 3-39

“Executive lobbying” means any act to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to, statewide constitutional officers and their employees, where the decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any general or special law, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement.

- Executive lobbying also includes acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level.
- Executive lobbying also includes strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee.
 - Exceptions: Executive lobbying does *not* include providing information in writing in response to a written request from an officer or employee of the executive branch or an authority for technical advice or factual information regarding a standard, rate, rule or regulation, policy or procurement.

“Executive agent” means a person who for compensation or reward engages in executive lobbying, which includes at least one lobbying communication with a government employee.

- The term “executive agent” includes a person who, as part of his regular and usual business or professional activities and not simply *incidental* to them, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services.
- Incidental Exception: For the purposes of this definition a person is presumed to be engaged in executive lobbying that is simply *incidental* to his regular and usual business or professional activities if he:
 - engages in executive lobbying for not more than 25 hours during any reporting period; *and*
 - receives less than \$2,500 during any reporting period for executive lobbying.

“Legislative lobbying” means any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor’s approval or veto of legislation including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation.

- Legislative lobbying also includes acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with legislative lobbying at the state level;
- Legislative lobbying also includes strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee.
 - Exceptions: Legislative lobbying does *not* include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation.

“Legislative agent” means a person who for compensation or reward engages in legislative lobbying, which includes at least one lobbying communication with a government employee.

- The term “legislative agent” includes a person who, as part of his regular and usual business or professional activities and not simply *incidental* thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services.
- Incidental Exception: For purposes of this definition a person is presumed to be engaged legislative lobbying that is simply *incidental* to his regular and usual business or professional activities if he:
 - engages in legislative lobbying for not more than 25 hours during any reporting period; and
 - receives less than \$2,500 during any reporting period for legislative lobbying.

“Legislation” means bills, resolutions and proposals of every kind, character or description considered by the general court or any committee thereof, or the governor.

“Lobbyist entity” means an entity providing lobbyist services, consisting of at least one legislative or executive agent, including a foreign or domestic corporation, association, sole proprietor, partnership, limited liability partnership or company, joint stock company, joint venture or any other similar business formation.

“Client” means any person, corporation, partnership, association, or other entity that contracts with another person, corporation, partnership, association, or other entity to receive lobbying services.

“Act to communicate directly with a covered executive official to influence a decision concerning policy or procurement” includes any direct communication by a person to such official by telephone, mail, commercial messenger, facsimile transmission, electronic mail, other direct means or in person.

Exceptions: the above *does not* include the following activities, in relevant part (see statute for full list):

- a request for a meeting, a request for the status of an action or any similar administrative request, if the request does not include an attempt to influence a covered executive official;
- participation in an advisory committee or task force;
- providing information in writing in response to a written request for specific information by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and their employees;

- a petition for action by the executive branch or an authority, including, but not limited to, statewide constitutional offices made in writing and required to be a matter of public record pursuant to established procedures of such executive branch or authority, including, but not limited to, statewide constitutional offices;
- a response to a request for proposals or similar invitation by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, for information relevant to a contract;
- participation in a bid conference.

“Authority” means any state public instrumentality that is not subject to the supervision and control of either the legislative, executive or judicial departments of state government, or of any city, town, or county within the commonwealth, and that does not receive state appropriations either for operations or the payment of debt obligations. (See statute for full list.)

“Covered executive official” means:

- The governor, lieutenant governor, state secretary, attorney general, state treasurer, state auditor;
- Any person who holds a major policy-making position;
- Any person designated by the governor, lieutenant governor, state secretary, attorney general, state treasurer or state auditor, the secretary or deputy or assistant secretary of any executive office, or the executive or administrative head or deputy or assistant head of any authority, any department, board, commission, or division of the state government or subdivision of any of the foregoing, *but not* including the legislative and judicial departments.

“Policy” means a plan or course of action that is applicable to a class of persons, proceedings or other matters and that is designed to influence or determine the subsequent decisions and actions of any covered executive official, including, but not limited to, a plan or course of action that would constitute a “regulation.”

- The term *does not* include the adjudication or determination of any rights, duties, or obligations of a person made on a case by case basis, including but not limited to the issuance or denial of a license, permit, or certification or a disciplinary action or investigation involving a person.

“Procurement” means the buying, purchasing, renting, leasing or otherwise acquiring or disposing, by contract or otherwise, of supplies, services or construction or the acquisition or disposition of real property or any interest therein, including, but not limited to, the purchase, lease or rental of any such real property or the granting of easements or rights of way therein;

- The term *does not* include any item of expenditure the value of which is \$25,000 or less.

REGISTRATION

Both Direct and Grassroots Lobbying Regulated:

- Massachusetts' definition of executive and legislative lobbying – “any act to promote, oppose, influence, or attempt to influence” – is broad enough to cover both direct lobbying and grassroots lobbying (soliciting others to directly lobby).

Trigger:

- Individuals: An individual is *required* to register as a lobbyist if s/he:
 - Agrees to engage in legislative or executive lobbying for more than 25 hours during a six month reporting period; *and*
 - Receives more than \$2,500 in compensation during a six-month reporting period for legislative or executive lobbying.
 - There are *separate* time and compensation triggers for legislative and executive lobbying; it is not a single aggregate trigger. However, only a single registration is required even if a lobbyist meets *both* triggers.
 - An individual who engages in lobbying activity but does not meet *both* the above triggers may voluntarily register as an “incidental lobbyist,” which has more limited requirements (see [here](#)). This is not required, however.
- Organizations:
 - An organization is required register as a “client” if it has registered lobbyists.
 - Note: A client must wait to register until *after* its lobbyist registers – if the lobbyist is not yet in the database, the client will not be able to register. A client must disclose the lobbyists who work on its behalf as part of the registration process.
 - A special type of “organizational” registration is required if an organization does not have any registered lobbyists but spends more than \$250 in a calendar year on direct *or* grassroots lobbying. G.L. § 3-44. The registration form for “Section 44 organizations” is not currently available online, and must be requested from the Secretary of State.

Note: Section 44 registration/reporting is not required if an organization meets *all of the following*:

- Is a non-profit entity,
- Does not make any contributions to a political candidate or committee,

- Does not pay members to perform services for the organization, *and*
 - Spends \$2,000 or less on direct or grassroots lobbying,
- This is a relatively narrow exception, essentially encompassing all-volunteer non-profits.

Timing:

- Initial registration as a lobbyist or client is required within 10 days of an individual or organization triggering the registration threshold; an agreement alone is enough. G.L. § 3-41.
 - If an organization has a new lobbyist, its registration must also be updated within 10 days.
- Annual registration is required – ongoing lobbyists and clients must re-register during Dec. 1-15th to continue being registered the next year.
- Section 44 organizational registration/disclosure is required semi-annually:
 - On or before July 15th for Jan. 1 – June 30
 - On or before January 15th for July 1 – Dec. 31

Fee:

- Client: \$100 for each lobbyist
 - Upon written request, the Secretary of State may waive this filing fee for a not-for-profit client.
- Lobbyist: \$100
- Section 44 Organization: No fee
- Late fees will be assessed for late registration. G.L. § 3-41.

Registration Process:

- Electronic registration is required for lobbyists and clients through the Secretary of State's [Lobbyist Registration and Reporting System](#).
 - New filers may obtain a username and password [here](#).
- Section 44 Organization registration must be completed on paper. However, Massachusetts *does not* currently provide the form online; it must be requested from the Secretary of State by emailing lob@sec.state.ma.us.

Information Requested for Registration:

- Lobbyists and Clients: Beyond general identifying and contact information, a lobbyist or client must disclose the interest it is lobbying on behalf of. Clients must also disclose lobbyists.
- Organizational: Section 44 organizations file a semi-annual registration statement that also serves as a disclosure statement. In addition to basic organizational details, an organization must:

- Describe the legislative or executive branch decisions being influenced.
- Itemize expenditures for meals, transportation, entertainment, advertising, public relations, printing, mailing and telephone. Include names of the payees, and the amount paid to each payee.
 - Where an expenditure is for meals, entertainment or transportation, identify the date, place, amount, and the names of all persons in the group partaking in, or of, such meal, entertainment or transportation.
- List names and addresses of every person, group, or organization from whom \$15 or more was contributed, and the amount contributed, during the year for the purpose of influencing legislative or executive branch decisions.
- Itemize all campaign contributions made by the group to a political candidate or committee, the name of each candidate or committee, the amount contributed and the date of the contribution.

G.L. § 3-44.

Training Required: Lobbyists are required to complete a lobbyist educational seminar *each year* prior to registration, either by completing an in-person seminar or by reviewing online training materials. Training is self-reported on the registration statement.

License and Identification Card: Upon registration, Massachusetts will issue a lobbyist a license and nontransferable identification card with the lobbyist’s name and photo (passport photo must be provided upon registration).

REPORTING

Semi-annual reporting: Each legislative or executive lobbyist, client, or Section 44 organization is required to file a semi-annual disclosure report. G.L. § 43; 44; 47.

- July 1 – December 31: Report due January 1-15
- January 1 – June 30: Report due July 1-15

Note: Deadlines are *not* extended due to weekends or holidays.

Electronic Reporting: Lobbyists and clients must file disclosure reports using the Secretary of State’s [Lobbyist Registration and Reporting System](#).

Report contents: Lobbying expenditures should be reported by the lobbyist *or* the client, *not both*.

- Lobbyist:
 - Operating Expenses
 - All expenditures incurred or paid during the reporting period in connection with lobbying.

- Reported by category type (see [Guide to Lobbyist Reporting](#) for full list of categories)
 - Activities and Bill Numbers
 - Identify bill title, number, client, position taken, amount of compensation related to activity.
 - Identify any direct business associations with public officials being lobbied.
 - Meals, Travel, Entertainment
 - Date, place, and amount of event.
 - Names and addresses of public officials participating in event (the Secretary of State informs these officials they were identified in the report).
 - Additional Expenses
 - Itemize other expenses such as tickets, lodging, donations to a charity, or gifts.
 - Identify the name of the recipient and amount paid, the date, and purpose of payment.
 - Campaign Contributions
 - Date, recipient (and office sought), and amount of contribution.
- Client:
 - Operating Expenses and Lobbyist Salaries
 - All expenditures incurred or paid during the reporting period in connection with lobbying
 - Lobbyist salaries
 - Meals, Travel, Entertainment
 - Date, place, and amount of event.
 - Names and addresses of public officials participating in event (the Secretary of State informs these officials they were identified in the report).
 - Additional Expenses
 - Itemize other expenses such as tickets, lodging, donations to a charity, or gifts.
 - Identify the name of the recipient and amount paid, the date, and purpose of payment.
- Section 44 Organization: An organization that is required to register/report based on Section 44 (\$250 trigger) has semi-annual registration/reporting requirements, described in greater length earlier. Must request form from Secretary of State.

Grassroots lobbying reportable: Grassroots lobbying is treated the same as direct lobbying for reporting purposes.

No membership exception: Communications to members are *not* exempt under Massachusetts lobbying rules, unlike the state's campaign finance rules.

Lobbyists and Clients Not Required to Disclose Donors: Lobbyists and clients are not required to disclose donors.

- Section 44 Organizations Must Disclose Donors: An organization that is required to register/report based on Section 44 (\$250 trigger) has semi-annual registration/reporting requirements, described in greater length earlier, which requires disclosure of donors who contributed \$15 or more for purposes of influencing legislative or executive action.

LOBBYING RESTRICTIONS

Campaign Contribution Limit: Registered lobbyists may contribute no more than \$200 in the aggregate to any one candidate or any other political committee during a calendar year. However, unlimited contributions to ballot question committees are permitted. G.L. § 55-7A(b).

Contingency Compensation Prohibited: Lobbyists are prohibited from receiving compensation that is contingent upon legislative or executive action. G.L. § 3-42.

Gift Ban for Lobbyists: A lobbyist may not provide any gift to any covered public official or public employee. G.L. §§ 3-43, 268B-6.

Gift Restriction for Clients, Non-Lobbyists: Gifts of \$50 or more are generally restricted. 930 CMR §§ 5.01, 5.05; G.L. §§ 268A-3, 268A-23. Exceptions to the \$50 gift limit include:

- travel and related expenses for a public employee where the purpose of the travel is to engage in an activity that serves a legitimate public purpose;
- incidental hospitality that serves a public purpose;
- legitimate speaking engagements;
- honorary degrees;
- awards for meritorious public service or lifetime achievement;
- ceremonial gifts and privileges;
- retirement gifts;
- unsolicited perishable items;
- admission to political campaign events for elected officials and staff;

Given the complexity of gift rules and gift exceptions, it is important to carefully review 930 CMR § 5 and seek appropriate guidance from an attorney and/or the [Massachusetts State Ethics Commission](#).

PENALTIES

Penalties: Violation of Massachusetts lobbying rules may be punished by:

- a fine between \$100 and \$10,000; and/or
- imprisonment in state prison for not more than 5 years, or in a jail or house of correction for more than 2.5 years.

G.L. § 3-48.

Penalties for Late Reporting: Late disclosure reports are fined at \$50 per day for the first 20 days, and an additional \$100 per day thereafter. Penalties may be waived or reduced for good cause. G.L. § 3-43.

Complaints: Sworn complaints of violations of Massachusetts lobbying laws may be filed with the Secretary of State. G.L. § 3-45.

Judicial Enforcement: Massachusetts lobbying rules may also be enforced through the courts. Courts may order relief ranging from disgorgement of the value of compensation or gifts received, and a civil penalty up to \$10,000 for each violation. G.L. § 3-49.

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

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FOR FURTHER ASSISTANCE

**For assistance regarding these resources or for more
information about federal law, please contact our attorney
one-on-one counseling service:**

Email: Advocacy@afj.org
Telephone: 1-866-NPLOBBY
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**For assistance regarding state law in Massachusetts,
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