

NEW JERSEY

LOBBYING DISCLOSURE

These resources are current as of 11/22/17. There have been no changes in the law; however, this document has been reorganized into a more user-friendly format. 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 and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

GOVERNING LAW

- The Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C-18, et seq.
- N.J.A.C. 19:25-20.1, et seq.

DEFINITIONS

What is the Difference between a Lobbyist and a Governmental Affairs Agent?

- Under New Jersey Law, a “lobbyist” is any person, partnership, committee, association, corporation, labor union or any other organization that employs, engages or otherwise uses the services of a governmental affairs agent to influence legislation, regulation or governmental processes. N.J.S.A. 52:13C-20(d).

- A “governmental affairs agent” is the person who actually does the lobbying and who receives compensation¹ to influence legislation, regulation or a governmental process by:
 - directly or indirectly communicating² with (for more than 20 hours in a calendar year),
 - or providing a benefit to,³
 - a “High Level State Official,”⁴ which generally includes a member of the Legislature, legislative staff, the Governor, the Governor's staff, or any officer or staff member of the Executive Branch. N.J.S.A. 52:13C-20(g).⁵
 - In general, it is a rebuttable presumption that any communication made by a governmental affairs agent to a “high level State official” is a lobbying communication.

¹ “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 (for example, promise of future employment).

² “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.

³ “Providing a benefit to” means making any expenditure for entertainment, food and beverage, travel, lodging, honoraria, gifts, loans, or other things of value.

⁴ “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.

The definition also includes a policy advisor or a person in a position analogous 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.

⁵ 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 generally are considered to be “routine and ministerial,”⁶ and therefore are not lobbying communications.
- Experts or employees making communications in the company of a registered governmental affairs agent for the sole purpose of providing technical or expert advice are not governmental affairs agents. Rather, these persons are considered support personnel.⁷

When Does Lobbying Occur?

- 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 (as defined above). A communication with the general public (“grassroots lobbying”) in an attempt to influence legislation is also considered lobbying.
 - “Direct Lobbying” occurs when lobbyists or lobbyist organizations attempt to influence legislation, regulations, or governmental processes by communicating with, or providing a benefit to, a high-level State official.
 - “Grassroots Lobbying” occurs when a lobbyist or lobbyist organization communicates with members of the general public with the expectation or hope that those communications will persuade the public in turn to communicate with legislators.
- The term “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. The term also includes efforts to influence the preparation, drafting, content, introduction and consideration of any bill, resolution, amendment, report or nomination of the approval, amendment or disapproval

⁶ 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. Specific examples of routine and ministerial communications are detailed below.

⁷ Support personnel do not have to register with ELEC as governmental affairs agents. However, if the 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.

thereof by the Governor in accordance with his constitutional authority. N.J.S.A. 52:13C-20(h).

- The term “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.
 - Lobbying activity that takes place before the introduction of a bill or the proposal of a regulation is reportable.
- The term “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. A “governmental process” includes:
 - Promulgating executive orders;
 - Rate Setting;
 - Public Contracting;
 - Issuing, denying, modifying, renewing, revoking or suspending permits, licenses or waivers;
 - Bidding Procedures;
 - Purchasing Procedures
 - Award, denial, modification, renewal or termination of financial assistance, grant, and loan processing; and
 - Rendering of administrative decisions.

What Activities are not Considered Lobbying?

- The following communications and actions are **not** considered “lobbying” subject to the registration and reporting requirements of the Legislative and

Governmental Process Activities Disclosure Act. N.J.S.A. 52:13C-27.

- Publication of a news item or editorial in the ordinary course of business;
 - Acts of a government employee in carrying out his or her official duties;
 - Acts of bona fide religious groups acting for the purpose of protecting the public's right to practice religion;
 - Acts of a political party;
 - Acts of a person testifying on legislation or regulations who is uncompensated and makes no other communication in connections with his/her testimony;
 - 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
 - Communicating with any State official on a "routine, ministerial matter"⁸ is not considered to be lobbying.
- Participation in a task force, advisory board, or working group that is specifically established pursuant to statute or established by the head of a

⁸ "Routine, ministerial" matters have been interpreted by the New Jersey Election Law Enforcement Commission to 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.

principal department in State government who has statutory authority to convene the group is **not** considered lobbying where the following conditions have been met:

- The individual was nominated or invited to participate; and
 - The individual receives no separate compensation for his or her services.
- For governmental process lobbying, the following activities do **not** constitute lobbying:
 - 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 for the attorney to exercise his ethical duties as a lawyer;
 - Any communications by an attorney representing a client in the regular course of a routine litigation or administrative proceeding with the State or during a quasi-judicial civil or administrative proceeding with the State; and
 - 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 about employment.

REGISTRATION

Registration of Government Affairs Agents (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 Form REG, 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). Form ST-5, which excuses payment of the annual fee, may be filed by individuals who work for an employer with tax-exempt status. Agents who are voluntary filers are

not required to submit the annual fee but they are still required to file the reporting forms required by the Commission.

- A Government Affairs Agent must disclose:
 - Agent’s name, business address and regular occupation;
 - Proposed services and other duties of employment of agent;
 - Identity, contact information and occupation or principal business of the person from whom the agent receives compensation for acting as a governmental affairs agent;
 - When not otherwise “clearly revealed,” the disclosure shall include a description of the primary economic, social, political, or other interest of the compensating entity or individual and a list of the persons having organizational or financial control of the organization or corporation, including the names, mailing addresses and occupations, respectively, of those persons.
 - Contact information and occupation or principal business of any person in whose interest the individual acts as a governmental affairs agent in consideration of the aforesaid compensation, if such person is other than the person from whom said compensation is received; and
 - The type of legislation, regulation or governmental process or the particular legislation, regulation or governmental process in relation to which individual is to act as governmental affairs agent in consideration of the aforesaid compensation.
- Grassroots lobbying organizations that only engage in grassroots lobbying are not required to register as lobbyists or governmental affairs agents; they may be required to file an Annual Financial Report. N.J.S.A. 52:13C-23.

Registration of a Represented Entity (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.

Notice of Termination (Form NT)

- The Notice of Termination must be filed within 30 days of ceasing activities as a Governmental Affairs Agent.
- Terminating representation of a particular entity can also be effectuated by the filing of a Form NT. The agent may retain his/her badge in this case.
- The Form NT must be filed when the agent stops working for a particular employer and obtains new employment.

REPORTING

Quarterly Filing Form (Form Q-4)

- Agents must file a signed quarterly report of their lobbying activity with the New Jersey Election Law Enforcement Commission (“ELEC”) on the Quarterly Report of Activities. The Quarterly Report is filed on the 10th of April, July, October, and January of each year. N.J.S.A. 52:13C-22.
- Each Agent must 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.

Annual Financial Reporting

- A Governmental Affairs Agent, Represented Entity, or other person who or which receives receipts in excess of \$2,500 or makes expenditures of more than \$2,500 in any calendar year, must file an Annual Report with ELEC if such receipts or expenditures were for:
 - Communication with, or providing a benefit to any member of the Legislature, legislative staff, Governor, Governor's staff, or an officer or staff member of the Executive Branch for the purpose of influencing legislation, regulations, or governmental processes; or
 - Communications with the general public described below ("grassroots lobbying").
- Communication costs of lobbying as well as the costs of benefit passing are generally reportable on the Annual Report. The report shall include, but not be limited to, the following expenditures which relate to communication with, or providing benefits to, any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, or communication with the general public:
 - Media, including advertising; entertainment; food and beverage; travel and lodging; honoraria; loans; gifts; and salary, fees, allowances or other compensation paid to an agent.
 - The expenditures shall be reported whether made to the intended recipient of the communication or benefit, to a governmental affairs agent or a lobbyist, or in the case of a communication to the general public, to the publisher of that communication.

Reporting Requirements of Grassroots Lobbying Activity

- Grassroots lobbying activity is subject only to annual financial reporting. Accordingly, a represented entity or governmental affairs agent that engages in grassroots lobbying must include these costs in their Annual Reports.
- If communicating with the general public is the only type of lobbying engaged in by a person or group, no Notice of Representation, Quarterly Report, or Notice of Termination is required; rather, only the Annual Report of Communication with the General Public (Form L1-G) must be filed if the

person or group makes expenditures or receives contributions for the purpose of communicating with the general public in excess of \$2,500 in a calendar year.

- “Communication with the General Public” means any communication that is:
 - Disseminated to the general public through direct mail or in the form of a paid advertisement in a newspaper, magazine, or other printed publication of general circulation or aired on radio, television, or other broadcast medium, including the Internet; and
 - Which explicitly supports or opposes a particular item or items of legislation or regulations, or the content of which can reasonably be understood, irrespective of whether the communication is addressed to the general public or to persons in public office or employment, as intended to influence legislation or to influence regulations.
- The following communications are not considered “Communications with the General Public” and are exempt from reporting:
 - A communication by a partnership, committee, association, corporation, labor union, or charitable organization made only to its members, partners, individuals, and stockholders; or
 - A communication in a newspaper, magazine, or other printed publication of general circulation, or aired on radio, television, or other broadcast medium, including the Internet, which communication is required to be made by law.

Disclosure of Donations/Contributions

- Contributions, loans, membership fees, dues payments, and assessments (“receipts”) of a reporting entity must be disclosed only if they exceed \$100 and were provided to the reporting entity with the specific intent to communicate with the general public.
 - Receipts are also reportable where the reporting entity communicated with the general public as its “major purpose,” (where the expenditures made during the calendar year related to such activity constituted more than 50 percent of its total expenditures).

RESTRICTIONS

- The following activities of a lobbyist or government affairs agents are subject to the restraints set forth in the Legislative and Governmental Process Activities Disclosure Act:
 - Identification of Government Affairs Agent
 - Registered government affairs agents are required to wear an identification badge at all times while lobbying. N.J.S.A. 52:13C-22.
 - Gifts, Entertainment, Travel, and other Things of Value
 - Lobbyists and government affairs agents are prohibited from offering or giving or agreeing to offer or give, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value to an officer or staff member of the Executive Branch or member of the Legislature or legislative staff, totaling more than \$250 in a calendar year. N.J.S.A. 52:13C-21b.
 - Post-Employment Restrictions
 - Governors and Cabinet officials may not serve as governmental affairs agents for a period of one year after their departure from State service; additional ethics provisions may preclude other post-employment activities for shorter and longer durations.
 - Contingency Fees
 - Contingency fees are prohibited. N.J.S.A. 52:13C-21.5.

<u>Activity</u>	<u>Regulation by State? Y/N</u>	<u>Statutory Citation</u>
Former Governor, Lieutenant Governor, Head of an Executive Branch Department, or Member of the Legislature – One Year Prohibition on Lobbying Subsequent to the Termination of Their Office	YES	<u>N.J.S.A. 52:13C-21.4</u>
Limits on Lobbyists Gifts to High Level State Officials	YES	<u>N.J.S.A. 52:13C-21b</u>
Hospitality Provided to Officials	YES	<u>N.J.S.A. 52:13C-21b</u>
Trips Organized by Lobbyists	YES	<u>N.J.S.A. 52:13C-21b</u>

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

New Jersey Election Law Enforcement Commission

P.O. Box 185

Trenton, New Jersey 08625

Phone: (609) 292-8700

www.elec.state.nj.us/

FOR FURTHER ASSISTANCE

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

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Telephone: 1-866-NPLOBBY
(675-6229)**

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