

# LOBBYING IN NEW JERSEY 2007

**New** Jersey Election Law Enforcement Commission



***FREDERICK M. HERRMANN, PH.D.  
EXECUTIVE DIRECTOR***

**NORCOL**

*Twentieth Annual Meeting of the  
Northeastern Regional Conference on  
Lobbying (NORCOL)  
Trenton, New Jersey*

■ Legislative History	■ Annual Update	■ Statistics	■ Proposed Legislation	■ Commentary	■ Bibliography	■ Forms and Instructions	■ Regulations
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August, 2007



**NORCOL**

## Lobbying In New Jersey 2007

*Frederick M. Herrmann, Ph.D.*

*Twentieth Annual Meeting of the  
Northeastern Regional Conference on Lobbying*

*Trenton, New Jersey*



*State of New Jersey*

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# LEGISLATIVE HISTORY



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- New Jersey in the 1960's was one of the last states to regulate lobbyists.
    - ◆ As far back as 1877, Georgia had become the first state to regulate lobbying.
    - ◆ Its Constitution simply declared lobbying was a crime.
    - ◆ In 1890, Massachusetts took a more moderate approach and enacted the first lobbying registration law.
  
  - A New Jersey legislative committee in 1906 recommended that New Jersey join Massachusetts as well as Wisconsin and Maryland in registering lobbyists.
    - ◆ Such a law was also to require the reporting of the bills being lobbied as well as annual expenditures.
  
  - Almost 60 years later, in 1964, the Legislature finally responded in part.
  
  - The Legislative Activities Disclosure Act of 1964 required the registration of lobbyists and the quarterly disclosure of lobbying activity with the Secretary of State.
    - ◆ The Act did not require financial disclosure but only a listing of bills being lobbied.
  
  - In 1971, the lobbying responsibilities of the Secretary of State were shifted to the Attorney General.
  
  - A decade later, in 1981, ELEC - which was created in 1973 – was given the responsibility of receiving annual financial reports from lobbyists.
    - ◆ Actually, ELEC's enabling legislation had granted the Commission this authority, but litigation prevented the filing of any reports until a new law was enacted.
  
  - In 1991, ELEC was given the additional responsibility of administering registration and activity reporting that had been under the jurisdiction of the Attorney General.
  
  - Moreover, the new law extended to lobbying of the Executive Branch as well as the Legislature.
    - ◆ The infamous “Expressly Loophole” was also removed so that there is not an exception for communications that do not expressly mention legislation or regulations.
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- In 1996, an amendment was enacted that requires annual notification of benefit passing to public officials by lobbyists.
    - ◆ No later than February 1st, a lobbyist must provide benefit passing information to the recipient of a benefit of over \$25 a day or \$200 in a calendar year.
    - ◆ This change provides the recipient with an opportunity to correct any error that may exist before public reporting on February 15th and allows an opportunity for reimbursement.
    - ◆ A reimbursement does not remove the disclosure of a benefit pass, but the reimbursement itself is noted on the report.
  
  - In 2004, seven new laws were enacted that impacted lobbying. The changes were as follows:
    - ◆ A \$250 per year cap on benefit passing;
    - ◆ Regulation of grassroots lobbying;
    - ◆ A revolving door ban on former Governors, legislators, and department heads from lobbying for one year after leaving office;
    - ◆ An expansion of lobbying regulation to cover contracts, permits, penalties, rate setting, and other administrative determinations as well as legislation and regulations;
    - ◆ Mandatory random audits of lobbying reports;
    - ◆ A prohibition on contingency fee lobbying; and,
    - ◆ An increase in the annual lobbying fee from \$325 to \$425.

# ANNUAL UPDATE





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## 1. Suggested Legislative Changes

- Annual financial filing combined with quarterly activity filing in one quarterly filing
- Terminology changes
  - ◆ Lobbyist for governmental affairs agent
  - ◆ Client for lobbyist
- Increase the statutory maximum penalty of \$1,000 to the same level as the Campaign Act (\$6,000 for a first offense and \$12,000 for a second and each subsequent offense) and adjust it quadrennially for inflation.

## 2. Latest Statutes

- In January, 2004, former Governor James E. McGreevey signed S-1756 of 2003 (Lance/Kyrillos), which places a \$250 cap on benefit passing.
- In June, 2004, former Governor McGreevey signed:
  - ◆ SCS for S-4 and S-631 (Adler/Lance et al.), which regulates grassroots lobbying;
  - ◆ A-14 (Panter/Mayer et al.), which bars the Governor, legislators, and department heads from lobbying for one year after leaving office;
  - ◆ S-22 (Karcher/Mayer et al.), which redefines lobbying to cover contracts, permits, penalties, rate setting, and other administrative determinations as well as legislation and regulations;
  - ◆ A-23 (Greenstein/Vas et al.), which requires random audits of lobbyists;
  - ◆ A-24 (Watson Coleman/Smith et al.), which raises the annual lobbying fee from \$325 to \$425; and,
  - ◆ A-25 (Fisher/Quigley et al.), which prohibits contingency fee lobbying.
- In August, 2004, former Governor McGreevey signed A-26 (Roberts/Sires et al.), which appropriates \$2 million to ELEC for the purpose of administering and enforcing the new laws affecting lobbying and campaign financing. ELEC's annual operating budget therefore increased from \$3 million to \$5 million.

## 3. Website

- ELEC homepage, which was thoroughly redesigned in April, 2005, can be found at: <http://www.elec.state.nj.us/>. It contains:



- ◆ Summary lobbying expenditures from 1982 to the present
- ◆ Benefit passing alphabetized by provider and recipient
- ◆ Alphabetized listings of lobbyists and clients
- ◆ Receipt and expenditure rankings
- ◆ Expenditures summarized by categories for each lobbyist and client
- ◆ Lobbyists listed with their clients
- ◆ Alphabetized list of lobbyists sitting on authorities, boards, and commissions

#### 4. Recent Advisory Opinions

- In **Advisory Opinion 01-2006**, the Commission advised the University of Medicine and Dentistry of New Jersey (UMDNJ) that it is not subject to the requirements of the Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq., which requires a lobbyist organization to file the Annual Report of Lobbyist Organization (Form L1-L) and a governmental affairs agent to file the Annual Report of Legislative Agent (Form L1-A).

The Lobbying Act and Commission regulations specifically exempt the acts of employees of State government from reporting requirements. The Commission therefore examined legislation creating and expanding the UMDNJ to determine whether or not it possessed characteristics of an instrumentality or unit of State government. Among the indicia of its status as a government entity, the Commission found that the UMDNJ is a public employer, has power to exercise the right of eminent domain, and is authorized to promulgate rules for its operation. The Commission therefore concluded that, as an instrumentality of State government, the UMDNJ is not required to file annual or quarterly lobbying reports.

In its opinion, the Commission noted that while the UMDNJ is authorized by law to create and participate with other entities in partnerships and joint ventures, the opinion made no determination regarding the lobbying reporting requirements of other organizations, hospitals, foundations, or ventures that may be associated or affiliated with the UMDNJ.

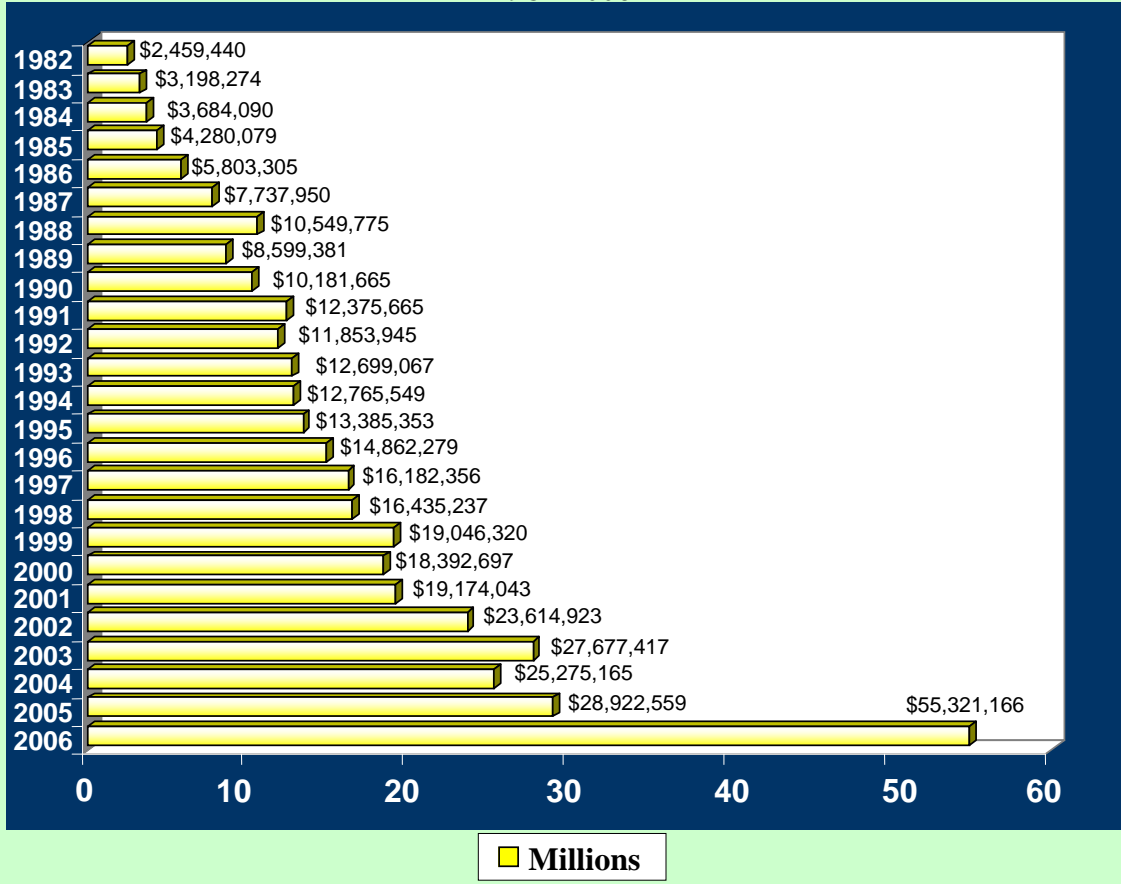
#### 5. Future Projects

- Scanning lobbying reports onto the Internet
- Electronic filing for lobbyists

# STATISTICS



### ANNUAL LOBBYING FINANCIAL REPORT EXPENDITURE SUMMARY 1982-2006





**ANNUAL LOBBYING FINANCIAL REPORT DETAILED EXPENDITURE SUMMARY  
2002-2006**

	2002	2003	2004	2005	2006 <sup>1</sup>	2005-2006% Increase/Decrease
<b><i>Operational Costs</i></b>	\$23,519,052	\$27,594,201	\$25,212,234	\$28,878,932	\$55,275,658	91.40%
<i>Salary</i>	17,646,417	19,724,547	20,539,160	23,831,737	42,624,959	78.86%
<i>Support Personnel</i>	2,164,743	3,154,004	2,345,161	2,464,026	3,354,989	36.16%
<i>Fees</i> <sup>2</sup>	459,403	675,736	334,300	615,962	2,108,615	242.33%
<i>Communication Costs</i> <sup>3</sup>	2,830,990	3,583,578	1,574,606	1,490,615	6,606,993	343.24%
<i>Travel</i>	417,499	456,336	419,006	476,592	580,102	21.72%
<b><i>Benefit Passing</i></b> <sup>4</sup>	95,871	83,216	62,931	43,627	45,508	4.31%
<b><u>Total Spending</u></b>	<b><u>\$23,614,923</u></b>	<b><u>\$27,677,417</u></b>	<b><u>\$25,275,165</u></b>	<b><u>\$28,922,559</u></b>	<b><u>\$55,321,166</u></b>	<b>91.27%</b>

1. During calendar year 2006, costs associated with governmental process lobbying as well as grassroots lobbying became reportable. Therefore, 2006 is a baseline year for lobbying costs covering the expanded areas of lobbying.
2. Fees include: assessments, membership fees, and dues.
3. Communication costs include: printed materials, postage, telephone calls, faxes, receptions, and, in 2006, also includes direct mail pieces, newspaper advertisements, and television and radio broadcasts.
4. Benefit passing includes: meals, entertainment, gifts, travel, and lodging.



<b>NUMBER OF LOBBYISTS AND REPRESENTED ENTITIES 1982-2006</b>		
<b>YEAR</b>	<b>GOVERNMENTAL AFFAIRS AGENTS</b>	<b>REPRESENTED ENTITIES</b>
1982	401	547
1983	425	572
1984	478	589
1985	437	583
1986	454	652
1987	484	685
1988	653	834
1989	622	663
1990	566	726
1991	560	747
1992	650	897
1993	572	910
1994	581	983
1995	559	925
1996	573	1,068
1997	569	1,068
1998	550	1,106
1999	543	1,153
2000	539	1,212
2001	523	1,186
2002	564	1,277
2003	577	1,277
2004	582	1,392
2005	613	1,499
2006	935	1,834

PROPOSED  
LEGISLATION  
2006-2007

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## 2006-2007 LOBBYING LEGISLATION

BILL NUMBER	PRIMARY SPONSOR(S)	SUBJECT
A-704	Baroni	\$100 annual cap on gifts from a single source.
A-1481	O'Toole/Russo	Expands lobbying disclosure to include influencing executive orders, permits, penalties, and contracts.
A-1491	O'Toole/Russo	Prohibits a public entity from engaging a governmental affairs agent who is not a regular, full-time employee of the public entity.
A-2155	Baroni	Prohibits persons who violated certain laws from registering as governmental affairs agents and from acting as representative before local government units.
A-2418	Merkt	Prohibits any person who has served as a member of the Legislature from acting as a lobbyist for two years from the time the individual leaves office.
A-2444	Merkt	Removes exemption for certain nonprofit organizations on limits for reimbursement or payment for travel or subsistence for Legislators and State officers and employees.
A-2676	Voss	Prohibits convicted former elected or appointed public official from registering as a governmental affairs agent.
A-3196	Fisher/Burzichelli	Prohibits school districts from hiring governmental affairs agents.
A-3338	Fisher	Requires that a governmental affairs agent retained by a State government entity file with ELEC a notice of representation, quarterly activity reports, and an annual financial report.
A-4012	Whelan, et al.	Restricts receipt of things of value by members of the Legislature and legislative staff from lobbyists and governmental affairs agents.
A-4013	Panter, et al.	Requires governmental affairs agent to report particular items in annual appropriation legislation or appropriation legislation supplemental thereto on which agent acted.
A-4017	O'Toole/Malone	Prohibits receipt of certain things of value by members of the Legislature and legislative staff and by their immediate families from lobbyists and governmental affairs agents.
A-4019	O'Toole/Malone	Requires governmental affairs agent to report particular items in any appropriation legislation on which agent acted.





**2006-2007 LOBBYING LEGISLATION (Continued)**

<b>BILL NUMBER</b>	<b>PRIMARY SPONSOR(S)</b>	<b>SUBJECT</b>
A-4130	Handlin	Requires ELEC to provide ethics training for governmental affairs agents.
S-221	Karcher	Prohibits a public entity from engaging a governmental affairs agent who is not a regular, full-time employee of the public entity.
S-586	Kyrillos/Adler	Requires ELEC to provide ethics training for governmental affairs agents.
S-702	Lance/Connors	Expands lobbying disclosure to include contracting, purchasing, permitting, and licensing. Also requires quarterly financial reporting.
S-833	Karcher	Prohibits member of Legislature from acting as a governmental affairs agent for two years after leaving office; prohibits candidate for elective office from being registered as a governmental affairs agent.
S-1813	Karcher	Prohibits member of Legislature from engaging in certain lobbying activities for two years after leaving office.
S-1874	Karcher/Sweeney	Requires that a governmental affairs agent retained by a State government entity file with ELEC a notice of representation, quarterly activity reports, and an annual financial report.
S-2062	Sweeney/Doria	Prohibits school districts from hiring governmental affairs agents.
S-2469	Inverso	\$100 annual cap on gifts from a single source.
S-2504	Codey/Lance	Restricts receipt of things of value by members of the Legislature and legislative staff from lobbyists and governmental affairs agents.
S-2505	Codey/Kean	Requires governmental affairs agent to report particular items in annual appropriation legislation or appropriation legislation supplemental thereto on which agent acted.

# COMMENTARY



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- **LOBBYING DEFINITION, REGISTRATION, AND FEE**

- ◆ A lobbyist (the statutory term is “governmental affairs agent”) is defined as a person who receives over \$100 for lobbying in a 3-month period, who “holds himself or herself out as” a lobbyist, or who incident to regular employment “engages in influencing legislation, regulations, or a governmental process such as contracting, permitting, penalizing, or rate setting.”
- ◆ Lobbyists must register with ELEC within 30 days of accepting a client or after 20 hours of lobbying in a calendar year, whichever comes first, and must wear a photo identification badge while lobbying.
  - An annual filing fee is payable by November 15<sup>th</sup> to cover administrative costs during the next calendar year.

- **QUARTERLY FILING**

- ◆ Lobbyists must file a quarterly report of their lobbying activity with ELEC.
- ◆ These forms provide basic information about each bill, regulation, and governmental process lobbied.
- ◆ Each effort to influence a bill or regulation by communicating with a State official or the general public requires the reporting of the following:
  - its general category (i.e., education, health, or labor),
  - its bill number or proposed rule number,
  - whether it was promoted or opposed,
  - its sponsor or authorizer/agency,
  - a bill description or rule title (NJ Register), and
  - the client interested in the bill or rule.
- ◆ Each effort to influence a governmental process must be reported as well in a similar fashion.

- **ANNUAL FILING**

- ◆ Two kinds of financial activity are reported annually if over \$2,500 has been raised or spent:
  - Benefit passing of over \$25 a day or \$200 a year to State officials, and
  - General operational costs to lobby.



- ◆ Reporting of benefit passing gives the public critical information about potential sources of undue influence on State officials.
- ◆ Reporting of operational costs gives the public a general idea of the overall expense of lobbying activity.
- ◆ Benefit passing covers:
  - Meals,
  - Entertainment,
  - Gifts, and
  - Travel and lodging for State officials.
- ◆ Operational costs cover:
  - Salaries of lobbyists and their support personnel (such as legal, technical, and clerical staff);
    - \* Support personnel do not make direct communications
  - Travel and lodging costs for lobbyists; and,
  - Communication costs:
    - \* Printed materials,
    - \* Postage,
    - \* Telephone calls,
    - \* Faxes,
    - \* Receptions, and
    - \* Direct mail pieces, newspaper advertisements, and television & radio broadcasts.

- **GUIDELINES**

- ◆ There is a personal expression exemption that allows a lobbyist to pass benefits without reporting providing that the lobbyist uses his or her own “personal funds.”
- ◆ Uncompensated lobbying services are generally not reportable unless there is an “intangible” financial benefit being gained by the lobbyist (i.e., promise of future employment).
- ◆ A communication to a “higher level official” is considered lobbying unless it can be demonstrated that such a communication is not an attempt to influence a decision through preferential treatment.



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- ◆ Routine ministerial contacts with higher level officials are not considered lobbying. Examples of such activity are:
    - Scheduling a meeting,
    - Requesting information,
    - Applying for a permit or a license,
    - Participating in an inspection or an audit, and
    - Responding to a subpoena or a public emergency.
  
  - ◆ All contacts with lower level officials are considered routine and ministerial and are not lobbying.
  
  - ◆ Invited & uncompensated participation on an Advisory Board is not considered lobbying.
  
  - ◆ Lobbying activity that takes place before the introduction of a bill or the proposal of a regulation is reportable.
  
  - ◆ Lobbying activity must be reported in the calendar year in which it was performed regardless of when it was billed.
  
  - ◆ Lobbyists have to provide “a written benefit notice” to all State officials that have received a benefit from them.
    - The notice must be given before the annual report is filed with ELEC in mid-February.
    - A State official may have an error corrected or may reimburse the amount of a benefit (but the benefit is still reported as is the reimbursement).
  
  - ◆ A State official speaking at a conference may receive food and beverages without incurring a benefit pass.
  
  - ◆ “Support personnel” may work up to 450 hours w/o being covered – a lobbyist only 20 hours.
  
  - ◆ A technical expert accompanying a lobbyist is considered a support person.
    - This provision is known as a “Lobbyist Shield.”
  
  - ◆ The preparation time of a lobbyist is reportable as lobbying activity and is part of the calculation in determining when 20 hours have been reached.



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- ◆ Contingency fees are not permissible.
  - ◆ Benefit passing is capped at \$250 per year but there is a 90-day reimbursement provision.
    - Moreover, there are exceptions for certain benefits related to: event participation, out-of-state travel, and non-profit organizations.
  - ◆ There is a record-keeping exemption for passing a benefit of \$5 or less.
  - ◆ Former Governors, Legislators, and Department Heads are banned from lobbying for one year after leaving office.
  - ◆ So-called “Grassroots Lobbying” expenditures to influence the general public on legislation or regulations are reportable annually.
  - ◆ Lobbyists are required to preserve their records for three years.
  - ◆ The Lobbying Law does not apply to the acts of:
    - a governmental officer or employee,
    - a political party,
    - an unsalaried person testifying before the Legislature in behalf of a nonprofit organization,
    - a labor organization involved in collective bargaining, or
    - an attorney representing a client in litigation or an administrative proceeding.
  - ◆ There are a number of activities prohibited by law that are enforced by the Attorney General including:
    - the employment of an unregistered lobbyist,
    - representing an adverse interest,
    - causing the introduction of legislation in order to obtain employment to stop its passage, and
    - false communication related to legislation.
    - Intentional misreporting
  - ◆ The Attorney General may ask for an injunction to prevent a lobbyist from working if he or she fails to comply with the lobbying law.



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- **GENERAL FILING INFORMATION**

- ◆ An original and two copies of all forms must be received by ELEC before 5:00 p.m. on a reporting date.
- ◆ All reports are public records and are available for inspection at ELEC's office from 9:15 a.m. to 4:45 p.m. Monday–Friday.
- ◆ Copies of reports can be obtained by placing a request by mail, by fax, or over the internet pursuant to the “Open Public Records Act.” Also, annual and quarterly reports are available for public inspection within seven business days after each respective filing date.
- ◆ Reports are available to the public within 7 business days of the filing date.
- ◆ The Commission compiles and publishes each quarter a summary of all information contained in the quarterly activity reports.
- ◆ Detailed lobbying data is available on ELEC's homepage at: <http://www.elec.state.nj.us/>.
- ◆ For further information, ELEC publishes various materials to explain what it does and what filing entities have to do.
- ◆ ELEC's staff may be called for assistance at (609) 292-8700 and toll free in New Jersey at (888) 313-ELEC (3532).

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# FORMS AND INSTRUCTIONS\*

\*Please always check with the Commission for the most recent filing information including forms and instructions before submitting reports.





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## **FORMS AND INSTRUCTIONS**

Click on link below:

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

# REGULATIONS\*

\*Please always check with the Commission for the most recent regulatory information before acting.

## **SUBCHAPTER 20. LOBBYISTS AND GOVERNMENTAL AFFAIRS AGENTS**

### **19:25-20.1 Authority**

The provisions of this subchapter are promulgated pursuant to the Legislative and Governmental Process Activities Disclosure Act (P.L. 1971, c.183), as amended, N.J.S.A. 52:13C-18, et seq., and following ("the Act").

### **19:25-20.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless a different meaning clearly appears from the context.

"Act" shall mean the Legislative and Governmental Process Activities Disclosure Act, as amended, N.J.S.A. 52:13C-18 et seq.

"Benefit recipient" means any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch who is the recipient of a benefit paid for or otherwise derived from a lobbyist's or governmental affairs agent's expenditures providing that benefit or benefits.

"Commission" shall mean the New Jersey Election Law Enforcement Commission.

"Communication with a member of the Legislature," "with legislative staff," "with the Governor," "with the Governor's staff," or "with an officer or staff member of the Executive Branch" shall mean any communication, oral or in writing or any other medium, addressed, delivered, distributed or disseminated, respectively, to a member of the Legislature, to legislative staff, to the Governor, to the Governor's staff, or to an officer or staff member of the Executive Branch, as distinguished from communication to the general public, including, but not limited to, a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch. If any person shall obtain, reproduce or excerpt any communication or part thereof which in its original form was not a communication under this definition and shall cause such excerpt or reproduction to be addressed, delivered, distributed or disseminated to a member of the Legislature, to legislative staff, to the Governor, to the Governor's staff, or to an officer or staff member of the Executive Branch, such communication, reproduction or excerpt shall be deemed a communication with the member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch by such person.

"Communication with the general public" means any communication that is:

1. 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

2. Which explicitly supports or opposes a particular item or items of legislation or regulation, 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 regulation;
3. A communication with the general public does not include:
  - i. A communication by a partnership, committee, association, corporation, labor union, or charitable organization made only to its members, partners, employees, and stockholders; or
  - ii. 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.

"Compensation," for the purposes of this subchapter, shall be included within the definition of the term "receipt."

"Contribution," for the purposes of this subchapter, shall be included within the definition of the term "receipt."

"Expenditure" includes every loan, gift, fee, salary, contribution, subscription, advance or transfer of money or other thing of value, including any item of real or personal property, tangible or intangible, and paid personal services (but not including volunteer services provided without compensation) made or paid by any governmental affairs agent or lobbyist, and any pledge or other commitment or assumption of liability to make such transfer. Any such commitment or assumption shall be deemed to have been an expenditure upon the date when such commitment is made or liability assumed.

"Expenditures providing a benefit" or "expenditures providing benefits" means any expenditures for entertainment, food and beverage, travel and lodging, honoraria, loans, gifts or any other thing of value, except for:

1. Any money or thing of value paid for past, present, or future services in regular employment, whether in the form of a fee, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense, or any combination thereof; or
2. Any dividends or other income paid on investments, trusts, and estates.

"Governmental affairs agent" shall mean any person who receives or agrees to receive, directly or indirectly, compensation, in money or anything of value (including reimbursement of his or her expenses where such reimbursement exceeds \$100.00 in any three-month period), to influence legislation, to influence regulation, or to influence governmental processes, or all of the above, by direct or indirect communication with, or by making or authorizing, or causing to be made or authorized, any expenditures providing a benefit to a member of the Legislature,

legislative staff, the Governor, the Governor's staff, or any officer or staff member of the Executive Branch, or who holds himself or herself out as engaging in the business of influencing legislation, regulation, or governmental processes by such means, or who, incident to his or her regular employment, engages in influencing legislation, regulation, or governmental processes by such means. The term "governmental affairs agent" shall also include any person who receives or agrees to receive, directly or indirectly, compensation, in money or anything of value for the purpose of conducting communication with the general public, or who incident to his or her regular employment conducts communication with the general public, or who holds himself or herself out as engaging in the business of conducting communication with the general public. However, a person shall not be deemed a governmental affairs agent who, in relation to the duties or interests of his or her employment or at the request or suggestion of his or her employer, communicates with a member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch concerning any legislation, regulation, or governmental process, or who conducts communication with the general public, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of his or her employment. For the purposes of this definition, activities to influence legislation, influence regulation, or influence governmental processes, or to conduct communication with the general public shall be deemed "isolated, exceptional or infrequent" if they constitute less than 20 hours of the time an employee spends working at his or her employment during a calendar year.

“Governmental process” means:

1. Promulgation of executive orders;
2. Rate setting;
3. Development, negotiation, award, modification or cancellation of public contracts.
4. Issuance, denial, modification, renewal, revocation or suspension of permits, licenses or waivers;
5. Procedures for bidding;
6. Imposition or modification of fines and penalties;
7. Procedures for purchasing;
8. Rendition of administrative determinations; and
9. Award, denial, modification, renewal or termination of financial assistance, grants and loans.

"Governor" includes the Governor or the Acting Governor.

"Governor's staff" includes the members of the Governor's Cabinet, the Secretary to the Governor, the Counsel to the Governor and all professional employees in the office of the Counsel to the Governor, and all other employees of the Office of the Governor.

"Influence governmental processes," "influencing governmental processes" or "influence governmental process" mean 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 such processes.

"Influence legislation" shall mean 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 thereof by the Legislature, including 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 in accordance with his constitutional authority.

"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.

"Legislation" includes all bills, resolutions, amendments, nominations and appointments, pending or proposed, in either House of the Legislature, and all bills and resolutions which, having passed both Houses, are pending approval by the Governor.

"Legislative staff" includes all staff, assistants and employees of the Legislature or any of its members in the member's official capacity, whether or not they receive compensation from the State of New Jersey.

"Legislature" includes the Senate and General Assembly of the State of New Jersey and all committees and commissions established by the Legislature or by either House thereof.

"Lobbyist" shall mean any person, partnership, committee, association, corporation, labor union, or any other organization that employs, retains, designates, engages or otherwise uses the services of any governmental affairs agent to influence legislation, regulation, or governmental processes.

"Member" means an individual who pays dues to, makes a contribution of money or time to, or has made an affirmative request to receive materials from a committee, association, or organization.

"Member of the Legislature" includes any member or member-elect of, or any person who shall have been selected to fill a vacancy in, the Senate or General Assembly, and any other person who is a member or member-designate of any committee or commission established by the Legislature or by either House thereof.

"Officer or staff member of the Executive Branch" means any assistant or deputy head of a principal department in the Executive Branch of State Government, including all assistant and deputy commissioners; the members and chief executive officer of any authority, board, commission or other agency or instrumentality in or of such a principal department; and any officer of the Executive Branch of State Government other than the Governor who is not included among the foregoing or among the Governor's staff, but who is empowered by law to issue, promulgate or adopt administrative rules and regulations, or to administer governmental processes, and any person employed in the office of such an officer who is involved with the development, issuance, promulgation or adoption of such rules and regulations or administration of governmental processes in the regular course of employment.

"Person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

"Public contract" means a contract the cost or price of which is to be paid with or out of State funds or the funds of an independent authority created by the State or by the Legislature.

"Receipt" includes every loan, gift, contribution, fee, subscription, salary, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible, and paid personal services (but not including voluntary services provided without compensation) made to any governmental affairs agent or lobbyist and any pledge or other commitment or assumption of liability to make such transfer. Any such commitment or assumption shall be deemed to have been a receipt upon the date when such commitment is made or liability assumed.

1. For the purposes of this subchapter, the term "receipt" shall include, but not be limited to, compensation by way of salary, fees, allowances, retainers, reimbursement of expenses, or other similar compensation, when received by a governmental affairs agent. For purposes of this subchapter, the term

"receipt" shall also include, but not be limited to, contributions by way of fees, dues, gifts or other similar contributions when received by a lobbyist.

"Regulation" includes any administrative rule or regulation affecting the rights, privileges, benefits, duties, obligations, or liabilities of any one or more persons subject by law to regulation as a class, but does not include an administrative action:

1. To issue, renew or deny, or, in an adjudicative action, to establish or make rates that have particular applicability on named or specified petitioners or parties, or to suspend or revoke, a license, order, permit or waiver under any law or administrative rule or regulation;
2. To impose a penalty; or
3. To effectuate an administrative reorganization within a single principal department of the Executive Branch of State Government.

### **19:25-20.3 Exemptions from the Act**

(a) The provisions of the Act shall not apply to the following activities:

1. The acts of the government of the United States or of the State of New Jersey or of any other state or of any of the political subdivisions or authorities or commissions of any of the foregoing, or any interstate authority or commission, or any official, employee, counsel or agent of any of the above when acting in his or her official capacity.
2. The publication or dissemination, in the ordinary course of business, of news items, advertising which does not constitute communication with the general public, editorials or other comments by a newspaper, book publisher, regularly published periodical, or radio or television station or similar media, including an owner, editor or employee thereof, nor the acts of a recognized school or institution of higher education, public or private, in conducting, sponsoring or subsidizing any classes, seminars, forums, discussions or other events, in the normal course of its business in which political information or discussion thereof or comment thereon is an integral part.
3. The acts of bona fide religious groups acting solely for the purpose of protecting the public right to practice the doctrine of such religious group.
4. The acts of a duly organized national, state or local committee of a political party.
5. The acts of a person in testifying before a legislative committee or commission, at a public hearing duly called by the Governor on legislative proposals or on legislation passed and pending his or her approval, or before



any officer or body empowered by law to issue, promulgate or adopt administrative rules and regulations in behalf of a nonprofit organization incorporated as such in this State, who receives no compensation therefor beyond the reimbursement of necessary and actual expenses, and who makes no other communication with a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch in connection with the subject of his or her testimony.

6. The acts of a person in communicating with or providing benefits to a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch if such communication or provision of benefits is undertaken by him or her by exclusive use of his or her personal funds as a personal expression and not incident to his or her employment, even if it is upon a matter relevant to the interests of a person by whom or which he or she is employed, and if he or she receives no additional compensation or reward, in money or otherwise, for or as a result of such communication or provision of benefits.
7. A communication by an individual with an employee of a principal department in the Executive Branch of State government, or with an employee of any authority, board, commission, or other agency or instrumentality in or of a principal department of the Executive Branch of State government for a routine, ministerial matter. A communication for a routine, ministerial matter includes, but is not limited to, a communication to:
  - i. Schedule a meeting date, time, and place;
  - ii. Request the status of an administrative matter;
  - iii. Request procedures or forms;
  - iv. Request information concerning requirements to comply with existing laws or regulations;
  - v. Apply for a permit or license as required by law;
  - vi. Participate in an inspection required by law;
  - vii. Respond to an audit conducted pursuant to law;
  - viii. Make a contact as a salesperson for the sole purpose of selling goods or services;
  - ix. Inquire about the delivery of services or materials pursuant to an existing contract;
  - x. Provide advice or perform services pursuant to an existing contract;
  - xi. Prepare documents and materials in response to a request for proposal or to participate at a bid conference after bid specifications have been established;
  - xii. Respond to a subpoena;
  - xiii. Respond to a public emergency or condition involving public health or safety; or

- xiv. Provide a response to a detailed request for specific information.
8. Participation by an individual 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 such groups, and where the following conditions are met:
- i. The individual has been specifically nominated or invited to participate; and
  - ii. The individual receives no separate compensation for his or her service.

(b) The provisions of the Act regarding attempts to influence governmental processes shall not apply to the following:

- 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 or 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.

### **19:25-20.3A Presumption of lobbying activity**

It shall be a rebuttable presumption that a communication, except as provided in N.J.A.C. 19:25-20.3(b), by a governmental affairs agent is a communication for the purpose of influencing legislation, influencing regulation, or influencing a governmental process if the communication is made to the Governor, the Governor's staff, or the Governor's Chief of Staff, or to the Commissioner, Deputy Commissioner, Assistant Commissioner, Division Director, Chief of Staff, Executive Director, policy advisor, or a person in an analogous position in a principal department in the Executive Branch of State Government, or in any authority, board, commission or other agency or instrumentality in or of such a principal department, or to a person empowered by law to issue, adopt, or promulgate administrative rules.

**19:25-20.3B \$250.00 Annual limit on gifts**

(a) Except as expressly authorized by N.J.S.A. 52:13D-24 and 52:13D-24.1, or when the lobbyist or governmental affairs agent is a member of the immediate family of the officer or staff member of the Executive Branch or member of the Legislature or legislative staff, no lobbyist or governmental affairs agent shall offer or give or agree 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 \$250.00 in a calendar year.

(b) The \$250.00 limit in (a) above shall not apply to any compensation, reward, gift, honorarium or other thing of value if:

1. It is received in the course of employment, from an employer other than the State, of an individual covered in (a) above or a member of the immediate family; or
2. It is received from a member of the immediate family when the family member received such in the course of his or her employment.

(c) Calculation of the \$250.00 limit in (a) above on offering or giving, or agreeing to offer or give, any compensation, reward, gift, honorarium or other thing of value shall also include any compensation, reward, employment, gift, honorarium or other thing of value given, directly or indirectly, to each member of the immediate family of the officer or staff member of the Executive Branch or member of the Legislature or legislative staff.

(d) As used in this section, the term "member of the immediate family" shall mean a spouse, child, parent, or sibling of a member of the Legislature residing in the same household as the member of the Legislature.

(e) The \$250.00 limit in (a) above on offering or giving, or agreeing to offer or give, any compensation, reward, gift, honorarium or other thing of value shall not apply if an officer or staff member of the Executive Branch or member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value offered or given by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

(f) If a lobbyist or governmental affairs agent receives reimbursement pursuant to (e) above, the lobbyist or governmental affairs agent shall report the receipt and amount of such reimbursement in the Annual Report, and the receipt of such a reimbursement does not remove or alter the requirement that the lobbyist or governmental affairs agent report the expenditure and the recipient of the compensation, reward, gift, honorarium or other thing of value on its Annual Report filed pursuant to this subchapter.

(g) Any reimbursement or payment of expenses for travel, subsistence, and entertainment, made by a lobbyist or governmental affairs agent pursuant to N.J.S.A. 52:13D-24, shall be subject to reporting as an expenditure on the Annual Report filed by the lobbyist or governmental affairs agent pursuant to this subchapter.

#### **19:25-20.4 Governmental affairs agent notice of representation**

(a) Each governmental affairs agent shall file with the Commission a signed notice of representation on a form prescribed by the Commission, and containing the information required by N.J.S.A. 52:13C-21.

(b) The notice of representation shall be filed prior to making any communication with, or the making of any expenditures providing a benefit to, a member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch, or prior to making any communication concerning a governmental process with an officer or 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, or shall be filed within 30 days of employment, retainer or engagement as a governmental affairs agent, whichever occurs earlier.

(c) Each governmental affairs agent must notify the Commission in writing of any material change in the information supplied in the notice of representation within 15 days of the effective date of such change, or not later than the filing date of the subsequent quarterly report, whichever occurs earlier.

(d) If a governmental affairs agent identifies a membership organization or corporation as the lobbyist or person from whom he or she receives compensation for acting as a governmental affairs agent, and the name or occupation so identified does not, either explicitly or by virtue of the nature of the principal business in which the organization or its members, or the corporation or its shareholders, is commonly known to be engaged, clearly reveal the primary specific economic, social, political, or other interest which the organization or corporation may reasonably be understood to seek to advance or protect through its employment, retainer, or engagement of the governmental affairs agent, a description of that primary economic, social, political, or other interest and a list of the persons having organizational or financial control of the organization or corporation, including the names, mailing addresses and occupations of those persons, shall be included in the notice of representation of the governmental affairs agent.

#### **19:25-20.5 Governmental affairs agent quarterly report**

(a) Each governmental affairs agent shall file with the Commission a quarterly report containing the information required by N.J.S.A. 52:13C-22 and signed by the governmental affairs agent.

(b) If there has been no activity in the calendar year quarter to influence legislation, influence regulation, or to influence governmental processes, the report shall so state.

(c) Such report shall be filed on a form prescribed by the Commission no later than the 10th day following the end of the calendar year quarter during which activities influencing legislations, influencing regulation, or influencing governmental processes occurred.

(d) Calendar year quarters end on March 31, June 30, September 30 and December 31.

(e) A governmental affairs agent shall not be required to report the specific details of a trade secret on a quarterly report filed pursuant to this section, but shall be required to report that activity concerning a trade secret occurred during the quarter.

### **19:25-20.6 Name tags**

(a) Each governmental affairs agent who is an individual shall wear a name tag issued by the Commission bearing the full name and photograph of the individual, which name tag shall be prominently displayed and visible at all times when such individual is in the State House, the State House Annex, or any other State building or other location when and where an authorized meeting of a legislative committee is being held for the purpose of influencing legislation or influencing regulation. A governmental affairs agent shall also wear the name tag issued by the Commission at any location when and where a meeting is being held at which there may be an attempt to influence a governmental process.

(b) On or about November 15, the Commission shall issue a name tag to a governmental affairs agent who is an individual, which name tag shall be effective for a 12-month period commencing on the following January 1.

(c) Name tags will be issued by the Commission only to a governmental affairs agent who has paid the annual fee and submitted two photographs as provided in N.J.A.C. 19:25-20.20, and has filed all required notices of representation and quarterly reports for the prior 12-month period.

(d) The Commission may terminate the active status of a governmental affairs agent who fails to renew his or her name tag on or prior to the expiration date provided in (b) above.

### **19:25-20.7 Notice of termination**

(a) Each governmental affairs agent shall file with the Commission a notice of termination within 30 days after his or her activities influencing legislation, influencing regulation, or influencing governmental processes cease.

(b) Any person who has engaged a governmental affairs agent shall file a notice of termination after that agent ceases to represent such person.

(c) The notice of termination shall be filed on a form prescribed by the Commission. The completed form shall include:

1. The effective date of termination;
2. The name of the person from whom service was terminated;
3. The name and signature of the governmental affairs agent; and
4. The date of the notice.

(d) A governmental affairs agent who files a notice of termination pursuant to (a) above, and who no longer is conducting activities to influence legislation, regulation, or governmental processes on behalf of any person, shall return the name tag issued to the agent pursuant to N.J.A.C. 19:25-20.6 at the time the agent files his or her notice of termination.

#### **19:25-20.8 Voluntary statements**

(a) Governmental affairs agents filing pursuant to N.J.S.A. 52:13C-35 a voluntary notice of representation, a voluntary quarterly report, or a voluntary notice of termination shall utilize the forms prescribed by the Commission.

(b) Such statements shall be marked by the governmental affairs agent as "voluntary filing."

(c) Voluntary filings pursuant to this section are exempt from the fees provided in N.J.A.C. 19:25-20.19.

#### **19:25-20.9 Annual report**

(a) Any lobbyist or governmental affairs agent who or which receives receipts of more than \$2,500 or makes expenditures of more than \$2,500 in any calendar year for the purpose of 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, for the purpose of influencing governmental processes, or for the purpose of communication with the general public, shall file with the Commission, not later than February 15th of each year, an annual report of receipts and expenditures for the previous calendar year on forms supplied by the Commission.

(b) A governmental affairs agent retained by or representing more than one lobbyist shall, for purposes of determining aggregate threshold expenditure figures pursuant to this section, include receipts and expenditures made on behalf of all of the lobbyists by whom the governmental affairs agent is employed.

#### **19:25-20.9A Annual report of communication with the general public**

Any person other than a governmental affairs agent or lobbyist who receives contributions or makes expenditures for the purpose of communication with the general public shall be required to file and certify the correctness of an annual report of such contributions or

expenditures in the same manner as governmental affairs agents if the contributions or expenditures made, incurred or authorized by the person for the purpose of communication with the general public exceed in the aggregate \$2,500 in any year.

### **19:25-20.10 Receipts**

(a) The following receipts of a lobbyist or governmental affairs agent 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 which relate to influencing governmental processes, or to communication with the general public, shall be included in the annual report:

1. Fees, salary, allowances or other compensation paid to a governmental affairs agent. Receipts required to be reported pursuant to this paragraph shall be detailed as to amount, from whom received and for what purpose. A law firm, advertising agency, public relations firm, accounting firm or similar organization which spends only a portion of its time in legislative or regulatory activity, in influencing governmental processes, or for communication with the general public on behalf of a lobbyist shall be required to report only that portion of its fees as are related to influencing legislation, influencing regulation, influencing governmental processes, or for communication with the general public.
2. Contributions, loans (except for loans made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons) or membership fees or dues received by a lobbyist. Such contributions, loans, fees or dues received by a lobbyist are reportable if they are made to a lobbyist whose major purpose is to influence legislation, influence regulation, influence governmental processes, or conduct communication with the general public. For purposes of this paragraph, a lobbyist shall be deemed to be engaged in influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public, as its major purpose for any calendar year in which expenditures related to such activity constitute more than 50 percent of its total expenditures for all purposes. If, under the above test, it is not the major purpose of the lobbyist to influence legislation, influence regulation, influence governmental processes, or conduct communication with the general public, the contributions, loans, fees and dues received by the lobbyist are not reportable by such organization, unless made to the lobbyist with the specific intent that the contributions, loans, fees or dues be employed to influence legislation, influence regulation, influence governmental processes, or conduct communications with the general public (in which case they are reportable as outlined below). If the major purpose of the lobbyist is to engage in influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public, the contributions, loans, membership fees or dues received by the

lobbyist shall be reported hereunder in the aggregate in the same proportion as the activities of the lobbyist are related to influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public, along with the name and address of the contributor(s) whose contribution(s), allocated as outlined above, aggregate more than \$100.00 during the calendar year.

**Example 1:** Trade Association XYZ engages in a wide range of activities, including trade shows, public relations, newsletters to its members, etc., and influencing legislation. This activity is done through a paid contract governmental affairs agent in Trenton as well as by communications by employees of the Trade Association. XYZ expends over \$2,500 during the course of the calendar year on this lobbying activity, although this expense constitutes less than 50 percent of its total expenditures for all purposes for that year. Trade Association XYZ is a lobbyist required to file an annual report. However, it need not report its contributions.

**Example 2:** Trade Association EFG has the same fact situation as above, except that Trade Association EFG's lobbying expenses constitute more than 50 percent (for example, 80 percent) of its expenditures for all purposes for the year. EFG must file an annual report as a lobbyist, including therein an aggregate allocated figure for lobbying contributions made to it (80 percent of each contribution must be allocated to lobbying for reporting purposes; the aggregate is then reported). EFG must also report the name and address of all those contributors whose contributions, after being allocated to lobbying, exceed \$100.00.

#### **19:25-20.10A Contingent fees, prohibited**

A governmental affairs agent shall not enter into any agreement, arrangement, or understanding under which the governmental affairs agent's compensation, or any portion thereof, is made contingent upon the success of any attempt to influence legislation, influence regulation, or influence a governmental process.

#### **19:25-20.11 Expenditures**

(a) The following expenditures of a lobbyist or governmental affairs agent 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 which relate to influencing governmental processes, or to communication with the general public, shall be reported in the annual report, and shall be listed in the aggregate by category:

1. Fees, allowances, retainers, salary or other compensation paid by a lobbyist to a governmental affairs agent. Compensation required to be reported pursuant to this paragraph shall be detailed as to amount, to whom paid and for what purpose and shall include consulting, legal or other fees, for services performed or to be performed, as well as expenses incurred in rendering such services. In the case of a volunteer, the above calculation shall not include any calculation of the value of the time for such volunteer, but shall include



only that amount reimbursed to the volunteer for expenditures related to activities to influence legislation, influence regulation, influence governmental processes, or related to communication with the general public on behalf of the lobbyist.

2. Pro rata share of salary or other compensation paid to an employee of any organization whose activities on behalf of that organization qualify him or her as a governmental affairs agent.

**Example 1:** Jones engages in lobbying activity in New Jersey and Pennsylvania for ABC Corporation. He spends one-half of his time in lobbying activity in New Jersey. Jones' total salary, as reported on his W-2 form, is \$30,000 per year. Since more than 20 hours of his time is spent on lobbying in New Jersey, Jones is a governmental affairs agent for ABC Corporation and one-half of his salary, \$15,000, is allocable to lobbying. ABC Corporation is a reporting lobbyist and must include this amount as an expense.

**Example 2:** Smith, another ABC Corporation employee, has spent less than 20 hours of his time on direct lobbying on behalf of his employer, and therefore none of his salary is reportable by ABC Corporation.

3. Contributions or membership fees or dues paid by the lobbyist, except that such contributions or fees shall not be deemed to be related to influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public, for the purpose of reporting under the Act and this subchapter unless made to a governmental affairs agent with the specific intent to influence legislation, influence regulation, influence governmental processes, or conduct communication with the general public or unless made to a lobbyist whose major purpose is to engage in influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public. For the purpose of this paragraph, a lobbyist shall be deemed to be engaged in influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public as its major purpose for any calendar year in which expenditures related to such activity constitute more than 50 percent of its total expenditures for all purposes. Such contributions, fees and dues (other than those made with the specific intent to influence legislation, or influence regulation) made by a lobbyist to an organization, association or union, shall be reportable hereunder in the same proportion as the activities of the organization, association or union are related to influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public. Contributions, fees or dues made with the specific intent to influence legislation, influence regulation, influence governmental processes, or conduct communication with the general public, or all of the foregoing, shall be reported in full. Contributions, fees or dues required to be reported pursuant to this paragraph shall be reported in the

aggregate, along with the name of any organization, association or union to whom the lobbyist made a contribution in excess of \$100.00 for the calendar year (when allocated as set forth above) as well as the date of each contribution, fee or dues.

4. Costs of preparation and distribution of material related to influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public, and paid for by a lobbyist or governmental affairs agent, including all disbursements for preparation and distribution of printed materials, correspondence, flyers, publications, films, slides, audio and video recordings and video tapes.
5. Travel and lodging related to influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public, for the governmental affairs agent.
6. Allocated cost of support personnel for the lobbyist or governmental affairs agent. The allocated cost of any support personnel for the lobbyist or governmental affairs agent shall be included hereunder if, in relation to the usual duties of their employment, such personnel, individually, spend, over the course of the reporting year 450 hours in activity supporting the activity of the lobbyist or governmental affairs agent in influencing legislation, influencing regulation, influencing governmental processes, or conducting communication with the general public. The term "support personnel" shall include costs related to the communication by an expert or employee, other than a governmental affairs agent, when the communication is made in the company of a governmental affairs agent for the sole purpose of providing technical or expert advice.

**Example:** Smith is in the government affairs department of ABC Corporation, a reporting lobbyist, and spends all of her time engaged in activity related to lobbying. Brown, her secretary, spends his time doing work supporting Smith's activities. Jones, an analyst in the financial department at ABC Corporation, spends 50 percent of his time analyzing legislation for Smith and preparing memoranda to be used in Smith's lobbying activity. King, an attorney in ABC's legal department, does some drafting of proposed legislation for Smith. Over the course of the year, however, this accounts for less than 450 hours of his time at work. Ford spends one-third of her time preparing testimony on governmental processes for Smith. ABC Corporation, in its annual report, must include Smith's full salary (under (a)2 above), as well as Brown's full salary, one-half of Jones' salary, and one-third of Ford's full salary, as the cost of support personnel. None of King's salary will have to be included on ABC's report.

(b) The following expenditures of a lobbyist or governmental affairs agent 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 ("benefit recipient") shall be reported in the Annual Report and shall be listed in the aggregate by category, except that if the aggregate expenditures on behalf of any benefit recipient exceed

\$25.00 per day, or exceed \$200.00 per calendar year, the expenditures, together with the name and office held of the intended recipient of the benefit, shall be stated in detail and shall include the date and type of each expenditure providing a benefit, and either the reasonable commercial value of the benefit as provided in N.J.A.C. 19:25-20.12 with a description of the benefit sufficient for determining its reasonable commercial value, or if the cost is greater than the reasonable commercial value, the cost of the benefit to the lobbyist or governmental affairs agent and the name and address of any person or entity to whom the lobbyist or governmental affairs agent incurred any cost or obligation for providing the benefit.

1. Entertainment, including, but not limited to, disbursements for sporting, theatrical and musical events provided to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, and paid for by a lobbyist or governmental affairs agent.
2. Food and beverages provided to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, paid for by a lobbyist or governmental affairs agent. Also included are payments by lobbyists or governmental affairs agents for food or beverages for any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch at conferences, conventions, banquets or other similar functions. This paragraph shall not apply to the food and beverages provided to an invited speaker who is a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, when the food and beverages are provided to all persons who attend the convention, banquet, or other similar function. "Invited speaker" shall mean a person who is announced as a speaker in advance of the convention, banquet, or other similar function, and shall not include a person who is merely identified and introduced to persons attending the event.
3. Travel and lodging expenses paid for or provided by a lobbyist or governmental affairs agent on behalf of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch.
4. Honoraria paid to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch by a lobbyist or governmental affairs agent.
5. Loans to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch from a lobbyist or governmental affairs agent except for loans from financial institutions made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

6. Gifts to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch including, but not limited to, material goods or other things of value.

(c) For purposes of reporting under the Act or this subchapter, when an expenditure included in (b) above is made to a member of the immediate family of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, such expenditure shall be deemed to be made on behalf of the member of the Legislature, legislative staff, the Governor, the Governor's staff, or the officer or staff member of the Executive Branch whose family member received it. A member of the immediate family shall mean a spouse, child, parent, or sibling residing in the same household, or any dependent children.

#### **19:25-20.12 Valuation of contributions and expenditures**

Where a contribution of goods or services is made to a lobbyist or governmental affairs agent to influence legislation, to influence regulation, to influence governmental processes, or to conduct communication with the general public, the value of such receipt shall be its reasonable commercial value to the lobbyist or governmental affairs agent receiving it. Where an expenditure of goods or services, including travel, is made by a lobbyist or governmental affairs agent to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch ("benefit recipient"), the value of the expenditure shall be its reasonable commercial value to the benefit recipient.

#### **19:25-20.13 Notice of lobbying benefit**

(a) A lobbyist or governmental affairs agent shall provide a written benefit notice, certified as correct by the lobbyist or governmental affairs agent, to any member of the Legislature, legislative staff member, Governor, Governor's staff member, or an officer or staff of the Executive Branch ("benefit recipient") who has received from that lobbyist or governmental affairs agent a benefit required to be reported on the lobbyist's or governmental affairs agent's Annual Report pursuant to N.J.A.C. 19:25-20.14, and the benefit notice shall include the same information as required on the Annual Report.

(b) The certified benefit notice shall be transmitted by the lobbyist or governmental affairs agent to the benefit recipient no later than February 1st of the year following the calendar year in which the benefit was received. Proof of service of the benefit notice shall be obtained and maintained for a period of at least three years.

(c) In the event that a lobbyist or governmental affairs agent has provided a benefit recipient with more than one benefit during a preceding calendar year, the lobbyist or governmental affairs agent may include all such benefits in a single written notice provided to the benefit recipient.

(d) In the event that a lobbyist or governmental affairs agent receives reimbursement from any benefit recipient for the reasonable commercial value of any benefit required to be

reported on its Annual Report pursuant to N.J.A.C. 19:25-20.14, the lobbyist or governmental affairs agent shall report the receipt and amount of such reimbursement in the Annual Report in which the benefit is required to be reported. The making of such a reimbursement does not remove or alter the requirement that the lobbyist or governmental affairs agent report the expenditure and the benefit recipient on its Annual Report pursuant to N.J.A.C. 19:25-20.14.

#### **19:25-20.14 Contents of annual report**

(a) The annual report shall contain the following:

1. Name, business address, telephone number of the reporting lobbyist or governmental affairs agent;
2. Name, address and occupation or business of governmental affairs agent(s) engaged by the reporting lobbyist, or name, address and occupation or business of lobbyist(s) engaging the reporting governmental affairs agent, whichever is applicable;
3. The particular items of legislation, regulation, or governmental processes and any general category or type of legislation, regulation, or governmental processes regarding which the governmental affairs agent or lobbyist influenced legislation, influenced regulation, or influenced governmental processes during the calendar year, except that a governmental affairs agent who has provided this information in his or her notice of representation and quarterly reports may satisfy this requirement by so indicating on the annual report;
4. Receipts received by the governmental affairs agent or lobbyist as set forth in N.J.A.C. 19:25-20.10; and
5. Expenditures made by the lobbyist or governmental affairs agent, as set forth in N.J.A.C. 19:25-20.11.

(b) With respect to any specific event, such as a reception, where expenditures required to be reported pursuant to N.J.A.C. 19:25-20.11(b) in the aggregate exceed \$100.00, the report shall include the date, type of expenditure, amount of expenditure and to whom paid. Any expenditure in excess of \$5.00 made to provide a benefit pursuant to N.J.A.C. 19:25- 20.11(b) to a member of the Legislature, legislative staff, the Governor, member of the Governor's staff, or offices or staff members of the Executive Branch present, attending or participating in the event with the actual or constructive knowledge of the lobbyist or governmental affairs agent shall be included in the calculation of the per day, or per calendar year, thresholds contained in N.J.A.C. 19:25-20.11(b).

(c) A governmental affairs agent retained by or representing more than one lobbyist shall include in his or her annual report receipts received from and expenditures made on behalf of all lobbyists by whom it is employed.

(d) An individual who is a governmental affairs agent and who serves as a member of any independent State authority, county improvement authority, or municipal utilities authority, or as a member from New Jersey on an interstate or bi-state authority, or as a member of any board or commission established by statute or resolution or by executive order of the Governor or by the Legislature or by any agency, department or other instrumentality of the State shall disclose such service, including the name of the authority, board or commission, and the date upon which his or her term as a member thereof expires, in the governmental affairs agent's annual report.

#### **19:25-20.15 Audit by commission; recordkeeping**

(a) All annual reports of lobbyists or governmental affairs agents required to be filed pursuant to the Act and this subchapter shall be subject to review and audit by the Commission.

(b) Each lobbyist and governmental affairs agent subject to reporting under the Act shall make or obtain and maintain for a period of three calendar years following the year of his, her, or its activity all records and documents relating to his, her, or its activity in influencing legislation, influencing regulation, or influencing governmental processes, including, but not limited to, checks, bank statements, contracts and receipts, so as to provide evidence to support statements in reports filed with the Commission and to permit an adequate basis for auditing by the Commission, except that a record or document of any single expenditure in an amount of \$5.00 or less may be excluded from this requirement.

(c) The Commission shall conduct random audits of records kept and preserved pursuant to this section.

#### **19:25-20.16 Responsibilities for filing annual reports; certification**

(a) The lobbyist and the governmental affairs agent shall have the responsibility of filing annual reports.

(b) Each organization which itself has a filing obligation as a lobbyist pursuant to this subchapter is not relieved of that obligation by virtue of the fact that a governmental affairs agent engaged, designated or employed by it has a filing obligation; except that a lobbyist required to file an annual report pursuant to the Act may designate a governmental affairs agent in its employ or otherwise engaged or used by it to file the annual report on its behalf, provided such designation is made in writing by the lobbyist on a form prescribed by the Commission, is acknowledged in writing by the designated governmental affairs agent and is filed with the Commission on or before the date on which the annual report of the lobbyist is due for filing, and further provided that any violation of the Act shall subject both the lobbyist and the designated governmental affairs agent to the penalties provided by the Act and this subchapter.

(c) Each governmental affairs agent which has a filing obligation pursuant to this subchapter is not relieved of that obligation by virtue of the fact that the organization engaging, retaining or employing it has or may have a filing obligation as a lobbyist or that the

governmental affairs agent has been designated by which organization to file an annual report for it; except that any lobbyist organization required to file a report pursuant to the Act which employs or otherwise engages or uses a governmental affairs agent or agents whose only reportable lobbying activity is on behalf of such organization, may file a single annual report required under N.J.A.C. 19:25-20.14 on behalf of its own lobbying activity and the activities of such governmental affairs agent or agents, provided that any violation of the Act shall subject the lobbyist alone to the penalties provided by the Act and this subchapter.

(d) Each report filed with the Commission by a lobbyist or governmental affairs agent shall be certified as to the correctness of the report by the governmental affairs agent or, in the case of a lobbyist, by a governmental affairs agent employed by the lobbyist or a responsible financial or government affairs officer of the lobbyist.

### **19:25-20.17 Advisory opinions**

The Commission may render advisory opinions as to the applicability of the Act and this subchapter to a given specific set of facts and circumstances.

### **19:25-20.18 Complaint proceedings; investigations; penalties**

(a) The term "violation" shall mean the failure to report timely or in the manner prescribed by the Act and this subchapter, or the failure to make and maintain a record as prescribed by the Act and this subchapter, of any event or transaction required to be reported or recorded by the Act or this subchapter.

(b) Upon receiving evidence of any violation of the Act or this subchapter, the Commission shall have the power to make investigations and bring complaint proceedings, to issue subpoenas for the production of witnesses and documents and to hold or cause to be held, by the Office of Administrative Law, hearings upon such complaint.

(c) In addition to any other penalty provided by law, any person who is found to have committed a violation of the Act or this subchapter shall be liable for a civil penalty of up to \$1,000 for that violation, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.).

### **19:25-20.18A Opportunity for hearing**

In any penalty proceeding undertaken by the Commission pursuant to N.J.S.A. 52:13C-23.1, each respondent shall be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and N.J.A.C. 1:1.

### **19:25-20.18B Default for failure to answer complaint**

In any penalty proceeding undertaken by the Commission pursuant to N.J.S.A. 52:13C-23.1 or other statutory authority, the Commission may enter a Final Decision, including penalty,

against any respondent who fails to file with the Commission a written responsive pleading or answer within 20 days after service on such respondent in conformity with the rules of the New Jersey Office of Administrative Law of a copy of a complaint alleging a specific violation of the law within the Commission's jurisdiction to enforce.

#### **19:25-20.18C One-year post-employment prohibition on lobbying**

(a) As used in this section, "person" means any member of the Legislature, the Governor, or the head of a principal department of the Executive Branch.

(b) No person, within one year next subsequent to the termination of the office or employment of such person, shall register as a governmental affairs agent.

(c) Any person who knowingly or willfully violates the provisions of (b) above shall be subject to a penalty of not more than \$10,000 and shall be barred from engaging in activity as a governmental affairs agent for up to an additional five years.

(d) Upon receiving evidence of any violation of this section, the Commission shall have the power to hold, or cause to be held, hearings about the violation and, upon finding any person to have committed a violation, to assess such penalty, within the limits set forth in (c) above, as it deems proper under the circumstances, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.).

#### **19:25-20.19 Nonresident governmental affairs agents or lobbyists**

Any governmental affairs agent or lobbyist not a resident of this State, or not a corporation of this State or authorized to do business in this State, shall file with the Commission, before attempting to influence legislation, influence regulation, or influence governmental processes, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

#### **19:25-20.20 Annual fee**

(a) Each governmental affairs agent who is an individual and whose activities are subject to the Act during any part of a 12-month period commencing on January 1 and ending on the following December 31 shall pay an annual fee of \$425.00, and shall submit with the agent's annual fee two identical, two-by-two-inch, color photographs taken of the governmental affairs agent within six months showing a full-face, front view of the agent with a plain white or off-white background.

(b) In the event that the governmental affairs agent is a partnership, committee, association, corporation, or other organization or group of persons, the annual fee shall be \$425.00 for each individual from the partnership, committee, association, corporation, or other organization or group of persons, who is required to wear a name tag pursuant to N.J.A.C. 19:25-20.6.



(c) Payment of the annual fee set forth in (a) and (b) above shall be by check or money order payable to "State of New Jersey, Election Law Enforcement Commission," and shall be made no later than November 15th for the 12-month period which begins on the following January 1.

(d) In the case of a governmental affairs agent who files an initial notice of representation, the annual fee shall be due upon the filing of such initial notice of representation, and subsequent annual fees shall be due pursuant to (c) above.

(e) No annual fee shall be required if the governmental affairs agent is an organization that is exempt from sales and use taxes under section 9(b) of chapter 30 of the laws of 1966, as amended (N.J.S.A. 54:32-9(b)).

# ABOUT THE COMPILER

**FREDERICK M. HERRMANN, Ph.D.**  
**Executive Director**

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**New Jersey Election Law Enforcement Commission**

Frederick M. Herrmann, Ph.D., has been the executive director of the New Jersey Election Law Enforcement Commission for over two decades. He received an A.B. (1969) from the University of Pennsylvania and an M.A. (1970) and a Ph.D. (1976) from Rutgers, The State University of New Jersey. Dr. Herrmann is also an honor graduate of the United States Army Quartermaster School at Fort Lee, Virginia.



Frederick M. Herrmann, Executive Director

The author of many publications about history and government, he is a frequent speaker at various forums inside and outside of New Jersey. Dr. Herrmann has also appeared as a campaign financing and lobbying law expert on radio and television. Currently, he is the publishing director and the book review editor of the *Guardian* and on the editorial board of *Public Integrity*. He is also on the Board of Trustees for the Friends of the State House.

Once a teacher at Rutgers and Kean Universities as well as a staff member of the New Jersey Legislature, he has also served on the Organizational Planning and Coordinating Committee of the Council of State Governments and has been the President of the Council on Governmental Ethics Laws (COGEL), an international organization, and the President of the Northeastern Regional Conference on Lobbying (NORCOL). Executive Director Herrmann currently serves on the COGEL Awards and Publications Committees.

In 1993, Dr. Herrmann was the recipient of the Annual COGEL Award for his continued efforts to promote the highest level of ethical conduct among governmental officials and candidates for public office in the international arena. At its regional meeting in 2001, NORCOL presented him with its 20<sup>th</sup> Anniversary Service Award for his outstanding efforts on behalf of and contributions to the organization. In 2005, he received the Haddonfield Alumni Society Lifetime Achievement Award. Dr. Herrmann has met often with dignitaries from various jurisdictions throughout the world to assist in the developing and drafting of statutes and regulations.

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