

## **ELEC Adopts Final NJ Lobbyist Registration and Reporting Regulations**

### **Effective January 1, “governmental processes,” grassroots lobbying must be tracked in addition to legislation and administrative rules**

*The New Jersey Election Law Enforcement Commission (ELEC) has published final regulations (N.J.A.C. 19:25-20.1 et seq.) to implement changes in the state’s lobby disclosure laws originally enacted in June 2004. The new regulations take effect January 1, 2006. This article presents a framework to help charities comply with the state law and existing IRS regulations. It does not constitute legal advice; consult a competent attorney for guidance concerning your own specific situation. [NOTE: The IRS lobbying regulations only apply to public charities which elect to conform to specified lobbying expenditure limits under sections 501(b) and 4911 of the Internal Revenue Code – contact the Center for an in-depth description of these rules.]*

Two broad categories of changes are worth noting:

- For the first time, “grassroots lobbying” must be tracked and reported by registered lobbyists/organizations; and
- The law now adds a new, broad category of “governmental processes” that are subject to tracking and reporting. For example, executive orders, administrative decisions, permits, licenses, awarding of grants and contracts are all included in the list of “governmental processes.”

### **Who must register as a governmental affairs agent under New Jersey’s law?**

Anyone who is paid or receives anything of value, including reimbursement of expenses when that reimbursement exceeds \$100 in any three-month period, to influence New Jersey legislation, administrative rules or governmental processes is defined as a governmental affairs agent and is required to register as such with the New Jersey Election Law Enforcement Commission (ELEC). (Individuals who are compensated for grassroots lobbying but who do not directly influence legislation, administrative rules or governmental processes are not required to register but may have to file annual reports; see below.)

Normally, annual filing fees are imposed on legislative agents; however, New Jersey law specifically exempts from the annual fees groups which are exempt from New Jersey sales tax under N.J.S.A. 54:32B-9(b). Most 501(c)(3) non-profits are eligible for State sales tax exemption, but must apply and be approved by the NJ Division of Taxation.

Volunteers or trustees who are unpaid for such activity, or employees whose legislative or administrative, or governmental process communication is “an isolated, exceptional or infrequent activity in relation to the usual duties of his employment” are exempt from the definition of a governmental affairs agent. Under the ELEC regulations, such activities are “isolated, exceptional or infrequent” if they constitute under 20 hours per calendar year. Technical personnel who conduct analysis and research but do not directly attempt to influence legislation or administrative rules are not defined as legislative agents (but may come under “support personnel” for expenditure reporting purposes - see “Annual Reports” below).

### **What is “influence a governmental process?”**

The new law and regulations require governmental affairs agents to track and report their attempts to influence governmental processes. According to the regulations, “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.

“Governmental processes” does NOT include:

- Activities in response to a request for proposal (e.g., grant/contract application, participation in a bidders’ conference and the like) *after such RFP has already been issued*. Participation in the development of an RFP would be considered influencing a governmental process.
- Communications required by government contracts to be placed in newspapers or other media.
- Communications with executive department or commission employees for “routine, ministerial matters,” such as communications to:
  - Schedule a meeting date, time, and place;
  - Request the status of an administrative matter;
  - Request procedures or forms;
  - Request information concerning requirements to comply with existing laws or regulations;
  - Apply for a permit or license as required by law;
  - Participate in an inspection required by law;
  - Respond to an audit conducted pursuant to law;
  - Make a contact as a salesperson for the sole purpose of selling goods or services;
  - Inquire about the delivery of services or materials pursuant to an existing contract;
  - Provide advice or perform services pursuant to an existing contract;
  - Prepare documents and materials in response to a request for proposal or to participate at a bid conference after bid specifications have been established;
  - Respond to a subpoena;
  - Respond to a public emergency or condition involving public health or safety; or
  - Provide a response to a detailed request for specific information.
- Participation on task forces, boards and commissions, provided that:
  - The task force, advisory board, or working group 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;
  - The individual has been specifically nominated or invited to participate; and
  - The individual receives no separate compensation for his or her service.

### **What is a communication with the general public?**

For the first time, New Jersey’s “Legislative and Governmental Process Activities Disclosure Act” covers grassroots lobbying – efforts to encourage members of the public to contact their legislators about a bill or administrative rule. Pursuant to the regulations, a “communication with the general public” is 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 which
2. 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.

A communication with the general public does NOT include:

- A communication made only to with members, employees, partners or stockholders. Pursuant to the new proposal, “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.” ELEC’s comments accompanying its final rules suggest that this definition covers members that are other organizations as well;
- 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;
- Communications with the public regarding governmental processes. This means that *an organization’s own direct efforts* to influence governmental processes (permits, licenses, etc.), must be tracked and reported, but *encouraging members of the public* to act on governmental processes are not covered.

### **What reporting requirements must we be concerned with?**

Non-profits and their governmental affairs agents should be aware of two reporting requirements: quarterly activity reports and annual financial reports.

Quarterly Reports - Registered governmental affairs agents are required to file quarterly reports of their attempts to influence legislation, regulations or governmental processes. Although grassroots lobbying activities must be tracked to comply with the Act, such activities are not reported on a quarterly basis.

Annual Reports – Governmental affairs agents or their employer organizations who receive receipts or make expenses exceeding \$2500 per year for “communicating with or providing benefits to” legislators, legislative staff, the Governor, Governor’s staff or members of the Executive branch, **for the purpose of influencing governmental processes, or for the purpose of communication with the general public**, are required to file annual expenditure reports with ELEC, with additional detail required if expenses communicating with any one legislator, the Governor, their staff or member of the Executive branch exceeds \$25 per day or \$200 per year. Note that, in addition to reporting requirements of governmental affairs agents, the regulations impose a new annual reporting requirement for any person *who is not a governmental affairs agent* but who receives or spends more than \$2500/year to “communicate with the general public.”

Types of receipts or expenses that count toward the \$2500 threshold include: fees, salaries or other compensation paid to a (non-employee) legislative agent; pro rata share of salary or other compensation paid to an employee whose activities qualify him/her as a legislative agent; costs of preparation and distribution of materials such as correspondence, publications, videotapes, etc.; travel and lodging; allocated cost of support personnel when their support functions of lobbying activities exceeds 450 hours per calendar year.

Expenses made to provide benefits to government officials include: entertainment; food and beverages, including those provided at conferences and similar functions; travel or lodging paid by a lobbyist on behalf of a government official; honoraria; gifts or loans. These expenses must be reported whether or not legislation is also discussed. Generally speaking, a lobbyist/governmental affairs agent may not provide gifts or anything of value in excess of \$250 per year.

Registered legislative agents who serve on any board, authority, commission, or other similar group established by the Legislature, by executive order or by a State department or division must disclose such information in their annual financial report.

### **How can I adjust my record keeping to comply with New Jersey and Federal laws?**

New Jersey and Federal laws and regulations differ significantly with respect to what counts as “lobbying”

and, therefore, what expenses must be tracked (although there is some overlap). In order to be safe, you should keep two sets of records for lobbying expenses, one New Jersey and one for the IRS.

**Federal** - Generally speaking, under federal law, “lobbying” is the attempt to influence the passage, defeat, introduction, or amendment of legislation, including bills introduced by a federal, state or local legislative body, bond issues, referenda, constitutional amendments and Senate confirmation votes on Executive branch nominees. Records of expenses for time, materials, postage, travel, etc., should be kept for both direct lobbying (communicating directly with a legislator or staff to influence legislation) and grassroots lobbying (attempting to influence legislation by encouraging the general public or any segment thereof to engage in lobbying activities).

Attempts to influence administrative rulemaking or “governmental processes” do not count as lobbying under IRS definitions. For more information on the IRS lobbying regulations and other federal reporting requirements, contact the Center.

**New Jersey** – Under New Jersey law, “influencing legislation” applies to attempts to secure or prevent the initiation, passage, defeat or amendment of New Jersey legislation or legislative proposals. “Influencing regulation” applies to attempts to secure the consideration, amendment, issuance, promulgation, adoption or rejection or proposal of any regulation 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 to promulgate rules and regulations. “Influencing governmental process” includes attempts to influence executive orders, administrative decisions, permits, licenses, awarding of grants and contracts. Records should be kept of the bills or rules on which the organization or legislative agent is active during a quarter, as well as time spent and expenses for salaries, materials, benefits provided to government officials, travel, etc., as described in the annual report section above. This applies both to communications made directly to State government officials and communications with the general public regarding legislation and regulations.

There are additional state registration and reporting requirements for organizations that raise or expend \$1800 or more for one election to promote passage or defeat of a public question. More information about this requirement is available from the Center.

New Jersey’s regulations now contain a new ***rebuttable presumption that communications by a government affairs agent with certain high-level officials are deemed to be lobbying.*** Covered officials include the Governor, the Governor’s staff, or the Governor’s Chief of Staff, 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. Consequently, communications with these individuals should be tracked, along with any documentation as applicable that could rebut the presumption that the communication was a lobbying communication.

Attempts to influence federal or local laws and regulations do not need to be tracked for compliance with New Jersey’s lobbying disclosure law.

## **Conclusion**

Non-profits may face some confusion and special problems in complying with both State and federal lobbying laws. The Center continues to make a top priority of ensuring that charities know about - and are encouraged to exercise - their lobbying rights. For more information, contact the Center for Non-Profits, 1501 Livingston Avenue, North Brunswick, NJ 08902, 732/227-0800 , fax: 732/227-0087, e-mail: [center@njnonprofits.org](mailto:center@njnonprofits.org), Web: [www.njnonprofits.org](http://www.njnonprofits.org) . For the full text of the laws and regulations, go to the ELEC Web site at [www.elec.state.nj.us](http://www.elec.state.nj.us) .