



Changes in the Lobbying Law *What Non-Profits Need to Know*

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Chapter 28 of the Acts of 2009, “AN ACT TO IMPROVE THE LAWS RELATING TO CAMPAIGN FINANCE, ETHICS AND LOBBYING” is the most sweeping change in the ethics and lobbying laws in decades. Changes in the lobbying sections will have widespread impact in the advocacy community. This document explains some of the key changes in the lobbying laws.

NOTE: This interpretation of the law, based on our extensive involvement with its passage, has no legal authority. Under the statute, the Secretary of the Commonwealth (the “Secretary”) has primary responsibility to enforce and interpret the law. This document is not intended as a substitute for seeking oral advice, or requesting an advisory opinion, from the Secretary pursuant to M.G.L. c. 3, s. 41.

PART 1—GENERAL INFORMATION.

Who needs to register? The law continues to require that certain individuals who are paid to lobby register and report their activities. Lobbying entities and organizations must also register and report. Volunteers, regardless of how much they lobby, do not have to register.

Anyone who must register as a lobbyist is referred to as a “legislative agent” if she or he engages in legislative lobbying and as an “executive agent” if he or she engages in lobbying the executive branch on a policy, rate, rule, or procurement decision. (See Part III of this document for definitions.)

How do I know if I am a “legislative agent” or an “executive agent”? For either a legislative or executive agent the law has several components:

- 1) You must be paid—including your regular salary.
- 2) You must make at least one lobbying communication to a government employee for your employer or client.
- 3) You must be engaged in more than “incidental” lobbying—i.e., you lobby as part of a larger job description (executive director of an organization for example) and do it for more than 25 hours in a six-month reporting period (January through June, or July through December) or get paid more than \$2,500 during that six-month period for the time you have spent lobbying. In practice, for most non-profits, this means that the 25

hours is the most important number to remember, as it will be more restrictive than the \$2,500 unless you make more than \$100 per hour.

All of these conditions must be met. So if you are not paid, you don't have to register. If you never lobby yourself, you do not have to register. Similarly, if you lobby only incidentally—for less than 25 hours in a six month period, and get paid less than \$2,500 during that period for the time in which you are lobbying—you do not have to register.

What is lobbying? The term legislative lobbying and executive lobbying are defined in the new law more specificity than in the past. Prior to the change, lobbying was not separately defined, but in other sections was referred in very broad terms such as “*any act to promote, oppose or influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof.*”

Here’s what the new law says:

“Legislative lobbying,” *any act to promote, oppose, influence or attempt to influence legislation, or to promote, oppose or influence the governor’s approval or veto thereof including, without limitation, any action to influence the introduction, sponsorship, consideration, action or non-action with respect to any legislation; provided further, that legislative lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with legislative lobbying at the state level; and provided further, that legislative lobbying shall include strategizing, planning and research if performed in connection with or for use in an actual communication with a government employee; provided, however, that “legislative lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the legislative branch for technical advice or factual information regarding any legislation for the purposes of this chapter.*

“Executive lobbying,” *any act to promote, oppose, influence, or attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to, statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated pursuant to any general or special law, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement; provided further, that executive lobbying shall include acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and provided further, that executive lobbying shall include strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee; and provided, further, that “executive lobbying” shall not include providing information in writing in response to a written request from an officer or employee of the executive branch or an authority for technical*

advice or factual information regarding a standard, rate, rule or regulation, policy or procurement for the purposes of this chapter.

Note that there are 11 exemptions to the executive lobbying. These exemptions were in previous law and apply to executive branch lobbying only and are listed in Part III of this document along with a few other key sections of the law.

In short, the definition of lobbying—in both the legislative and executive branch—is quite broad. It is a broader category than who needs to register and informs both the question of who needs to register and what needs to be reported.

How do I register? Legislative and executive agents and lobbying entities register and report using an online system. Simply go to www.mass.gov/sec and click on the lobbyist reporting link. The reports are fairly straightforward but can take some getting used to. Many non-profits register and report in well under an hour per six-month reporting period. Make sure that email from lob@sec.state.ma.us is not caught in your spam filter! Additionally, lobbyists must now participate in an online or in-person training developed by the Secretary upon registration and annually thereafter. These trainings are currently being developed.

How much will it cost? Fees for registering as a legislative or executive agent (or both) are \$100 and \$100 for the “client,” i.e. the non-profit organization that hires the lobbyist. Some fees may be waived for non-profits. You must request a waiver in writing. Lobbyist entities like lobbying firms pay \$1,000 plus an additional fee for each lobbyist they employ.

What needs to be reported? The current provisions of the law were retained and augmented. As before Chapter 28, agents must report: all campaign contributions; all lobbying expenditures itemized if they exceed thirty-five dollars or more in any day.

“Such itemized accounting shall include, but not be limited to, specific expenditures for meals, gifts, transportation, entertainment, advertising, public relations, printing, mailing and telephone; and shall also include the names of the payees and the amount paid to each payee and shall further include the names of the candidate or political committee to whom or to which the contribution was made, and the amount and date of each contribution. When such expenditure is for meals, entertainment or transportation, said expenditure shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such meal, entertainment or transportation. No expenditure shall be split or divided for the purpose of evading any provision of this section.”

In addition the law as amended by Chapter 28 now requires:

(1) the identification of each client for whom the legislative or executive agent provided lobbying services; (2) a list of all bill numbers and names of legislation and other governmental action that the executive or legislative agent acted to promote, oppose or influence; (3) a statement of the executive or legislative agent’s position, if any, on each such bill or other governmental action; (4) the identification of the client or clients on

whose behalf the executive or legislative agent was acting with respect to each such bill or governmental action; (5) the amount of compensation received for executive or legislative lobbying from each client with respect to such lobbying services; and (6) all direct business associations with public officials. The disclosure shall be required regardless of whether the legislative agent or executive agent specifically referenced the bill number or name, or other governmental action while acting to promote, oppose or influence legislation, and shall be as complete as practicable.

What happens if I don't register or report? Late reports are subject to a \$50 per day late fee up to 20 days and \$100 per day thereafter. These fines may be waived for good cause. The law also sets up a new civil enforcement procedure in the Secretary's office modeled after the enforcement process conducted by the State Ethics Commission. If the Secretary finds, after a hearing, that a person has violated the law, the Secretary may order the person to cease and desist, suspend or revoke their license to lobby, and/or impose a fine of up to \$10,000. The Secretary's decision may be appealed to superior court, and if the court finds against the Secretary, the petitioner may be entitled to limited attorney's fees. The lobbying laws may also be prosecuted criminally by the attorney general or district attorney if there is criminal intent. Criminal fines are also up to \$10,000 and up to 5 years in prison.

If I am confused may I request an advisory opinion? Yes, the new law requires the Secretary to issue confidential advisory opinions about the law, which are binding on all subsequent law enforcement actions.

Are there any other restrictions associated with being a lobbyist? Yes. Lobbyists may not give more than \$200 per candidate per year for state or local elections.

PART II—HOW THE NEW LOBBYING LAW APPLIES IN SOME SPECIFIC INSTANCES.

A. How the Law Applies to Volunteer Board Members

Question. I am a member of the board of directors of a non-profit organization that advocates for civil rights and equity issues. Board members are unpaid and volunteer their time. Many of the board members write, meet or call legislators and engage in other legislative lobbying to promote the organization's agenda. Do the board members who contact legislators or engage in legislative lobbying have to register as a legislative agent or lobbyist?

Answer. No. Volunteer board members of a non-profit organization do not have to register as a lobbyist. The lobbying law does not consider someone to be a legislative agent or lobbyist unless they are "compensated or rewarded" for engaging in lobbying activities. It does not matter, therefore, how many hours volunteer board members lobby for their non-profit organization. If they are volunteers, they are not legislative agents and they do not have to register.

Question. I serve on an unpaid, volunteer board of a non-profit organization. Sometimes we hold board meetings during the workday. Board members, who are employed, attend on their lunch hours or use personal time from their employers to attend board meetings. For example, I am a legal secretary and another member is a banker. My employer has a written policy while the

banker's employer has a customary practice that allows employees to participate in community service during the day. Does merely attending board meeting during the day mean we are paid by our employer to attend board meetings and therefore have to register?

Answer. No. Although some or all of the board members of a non-profit organization may be employed by other organizations or businesses, such employment does not make them lobbyists. This is because they are not being paid, or as the statute says "compensated or rewarded" for their service on the non-profit organization. Moreover, such employment does not make them a lobbyist even if the organization and its lobbying activities are of concern to their employer's business unless there are other factors involved.

Question. I am a board member of a non-profit organization that promotes the general interests of small businesses. I am also a salaried employee of a small business that is a member of the non-profit organization. Part of my usual professional responsibilities includes serving on the board of the non-profit. Am I compensated for purposes of the lobbying law? Do I have to register as a legislative?

Answer. Yes, you are compensated for purposes of the lobbying law. Although you are not compensated by the non-profit for your service as a board member or its lobbying activities, your service on the board and your lobbying are part of your usual professional responsibilities. You will, therefore, have to register as a legislative agent unless your lobbying activity is "incidental" for purposes of the lobbying law. Lobbying activities are presumed to be incidental if, during a six-month reporting period, you (a) engage in lobbying for no more than 25 hours and (b) are paid no more than \$2,500 for such lobbying.

B. How the Law Applies to Research, Writing & Strategizing

Question. I work for an environmental non-profit organization as a researcher. I review and analyze data and write reports for the organization for many different purposes. Sometimes, my organization uses my research or reports as the basis for drafting legislation or environmental regulations. I also occasionally write op-eds about my research and give briefings to the general public. I do not write to or talk with legislators or regulators about my research and reports or otherwise engage in lobbying for my organization. The organization has a registered lobbyist who does that work. Do I have to register as a lobbyist?

Answer. No, regardless of how much time you spend preparing, or how much you are paid for, your research or reports that are used by others in connection with legislation or you are not considered a lobbyist and, therefore, do not have to register. Why? Because you have not had "at least 1 lobbying communication with a government employee." If you never have a lobbying communication with a government employee about the research or other issues for your employer, you will not have to register as a lobbyist.

If you did have a lobbying communication with a legislator or other government employee about legislation drafted by the organization, you would have to register as a lobbyist unless, during a six-month reporting period, your lobbying activities are "incidental," i.e. you engage in them for less than 25 hours and are paid less than \$2,500 for the hours you work on lobbying. Your research and report writing, as well as any strategizing, would be considered as lobbying

activities if they were “performed in connection with or for use in an actual communication with a government employee.”

C. How the Law Applies to Communications

Question. I am employed by a non-profit organization to work as an advocate for developmentally disabled persons. I work directly with my clients helping them, among other things, to get housing and medical treatment, and helping them with daily life activities. My organization also encourages our clients to talk with legislators about their challenges or to advocate for more treatment resources. In some cases, I may accompany my clients to meetings and help them prepare what to say. Sometimes I may also say a few words but only to help my clients express their views when they are unable to speak at the meeting or are having a difficult time expressing their views. The preparation for these meetings takes more than 25 hours in any six-month period. Do I have to register?

Answer. Yes, unless your communications are limited solely to helping you client express his or her views, in effect, like a translator or interpreter. If you were also to advocate on behalf of mentally ill persons generally or your organization you would have to register as a lobbyist, again assuming your advocacy and any related strategizing is more than “incidental”.

Question. I work for an advocacy group for the mentally ill. An employee in the Department of Mental Health (DMH) telephones and asks how one of the providers under contract to DMH is doing. The purpose of the call is to help DMH determine whether to renew that provider’s contract. Do I need to count that time as “lobbying” to determine whether I exceed the 25 hour trigger?

Answer. Yes, unless the DMH employee’s request and your response is in writing. By definition, executive lobbying includes “any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement.” If the purpose of the call were to help determine whether to continue a specific procurement contract the time spent would have to be counted toward the 25 hour trigger. The law, however, provides for a specific exception if the information is provided “in writing in response to a written request for specific information by an officer or employee of the executive branch.” If you do not wish this time to count toward the 25-hour threshold, you should ask that the officer or employee submit a written request to you for this information and to reply in writing.

PART III—ADDITIONAL KEY SECTIONS OF CHAPTER 28.

(1) Definitions:

“Legislative agent”, a person who for compensation or reward engages in legislative lobbying, which includes at least 1 lobbying communication with a government employee made by said person.

The term “legislative agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services.

For purposes of this definition a person shall be presumed to be engaged in legislative lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in legislative lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for legislative lobbying.

“Executive agent”, a person who for compensation or reward engages in executive lobbying, which includes at least 1 lobbying communication with a government employee made by said person.

The term “executive agent” shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services.

For the purposes of this definition a person shall be presumed to be engaged in executive lobbying that is simply incidental to his regular and usual business or professional activities if he: (i) engages in executive lobbying for not more than 25 hours during any reporting period; and receives less than \$2,500 during any reporting period for executive lobbying.

(2) Exemptions from executive lobbying:

(a) a request for a meeting, a request for the status of an action or any similar administrative request, if the request does not include an attempt to influence a covered executive official;

(b) an act made in the course of participation in an advisory committee or task force;

(c) providing information in writing in response to a written request for specific information by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof;

(d) an act required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation or other action of the executive branch or an authority, including, but not limited to, statewide constitutional offices;

(e) a communication made to an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, with regard to: (1) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation or proceeding; or (2) a filing or proceeding that the executive branch or an authority, including, but not limited to, statewide constitutional offices, is specifically required by statute or regulation to maintain or conduct on a confidential basis; if such executive branch or authority, including, but not limited to, statewide constitutional offices, is charged with responsibility for such proceeding, inquiry, investigation or filing;

(f) an act made in compliance with written agency procedures regarding an adjudicatory proceeding, as defined in section one of chapter thirty A, conducted by the agency, or similar adjudicatory or evidentiary proceedings conducted by any department, board, commission or official not governed by chapter thirty A;

(g) a petition for action by the executive branch or an authority, including, but not limited to, statewide constitutional offices made in writing and required to be a matter of public record pursuant to established procedures of such executive branch or authority, including, but not limited to, statewide constitutional offices;

(h) an act made on behalf of an individual with regard to that individual's benefits, employment or other personal matters;

(i) a response to a request for proposals or similar invitation by an officer or employee of the executive branch or an authority, including, but not limited to, statewide constitutional officers and employees thereof, for information relevant to a contract;

(j) participation in a bid conference;

(k) an appeal or request for review of a procurement decision.

(3) Seeking an advisory opinion:

The state secretary shall, upon written request from a person who is or may be subject to sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion rendered by the state secretary, unless amended or revoked, shall be a defense in a criminal action brought pursuant to sections 39 to 50, inclusive, and shall be binding on the state secretary, the attorney general or the district attorney in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the state secretary may publish such opinions if the name of the requesting person and any other identifying information is not included in such publication unless the requesting person consents to such inclusion.