

# State Lobbying Rules and Regulations

## Public Affairs Council

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and Affiliates

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- Any time you communicate or interact with a public official, or spend money and a public official participates in the event or occasion, it is likely you are engaging in regulated activity.
  - If related to election or campaign, campaign finance and pay-to-play considerations.
  - If providing a personal benefit, gift considerations.
  - If in connection with influencing an official decision, lobbying considerations.



- Three categories of activities may trigger lobby registration and reporting requirements at federal, state, and local levels.
  - Attempt to influence legislation.
  - Attempt to influence legislation or formal rulemaking by executive branch agency.
  - Attempt to influence legislation or any decision of executive branch agency, including financial arrangements and contracts (e.g., seeking business from agency).
- Thresholds: Even if activity is considered lobbying activity, must meet thresholds (e.g., \$3,000 compensation in Connecticut; 25 hours or \$2,500 compensation in Massachusetts).
- Special issues when lobbying on behalf of an outside client
  - Both placement agent and client have to register in most states
- Placement agent restrictions under public pension fund policies





- Category 1 lobbying (attempting to influence legislation)

Maine

Montana

Nebraska

Nevada

North Dakota

Oregon

South Dakota

Wyoming

- Category 2 lobbying (attempting to influence legislation or rulemakings)

Alaska

Colorado

Hawaii

Iowa

Minnesota

(as to state actions or decisions)

New Mexico

South Carolina

Utah (as to state actions or decisions)

Vermont

Washington

West Virginia

Wisconsin



- Beyond "traditional" lobbying, trend toward regulation of Category 3 lobbying (including financial arrangements and contracts)

Alabama

Illinois

New Hampshire

Arizona

Indiana

New Jersey

Arkansas

Kansas

New York

California (placement agents only)

Kentucky

North Carolina

Connecticut

Louisiana

Ohio

Delaware

Maryland

Oklahoma

D.C.

Massachusetts

Pennsylvania

Federal

Michigan

Rhode Island

Florida

Minnesota\*

Tennessee

Georgia

Mississippi

Texas

Idaho

Missouri

Utah (local and school actions)

Virginia

\* Metropolitan governmental units only



- Some state lobby laws cover local lobbying
  - Alabama, Arkansas, Georgia, Louisiana, Minnesota, Mississippi, Missouri, New York, Utah
- Some Florida county lobby laws cover lobbying municipalities within the county
  - Miami-Dade County, Palm Beach County



- Direct lobbying
  - Generally, direct lobbying includes preparation for (e.g., research, strategizing, or coordinating lobby activity) and communications with covered officials to influence legislative or executive
    - » Includes strategizing, planning, possibly other background work
  - “Education” – that is what lobbying is
  - Strategic planning
    - » Strategizing with trade associations, task forces, and others in the industry
      - > Official need not be present, just need purpose to be attempting to influence
  - Must there be pending legislation, rulemaking, or RFP?
  - Ripening of preparation time that does not result in a contact
  - Travel time
  - Subject matter experts
  - Administrative time





- Door-opening
- Discussing legislation or policy at a site visit
  - » If there is an attempt to influence
  - » Prep time counts if purpose was to attempt to influence
- Attending a fundraiser and talking about legislation
  - » Generally, the time spent merely attending a fundraiser does not constitute lobbying. However, one-on-one opportunities to influence legislation should be included.
- C-Suite activity: leveraging activity and managing compliance
- Covered officials
  - » Concept varies widely across states. Some states cover virtually all public employees, unlike the limited federal definition.
- Work performed with the intent that it will be used for lobbying purposes at the time it is created
  - » Can documents created for thought leadership be considered lobbying?





- Grassroots lobbying: Communicating with the public or segment of the public, including with vendors and employees, asking them to contact their government representatives regarding legislation.
  - In 29 states, grassroots lobbying triggers registration.
  - In 6 additional states plus D.C., grassroots lobbying does not trigger registration but if already registered, grassroots expenditures must be reported (Alaska, Florida, Kentucky, Maine, Texas, Wisconsin).



- Types of social media communications, expanding lobbying footprint:
  - Direct lobbying
    - » Direct messages
    - » “Tagging” public officials
    - » Emails
  - Grassroots lobbying
    - » Tweets
    - » Likes and retweets
    - » Facebook
- Electronic petitions and form letters
- State regulators are giving increased consideration to social media activity
  - Evolving area



- Contingent fee restrictions under the lobbying laws (e.g., restriction in California, Florida, Massachusetts, New York, and Connecticut).
- Types of compensation that may be permissible under a contingency fee ban:
  - Retainer or flat fee
  - Target-based compensation
    - » This approach has some risk
  - Discretionary bonus
    - » Has to be based on a number of factors
    - » Cannot be formula-based
    - » No dollar of compensation should be traceable to a particular contract





- Effective January 1, 2020, Chicago requires lobbyists for non-profits to register, subject to limited exceptions.
  - Implementation delayed to April 20, 2020
- Effective December 5, 2019, Illinois requires lobbyists to disclose local registrations, elected or appointed public offices held, and subregistrants retained.
- Boston lobby law effective April 13, 2019
- A federal appeals court overturned a prior decision and ruled that Missouri may not require lobby registration by unpaid lobbyists
- Under an executive order signed July 2, 2019, Puerto Rico established an executive branch lobby registry requiring registration for influencing effectively all agency decisions, including regulations and procurement
- Effective September 1, 2019, Texas requires lobby registrants to disclose FARA registration on annual registration form
- Effective May 13, 2019, Utah requires local lobbyists and lobbyist employers to file reports with the state



- New York's JCOPE issued a set of comprehensive lobbying regulations, which effective January 1, 2019:
  - Incorporate existing guidelines and decades of advisory opinions
  - Codify definitions related to treatment of grassroots lobbying
  - Require lobbyists to report the name of the person, organization, or legislative body before which the lobbyist has lobbied
    - » For direct lobbying, the name of the official or official's office or the legislative committee, as applicable, with whom the lobbyist engaged in direct communication
    - » For grassroots lobbying, the intended target of the lobbying activity, which may be a person, state agency, municipality, or legislative body



- California incorporates anti-harassment policies into mandatory lobbyist training.
- Georgia requires lobbyists to acknowledge and agree to abide by the General Assembly's sexual harassment policy when they register or renew.
- Hawaii's Senate and House of Representatives implemented policies that address sexual harassment involving lobbyists.
- Illinois requires registrants to undergo sexual harassment training and adopt a harassment policy.
- Maine requires in-person sexual harassment training for lobbyists working in the capitol.
- Maryland mandates that Ethics Commission training cover sexual harassment.
- Nebraska legislature policy requires legislators and employees to take action to correct or prevent sexual harassment committed by third parties, including lobbyists.





- Nevada addresses harassment in mandatory lobbyist training and lobbyists are covered under the Joint Standing Rules of the Senate and Assembly prohibiting harassment.
- New Mexico offering voluntary sexual harassment training, with attendance indicated on lobbyist registration forms.
- Utah requires lobbyists to complete an anti-harassment course within 30 days of registration or renewal.
- Washington extended the respectful workplace code of conduct provisions to all members of the legislative community and requires registered lobbyists to complete code of conduct training as a condition of registration.



- Civil fines to criminal penalties.
- Losing business in jurisdictions where procurement activities are lobbying.
- Requirement that company certify in RFP that it is in compliance with lobbying laws.
  - Mandatory under law in Kentucky and L.A. County.
  - Matter of practice in Ohio, Florida, and Dade County.



- In California, retirement systems are refusing to meet with individuals who should be registered as lobbyists but have not
- Colorado lobbyist fined \$74,000 for failure to register, state senator filed the complaint
- Chicago levies numerous fines for failure to register in the Rahm Emanuel e-mail case, led by a \$90,000 fine for one lobbyist
- Chicago fined a former elected official for violating the one-year post employment period restriction and his employer for retaining an unregistered lobbyist. The former elected official listened in on a conference call with city officials unannounced and provided advice to his colleagues in real time.
- Hawaii lobbyist and employer fined for failure to register, having misinterpreted an exemption





- New York fines a lobbying firm \$180,000 for registration and reporting violations
  - \$62,000 settlement was reached but firm failed to comply with agreement terms
- New York City sweep based on New York State lobby filings
  - Detroit sweep based on Michigan lobby filings
- North Carolina: criminal charges brought against outside lobbyist for failure to register
- Philadelphia fined a company \$2.9 million for failing to report use of outside lobbyists and their contributions during procurement process



- Avoid linkage: when making contributions or donations (political or charitable) or providing gifts
- Make sure that your consultants are properly vetted
- Comply with specific conflicts of interest laws (dual hatted employees and post-employment rules)
- Conflict of interests in government procurement process
- Be aware of strict liability pay-to-play laws (federal, state, and local)



- Prohibition, limit, or restriction on providing personal benefit to public officials.
- Covered gifts include anything of personal value, such as meals, entertainment, transportation, and lodging, including in-kind gifts; but not in-kind political contributions.
  - Factors to consider
    - » Timing/Linkage
    - » Contacts with campaign staff or office staff?
    - » Content of presentation/meet and greets vs. campaign events
- Federal government, each state, and certain cities and counties have their own separate gift laws.





- Absolute ban regardless of value (e.g., Florida lobbyist law).
- Dollar limits – Some are per occasion (e.g., Florida non-lobbyist law – \$100 per occasion) and some are per period (e.g., California – \$500 per 12-month period).
- Prohibition on gifts that may reasonably tend to influence an official (Contrast: New Jersey and Nevada).



- Meals are sometimes exempt (e.g., Michigan lobby gift law).
- Travel and entertainment are sometimes exempt – usually, they must be provided in connection with giving a speech or as part of official duties (e.g., New York).
- Single source issue – In states that have an aggregate gift limit, a company and its employees are considered part of a single source. Gifts made by those employees to a certain official are aggregated toward the same limit (e.g., Kentucky and Rhode Island). Subsidiaries are generally not included.
- There may be special gift limits for lobbyists and lobbyist employers.
- Lobby registration gift triggers (e.g., Maryland and Texas).



- Valuation
  - Fair market value/face value vs. cost vs. value on secondary market
  - Actual consumption vs. pro rata share
- Tax and tip
- Buydowns
- Splitting
- Bargained-for in an arms-length agreement (*e.g.*, BPA, advisory board meetings)
- Legal liability
- Large events
- Gift to agency or governmental entity
- Consultant gifts





- Types of preclearance strategy
  - Preclear everyone and everything
  - Preclearance thresholds
- Gift preclearance software

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