

PHILADELPHIA ENACTS NEW LAW REGULATING LOBBYING

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On June 16, 2010, Mayor Michael Nutter signed into law the first ever registration and reporting requirements for individuals engaged in lobbying with the city of Philadelphia. The law largely tracks the statutes which govern lobbying on the state level. It does not go into effect immediately, but will govern actions taken on or after July 1, 2011.

LOBBYING DEFINED

Under the Philadelphia Code, *lobbying* will include "an effort to influence legislative action or administrative action," including direct or indirect communications to officials;¹ incurring office expenses; and the provision of gifts, hospitality, transportation, or lodging for a City official or employee for the purpose of advancing the interests of the lobbyist or a principal. Phila. Code §20-1201(18).

In turn, a *legislative action* is "an action taken by a City official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation, legislative motions, a veto by the Mayor; or confirmation of appointments by the Mayor or appointments to public boards or commissions by the Mayor or Council." §20-1201(17). An *administrative action* includes an agency's efforts regarding a regulation or statement of policy; its procurement, requests for qualifications and proposals and other contract decisions; zoning and land use decisions, including license and permitting decisions; the mayor's decision to sign or veto legislation, public nominations and appointments; and actions concerning executive orders. §20-1201(1).

What is an agency? "Any office, department, board, commission,

or other entity that is part of the government of the City of Philadelphia, including Council." §20-1201(3). A City official or employee is defined as any person who is elected or appointed to any branch of City government, including City agencies, whether serving full time or not, and whether paid or unpaid. §20-1201(7).

The terminology is consistent with state law. A *principal* is the person or entity on whose behalf lobbying is being done by a *lobbyist*, and a *lobbying firm* is an entity which engages in lobbying for economic consideration on behalf of some principal other than itself.

Exempt from the above definitions (and the subsequent registration and reporting requirements) are a long list of activities which would otherwise constitute lobbying. The most relevant ones include those individuals who do not receive economic consideration for lobbying; those whose involvement consists of the preparation or presentation of formal testimony or participate in administrative agency proceedings; individuals who receive less than \$2,500 in consideration and accrue less than \$2,500 in expenses during a reporting period (three months) for all principals represented; an individual who spends up to 20 hours per-period of lobbying on behalf of her employer; non-lobbyists who serve on official public boards; members of the news media; attorneys who participate as part of a formal adjudication proceeding; expenditures which are covered by campaign finance law; and vendor activities directly related to responding to public bid processes. §20-1204.

REPORTING REQUIREMENTS

A lobbyist, lobbying firm, or principal must register with the City of Philadelphia Board of Ethics within 10 days of acting in any capacity as a lobbyist, lobbying firm, or principal. Registration is

1. **Direct:** "An effort, whether written, oral or by any other medium, made by a lobbyist or principal, directed to a City official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses." §20-1201(9).

Indirect: "An effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action," including but not limited to such means as encouraging letter-writing campaigns, telephone banks or through advertising. It does not include "regularly published periodical newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation." §20-1201(15). Any indirect communication must clearly and conspicuously name the person who made or financed the communication. §20-1205(1).

biennial and, as noted above, begins on July 1, 2011. §20-1202(1). A fee of \$500 "or other such amount as the Board of Ethics shall by regulation require" is assessed at the time of registration. §20-1208(1). In addition, all persons required to be registered are required to participate in training regarding these laws by the Board of Ethics, "in such form and at such frequency" as the board, by regulation, requires.

Registration will be done electronically. The main registration package must include the lobbyist's name, contact information, client list, name of lobbying firm, and a recent photograph. §20-1202(2). In addition, both lobbyists and principals must disclose any political action committees with which they are affiliated, an expansive inquiry which includes any political action committee with an officer who is a principal or lobbyist, or is employed by a principal or lobbyist,² or any candidate committee for which the lobbyist serves as an officer. §20-1202(h)-(i); §20-1201(2). As is the case on the state level, a lobbyist may not serve as a treasurer or other officer for a candidate's political action committee if the candidate is seeking a City elected office. §20-1205(2).

Every three months—no later than 30 days after the end of each calendar quarter, registered lobbyists must file a report containing the client and subject matter or issue being lobbied (including bill numbers); expense reports containing the total costs of lobbying for the period, including "all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to City officials or employees, and any other lobbying costs." §20-1203. The report must detail—by name, position, and each occurrence—the city officials or employees who have received anything of value from the lobbyist (except when the lobbyist is giving something to a family member, so long as it is clear that the motivation behind the gift was the personal or family relationship). The officials must be given seven days' advance notice prior to the report's submission in order to ensure their compliance with their own legal/ethical responsibilities. §20-1203(e)-(f).

These costs need to be further allocated between gifts/hospitality, direct communications and indirect communications, though any reasonable methods of estimation and allocation can be used. §20-1203(2). The expense report must also list any individuals, corporations, partnerships, or other entities which contributed more than 10 percent of the total resources received by the firm during the reporting period. §20-1203(2)(h).

PROHIBITED ACTIVITIES

Under the new law, no lobbyist can lobby on behalf of a principal whose interests are directly adverse to those of another principal currently represented by that lobbyist, previously represented by that lobbyist during the current four-year council session, or directly adverse to the lobbyist's own interest. That is unless the lobbyist reasonably believes he/she will be able to provide competent and diligent representation to each affected principal, provides them with written notice of the conflict, and obtains their written informed consent. §20-1205(5).

Contingent-fee lobbying is expressly prohibited, with no exception for procurement lobbying as exists under state law. §20-1205(7).

A lobbyist may not instigate the introduction of legislation that he/she has been hired to defeat, nor may he/she refuse to disclose to a city official or employee, upon request, the identity of the principal on whose behalf he/she is lobbying. §20-1205(8). Extortion, coercion, bribery, threats, and unlawful retaliation are barred, as is the nebulous "conduct that brings the practice of lobbying or the legislative or executive branches of City government into disrepute." *Id.*

PENALTIES

A person who violates the registration and reporting requirements is subject to a civil penalty of up to \$2,000, plus up to \$250 per day (up to a total of \$2,000) when a required registration or report is filed late. §20-1207(1). In addition, when the violation of law is intentional, the Board of Ethics may prohibit the individual from lobbying for pay for up to five years.

The Disciplinary Board of Pennsylvania is additionally notified whenever the penalized lobbyist or principal is an attorney. §20-1207(1)(d).

- Adam Bonin

2. There is an exception for employees of principals or lobbying firms who serve as PAC officers "in what is clearly a personal capacity and the goals and the mission of that political action committee clearly have no relationship to the goals and mission of the registrant." §20-1201(2)(b).