

OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

Electronic Filing of Annual Reports:

Represented Entities and Governmental Affairs Agents, and Persons Communicating with the General Public

“Represented Entity” Substituted for “Lobbyist”

Proposed Amendments: N.J.A.C. 19:25-20.2, 20.4, 20.9, 20.9A, 20.10, 20.11, 20.12, 20.13, 20.14, 29.15, 20.16, and 20.19.

Proposed New Rules: N.J.A.C. 19:25-20.9B and 20.9C

Authorized By: Election Law Enforcement Commission, Jeffrey M. Brindle, Executive Director.

Authority: N.J.S.A. 52:13C-23.2.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-

The sitting New Jersey Election Law Enforcement Commission will conduct a **public hearing** concerning this proposal on Tuesday, October 16, 2012 at 11:00 A.M. at:

Election Law Enforcement Commission
Edward J. Farrell Memorial Conference Room
28 West State Street, 12th floor
Trenton, New Jersey

Persons wishing to testify are requested to reserve time to speak by contacting Administrative Assistant Elbia L. Zeppetelli at (609) 292-8700 no later than Friday, October 12, 2012.

Submit written comments by October 16, 2012 to:

Michelle R. Levy, Associate Legal Director
Election Law Enforcement Commission
PO Box 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

Required Electronic Filing of Annual Reports

The Uniform Electronic Transactions Act (UETA), N.J.S.A. 12A:12-17 and 12A:12-18, authorize State agencies to accept reports filed in an electronic format. In 2004, the Commission adopted rules authorizing electronically filed reports under the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.*; see N.J.A.C. 19:25-3.

The rules require candidates and committees to use software designed by the Commission, which is supplied at no charge, because the software specifically conforms to the complex filing requirements of the Campaign Reporting Act. The rules further authorize the encryption and security technology embedded in the Commission's software to serve in lieu of the required certification of paper reports by candidates and treasurers. In 2005, the Commission extended electronic filing to require gubernatorial or legislative candidates who spend in excess of \$100,000 to file reports using the Commission's electronic filing software; see N.J.A.C. 19:25-3.3. Additionally, as part of the Commission's "pay to play" disclosure rules, business entities that file a business entity annual disclosure statement are required to file electronically; see N.J.A.C. 19:25-26.5.

The Legislative and Governmental Process Activities Act, N.J.S.A. 52:13C-18 *et seq.* and the Commission's regulations at Subchapter 20 require the filing of annual reports with the Commission by governmental affairs agents, represented entities and persons communicating with the general public, see N.J.S.A. 52:13C-22.1 and N.J.A.C. 19:25-20.9 and 20.9A. In 2012, the Commission instituted a voluntary electronic filing program for annual financial report filing obligations under Subchapter 20. Based on the Commission's experience in that program, the increase in preparation of reports using computer software, and the trend towards requiring electronic filing, the Commission believes that it is reasonable to require governmental affairs agents, represented entities and persons communicating with the general public, to file annual reports electronically, and to require the use of the Commission's software.

The Commission proposes two new rules: N.J.A.C. 19:25-20.9B, Application for registration number and personal identification number, concerning the procedures for applying for a registration number and personal identification number prior to use of the electronic filing software, and specifying that insertion in an electronic report of these numbers will satisfy the obligation to certify the correctness of the report; and new rule N.J.A.C. 19:25-20.9C, Filing of an electronic report, requiring the use of software supplied by the Commission and following the methodology as well as keeping an exact copy of the report.

The Commission proposes to amend N.J.A.C. 19:25-20.9, Annual report, to require that a represented entity (lobbyist) or governmental affairs agent file an annual report (Form L1-L or L1-A) using electronic filing software supplied by the Commission, and to amend N.J.A.C. 19:25-20.9A, Annual report of communication with the general public, to require that a person communicating with the general public shall file an annual report (Form L1-G) using electronic software supplied by the Commission. The Commission further proposes to amend N.J.A.C. 19:25-16, Responsibilities for filing annual reports; certification, to specify that both the designation by a represented entity of a governmental affairs agent in its employ to file the annual report on its behalf, and the acknowledgement by the governmental affairs agent of that designation (Form L-2), shall also be made using electronic filing software supplied by the Commission. Finally, the Commission proposes to amend N.J.A.C. 19:25-20.19, Nonresident governmental affairs agents or represented entities, to require that, for purposes of the annual report filing, a nonresident governmental affairs agent, represented entity, or person communicating with the general public must file the consent to service of process (Form L-3) using electronic filing software supplied by the Commission.

Represented Entities

In 2004, the legislature significantly expanded the scope of reportable lobbying activity beyond attempts to influence legislation and regulation to include an extensive list of "governmental processes." New terminology, such as "communication with the general public," "governmental affairs agent," and "governmental process" was introduced and defined.

As stated in its prior rulemaking proposal in 2007, the Lobbying Act uses the term "governmental affairs agent" to refer to the individual who makes a lobbying communication; see N.J.S.A. 52:13C-20g, and N.J.A.C. 19:25-20.2. The Commission understands that this terminology can be confusing for members of the public who often use the term "lobbyist," instead of "governmental affairs agent," to refer to the individual who undertakes a lobbying communication. In 2007, the Commission amended its regulations to adopt the term "represented entity" to be used interchangeably with the term "lobbyist" to refer to the entity or organization that employs a governmental affairs agent to make lobbying communications, see N.J.A.C. 19:25-20.2, 39 N.J.R. 626(a), and 39 N.J.R. 3409(a). The Commission believes that the term "represented entity" more accurately describes the role of the party on whose behalf lobbying activity is conducted and therefore clarifies the nature of the "lobbyist" in lobbying activity.

The Commission believes that the term "lobbyist," although defined in the Act and Commission rules, is still subject to misinterpretation in the regulated community and general public, and is often confused with "governmental affairs agents." Members of the public often use the term "lobbyist," instead of "governmental affairs agent," to refer to the individual who undertakes a lobbying communication. Although the statute uses the term "lobbyist," the Commission believes that the term "represented entity" more accurately describes the role of the party on whose behalf lobbying activity is conducted and therefore clarifies the nature of the "lobbyist" in lobbying activity.

The Commission therefore proposes to substitute the term "represented entity" throughout Subchapter 20, for the term "lobbyist." The Commission proposes to specify that "represented entity" means "lobbyist" as found in the Act, and proposes to amend the definition of "lobbyist" to refer to the definition of "represented entity."

Thus, the Commission proposes to amend N.J.A.C. 19:25-20.2, Definitions; 19:25-20.4, Governmental affairs agent notice of representation; 19:25-20.9, Annual report; 19:25-20.9A, Annual report of communication with the general public; 19:25-20.10, Receipts; 19:25-20.11, Expenditures; 19:25-20.12, Valuation of contributions and expenditures; 19:25-20.13, Notice of lobbying benefit; 19:25-20.14, Contents of annual report; 19:25-20.15, Audit by Commission; recordkeeping; 19:25-20.16, Responsibilities for filing annual reports; certification; and 19:25-20.19, Nonresident governmental affairs agents or represented entities, by substituting "represented entity" for "lobbyist."

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Required Electronic Filing of Annual Reports

Proposed new rules N.J.A.C. 19:25-20.9B and 20.9C, and proposed amendments to N.J.A.C. 19:20-20.9, 20.9A, 20.16, and 20.19, have a positive social impact, by establishing procedures for represented entities, governmental affairs agents or person communicating with the general public, to file statutorily required reports with the Commission electronically. The Commission believes that its electronic filing software will provide flexibility in filing and will enhance timely reporting because reports will not have to be filled out by hand, and will reduce reliance on hand-delivery or postal delivery of required reports. Further, the use of the filing software designed by the Commission will enhance disclosure because it specifically conforms to statutory and regulatory requirements. The Commission will provide training sessions and support through a help desk, and a user-friendly website, which will ease the transition for individuals and entities who are not currently filing electronically.

Represented Entities

The Commission's proposal to amend the terminology in Subchapter 20 to replace "lobbyist" with "represented entity," will have the positive social impact of decreasing confusion and increase specificity of meaning, as the term "lobbyist" has varying connotations to the general public.

Economic Impact

The proposed new rules are not expected to impose any additional costs on represented entities, governmental affairs agents or a person communicating with the general public who are required to file annual reports with the Commission, and may increase efficiency in the reporting process by allowing filing to be achieved electronically using Commission software. Commission software is provided at no charge, and utilizing electronic filing software is expected to reduce paperwork and to simplify the reporting process. Any economic impact on the regulated community is outweighed by the considerable increase in the Commission's efficiency, by eliminating the need of staff to scan paper documents for public disclosure on the Commission's website and the obligation to input data manually for computer analysis of reported information.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules and amendments concern New Jersey filing entities. The new rules and amendments are not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules and amendments are not expected to result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rules are not expected to have any impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendments and new rules impose reporting, recordkeeping, and other compliance requirements on governmental affairs agents, represented entities, and a person communicating with the general public, concerning the electronic filing of reports and certain other submissions with the Commission. Some of those subject to the requirements may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements are described in the Summary above, and are not expected to impose any additional costs. It is not anticipated that any professional services will have to be employed in order to comply with the requirements. As the requirements are intended to simplify the reporting process and reduce paperwork to the benefit of both the Commission and those reporting, no differing compliance requirements are provided based upon business size.

Housing Affordability Impact Analysis

The proposed new rules and amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the amendments and new rules regarding electronic filing of annual reports would evoke a change in the average costs associated with housing because the amendments and new rules concern electronic filing of annual reports by represented entities, governmental affairs agents, or a person communicating with the public.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will have an insignificant impact on smart growth development and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules concern electronic filing of annual reports by represented entities, governmental affairs agents or a person communicating with the public.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 20. [LOBBYISTS] **REPRESENTED ENTITIES** AND GOVERNMENTAL AFFAIRS AGENTS

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.

...

“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] **represented entity’s** or governmental affairs agent’s expenditures providing that benefit or benefits.

...

"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] **represented entity**, 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.

...

"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] **means the same as “represented entity” as defined in this section.**

...

"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] **represented entity** 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] **represented entity**.

...

"Represented entity" [means the same as "lobbyist" as defined in this section] **shall mean a lobbyist, that is, 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, in accordance with N.J.S.A. 52:13C-20(d).**

...

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] **represented entity** 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] **represented entity** 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) - (d) (No change.)

(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] **represented entity** or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the [lobbyist] **represented entity** 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] **represented entity** or governmental affairs agent receives reimbursement pursuant to (e) above, the [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** 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] **represented entity** or governmental affairs agent pursuant to this subchapter.

19:25-20.4 Governmental affairs agent notice of representation

(a) - (c) (No change.)

(d) If a governmental affairs agent identifies a membership organization or corporation as the [lobbyist] **represented entity** 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.

...

19:25-20.9 Annual report

(a) Any [lobbyist] **represented entity** 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 legislation, regulations or 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] **represented entity** 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] **represented entities** by whom the governmental affairs agent is employed.

(c) A represented entity or governmental affairs agent shall file an annual report as defined in (a) and (b) above using electronic filing software supplied by the Commission pursuant to this subchapter.

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

(a) Any person other than a governmental affairs agent or [lobbyist] **represented entity** 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.

(b) (No change.)

(c) **A person communicating with the general public shall file an annual report as defined in (a) above using electronic filing software supplied by the Commission pursuant to this subchapter.**

19:25-20.9B Application for registration number and personal identification number

(a) **A governmental affairs agent, represented entity, or person communicating with the general public shall make a written application for a registration number and personal identification number (PIN) prior to its use of the Commission's electronic filing software. The written request shall include the name, address, and signature of the person applying for the registration number and PIN and such other information as may be required by the Commission.**

(b) **In the case of a represented entity, the application described in (a) above shall be made by a governmental affairs agent employed by the represented entity or a responsible financial or governmental affairs officer of the represented entity who is responsible for the certification of the correctness of the annual report as described in N.J.A.C. 19:25-20.16.**

(c) **In the case of a person communicating with the general public, the application described in (a) above shall be made by a representative of the person communicating with the general public who is responsible for the certification of the correctness of the annual report as described in N.J.A.C. 19:25-20.9A.**

(d) **Insertion in an electronic report of the registration number and personal identification number (PIN) provided by the Commission to a governmental affairs agent, represented entity, or person communicating with the general public shall satisfy the obligation to certify the correctness of a report required to be filed by the Act or this chapter.**

19:25-20.9C Filing of an electronic report

(a) **The Commission will accept a report in an electronic medium from a governmental affairs agent, represented entity, or person communicating with the general public only if the report has been prepared using the computer software supplied to the governmental affairs agent, represented entity, or person communicating with the general public by the Commission.**

(b) A governmental affairs agent, represented entity, or person communicating with the general public filing a report using computer software provided by the Commission shall use the most current version of the software.

(c) The Commission will accept a report in an electronic medium from a governmental affairs agent, represented entity, or person communicating with the general public only if the report has been completed according to the methodology in the Commission's software using the confidential registration and personal identification number (PIN) and any other means of identification required from the governmental affairs agent, represented entity, or person communicating with the general public.

(d) A governmental affairs agent, represented entity, or person communicating with the general public shall maintain as part of its records an exact copy of each report that has been filed electronically.

19:25-20.10 Receipts

(a) The following receipts of a [lobbyist] **represented entity** 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, which relate to influencing legislation, regulations, or 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] **represented entity** 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] **represented entity**. Such contributions, loans, fees or dues received by a [lobbyist] **represented entity** are reportable if they are made to a [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** 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] **represented entity** are not reportable by such organization, unless made to the [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** shall be reported hereunder in the aggregate in the same proportion as the activities of the [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity**, 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.

...

19:25-20.11 Expenditures

(a) The following expenditures of a [lobbyist] **represented entity** 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, which relate to influencing legislation, regulations, or 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] **represented entity** 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] **represented entity**.
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] **represented entity** and must include this amount as an expense.

Example 2: (No change.)

3. Contributions or membership fees or dues paid by the [lobbyist] **represented entity**, 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] **represented entity** 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] **represented entity** 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]

represented entity 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] **represented entity** 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] **represented entity** 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. (No change.)
6. Allocated cost of support personnel for the [lobbyist] **represented entity** or governmental affairs agent. The allocated cost of any support personnel for the [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity**, 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] **represented entity** 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] **represented entity** or governmental affairs agent and the name and address of any person or entity to whom the [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** or governmental affairs agent. Also included are payments by [lobbyist] **represented entity**s 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] **represented entity** 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] **represented entity** 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] **represented entity** 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. (No change.)

(c) (No change.)

19:25-20.12 Valuation of contributions and expenditures

Where a contribution of goods or services is made to a [lobbyist] **represented entity** 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] **represented entity** or governmental affairs agent receiving it. Where an expenditure of goods or services, including travel, is made by a [lobbyist] **represented entity** 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] **represented entity** or governmental affairs agent shall provide a written benefit notice, certified as correct by the [lobbyist] **represented entity** 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] **represented entity** or governmental affairs agent a benefit required to be reported on the [lobbyist's] **represented entity'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] **represented entity** 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] **represented entity** or governmental affairs agent has provided a benefit recipient with more than one benefit during a preceding calendar year, the

[lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** 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] **represented entity** 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] **represented entity** or governmental affairs agent;
2. Name, address and occupation or business of governmental affairs agent(s) engaged by the reporting [lobbyist] **represented entity**, or name, address and occupation or business of [lobbyist(s)] **represented entity/entities** 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] **represented entity** 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] **represented entity** as set forth in N.J.A.C. 19:25-20.10; and
5. Expenditures made by the [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** shall include in his or her annual report receipts received from and expenditures made on behalf of all [lobbyists] **represented entities** by whom [it] **he or she** is employed.

(d) (No change.)

19:25-20.15 Audit by Commission; recordkeeping

(a) All annual reports of [lobbyists] **represented entities** 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] **represented entity** 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, influencing governmental processes, or communicating with the general public, 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) (No change.)

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

(a) The [lobbyist] **represented entity** 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] **represented entity** 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] **represented entity** 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] **represented entity** 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] **represented entity** is due for filing, and further provided that any violation of the Act shall subject both the [lobbyist] **represented entity** 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] **represented entity** or that the governmental affairs agent has been designated by which organization to file an annual report for it; except that any [lobbyist] **represented entity** 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] **represented entity** alone to the penalties provided by the Act and this subchapter.

(d) Each report filed with the Commission by a [lobbyist] **represented entity** 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] **represented entity**, by a governmental affairs agent employed by the [lobbyist] **represented entity** or a responsible financial or government affairs officer of the [lobbyist] **represented entity**.

(e) A represented entity and governmental affairs agent shall file the designation and acknowledgment as defined in (a) and (b) above using electronic filing software supplied by the Commission pursuant to this subchapter.

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19:25-20.19 Nonresident governmental affairs agents or [lobbyists] **represented entities**

(a) Any governmental affairs agent or [lobbyist] **represented entity** 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.

(b) Any person other than a governmental affairs agent or [lobbyist] **represented entity** who receives contributions or makes expenditures for the purpose of communication with the general public and 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 engaging in communication with the general public, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

(c) For purposes of the annual report described in N.J.A.C. 19:25-20.9 and 20.9A, a nonresident governmental affairs agent, represented entity, or person communicating with the general public must file the consent to service of process as defined by (a) and (b) above using electronic filing software supplied by the Commission pursuant to this subchapter.

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