GUIDELINES TO THE NEW YORK STATE LOBBYING ACT

Effective: April 24, 2012

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The Guidelines which follow below in boxes highlighted in blue are intended to provide explanation and clarification on the application of selected provisions of the Lobbying Act.

Section 1-a. Legislative declaration.

The legislature hereby declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to appropriate officials their opinions on legislation and governmental operations; and that, to preserve and maintain the integrity of the governmental decision-making process in this state, it is necessary that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence the passage or defeat of any legislation by either house of the legislature or the approval, or veto, of any legislation by the governor and attempts to influence the adoption or rejection of any rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency, and the attempts to influence the passage or defeat of any local law, ordinance, or regulation be publicly and regularly disclosed.

The Lobbying Act applies to lobbyists, and public corporations, and to clients or employers of lobbyists or clients, who in any year during the biennial period reasonably anticipate expending, incurring or receiving, or who actually expend, incur or receive, more than $5,000 of combined reportable compensation and expenses for lobbying activities on the State and/or local level.

§1-b. Short title.

This article shall be known and may be cited as the "***Lobbying Act***".

§1-c. Definitions.

As used in this article unless the context otherwise requires:

(a) The term ***"lobbyist"*** shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer, director, trustee, employee, counsel or agent of the state, or any municipality or subdivision thereof of New York when discharging their official duties; except those officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the education law.

(b) The term ***"client"*** shall mean every person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client.

(c) The term ***"lobbying"*** or ***"lobbying activities"*** shall mean and include any attempt to influence:

"Attempt to influence" means any activity intended to support, oppose, modify, delay, expedite or otherwise affect any of the actions specified in §1-c(c)(i)-(x).

(i) the passage or defeat of any legislation or resolution by either house of the state legislature including but not limited to the introduction or intended introduction of such legislation or resolution or approval or disapproval of any legislation by the governor;

(ii) the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;

(iii) the adoption or rejection of any rule or regulation having the force and effect of law by a state agency;

(iv) the outcome of any rate making proceeding by a state agency;

(v) any determination: (A) by a public official, or by a person or entity working in cooperation with a public official related to a governmental procurement, or (B) by an officer or employee of the unified court system, or by a person or entity working in cooperation with an officer or employee of the unified court system related to a governmental procurement;

(vi) the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any other state actions related to Class III gaming as provided

in 25 U.S.C. § 2701, except to the extent designation of such activities as "lobbying" is barred by the federal Indian Gaming Regulatory Act, by a public official or by a person or entity working in cooperation with a public official in relation to such approval, disapproval, implementation or administration;

(vii) the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof;

(viii) the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a municipality;

(ix) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation; or

(x) the outcome of any rate making proceeding by any municipality or subdivision thereof.

The term ***"lobbying"*****shall not** include:

(A) Persons engaged in drafting, advising clients on or rendering opinions on proposed legislation, rules, regulations or rates, municipal ordinances and resolutions, executive orders, procurement contracts, or tribal-state compacts, memoranda of understanding, or any other tribal-state agreements or other written materials related to Class III gaming as provided in 25 U.S.C. § 2701, when such professional services are not otherwise connected with state or municipal legislative or executive action on such legislation, rules, regulations or rates, municipal ordinances and resolutions, executive orders, procurement contracts, or tribal-state compacts, memoranda of understanding, or any other tribal-state agreements or other written materials related to Class III gaming as provided in 25 U.S.C. § 2701;

(B) Newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities in connection with proposed legislation, rules, regulations or rates, municipal ordinances and resolutions, executive orders, tribal-state compacts, memoranda of understanding or other tribal-state agreements related to Class III gaming as provided in 25 U.S.C. §2701, or procurement contracts by a state agency, municipal agency, local legislative body, the state legislature, or the unified court system, are limited to the publication or broadcast of news items, editorials or other comments, or paid advertisements;

(C) Persons who participate as witnesses, attorneys or other representatives in public proceedings of a state or municipal agency with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation;

(D) Persons who attempt to influence a state or municipal agency in an adjudicatory proceeding, as "adjudicatory proceeding" is defined by section one hundred two of the state administrative procedure act;

(E) Persons who prepare or submit a response to a request for information or comments by the state legislature, the governor, or a state agency or a committee or officer of the legislature or a state agency, or by the unified court system, or by a legislative or executive body or officer of a municipality or a commission, committee or officer of a municipal legislative or executive body;

(F) Any attempt by a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a federal income tax return under paragraph 2(A)(i) of section 6033(a) of Title 26 of the United States Code or a religious order that is exempt from filing a federal income tax return under paragraph (2)(A)(iii) of such section 6033(a) to influence passage or defeat of a local law, ordinance, resolution or regulation or any rule or regulation having the force and effect of a local law, ordinance or regulation;

(G) Any activity relating to governmental procurements made under section one hundred sixty-two of the state finance law undertaken by (i) the non-profit-making agencies appointed pursuant to paragraph e of subdivision six of section one hundred sixty-two of the state finance law by the commissioner of the office of children and family services, the commission for the blind and visually handicapped, or the commissioner of education, and (ii) the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profit-making agencies for other severely disabled persons as identified in subdivision two of section one hundred sixty-two of the state finance law; provided, however, that any attempt to influence the issuance or terms of the specifications that serve as the basis for bid documents, requests for proposals, invitations for bids, or solicitations of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a state agency, the state legislature, the unified court system, a municipal agency or local legislative body

shall not be exempt from the definition of "lobbying" or "lobbying activities" under this subparagraph;

(H) Participants, including those appearing on behalf of a client, in a conference provided for in a request for proposals, invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract;

(I) Offerers who have been tentatively awarded a contract and are engaged in communications with a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body solely for the purpose of negotiating the terms of the procurement contract after being notified of such award or, when a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body is purchasing an article of procurement pursuant to an existing state procurement contract, offerers who are engaged in communications with the procuring entity solely for the purpose of negotiating terms applicable to that purchase; or persons who currently hold a franchise and who are engaged in negotiating the terms of a tentative franchise renewal contract with a municipality, but such negotiations, which do not constitute lobbying, do not include communications to the local legislative body that must approve the contract;

(J) **(i)** Offerers or other persons who are a party to a protest, appeal or other review proceeding (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(ii) Offerers or other persons who bring complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(iii) Offerers or other persons who submit written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to section one hundred sixty-three of the state finance law; or

(iv) Offerers or other persons who bring complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office; provided, however, that nothing in this paragraph shall be construed as recognizing or creating any new rights, duties or responsibilities or abrogating any existing rights, duties or responsibilities of any governmental entity as it pertains to implementation and enforcement of article eleven of the state finance law or any other provision of law dealing with the governmental procurement process;

(K) The submission of a bid or proposal *(whether submitted orally, in writing or electronically)* in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract;

(L) Offerers submitting written questions to a designated contact of a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body set forth in a request for proposals, or invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract, when all written questions and responses are to be disseminated to all offerers who have expressed an interest in the request for proposals, or invitation for bids, or any other method for soliciting a response from offerers intending to result in a procurement contract;

(M) Contacts during governmental procurements between designated staff of a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body involved in governmental procurements and officers or employees of bidders or potential bidders, or officers or employees of subcontractors of bidders or potential bidders, who are charged with the performance of functions relating to contracts and who are qualified by education, training or experience to provide technical services to explain, clarify or demonstrate the qualities, characteristics or advantages of an article of procurement. Such authorized contacts shall:

(i) be limited to providing information to the staff of a state agency, either house of the state legislature, the unified court system, a municipal agency and local legislative body to assist them in understanding and assessing the qualities, characteristics or anticipated performance of an article of procurement;

(ii) not include any recommendations or advocate any contract provisions; and

(iii) occur only at such times and in such manner as authorized under the procuring entity's solicitation or guidelines and procedures. For the purposes of this paragraph, the term "technical services" shall be limited to analysis directly applying any accounting, engineering, scientific, or other similar technical disciplines;

This exemption is intended to promote the exchange of information during a governmental procurement. It is essential that both the governmental entity and the responding party adhere to the limitations cited in the paragraph.

(N) Applications for licenses, certificates, and permits authorized by statutes or local laws or ordinances;

(O) The activities of persons who are commission salespersons with respect to governmental procurements;

A person qualifies under this exemption if he or she satisfies all of the following criteria:

(i) The person's primary purpose of employment is the sale of products or services through direct contact with potential purchasers; (ii) The person receives a commission in the form of a percentage of all or substantially all of the sales the person has caused, promoted, influenced or induced; (iii) The person is not otherwise required to file a statement of registration by virtue of engaging in lobbying activity; (iv) The person is either an employee or has a contract with a vendor for a definite term of not less than six months. See definition at 1-c(u).

A discretionary bonus which is based upon factors including success in meeting sales targets, but which is not calculated as a percentage of sales, does not constitute commission income.

(P) Communications made by an officer or employee of the offerer after the award of the procurement contract when such communications are in the ordinary course of providing the article of procurement provided by the procurement contract and in the ordinary course of the assigned duties of the officer or employee; provided, however, that nothing herein shall exempt: (i) an officer or employee whose primary purpose of employment is to engage in lobbying activities with regard to governmental procurements, or (ii) an agent or independent contractor hired

by an offerer and whose primary duty is to engage in lobbying activities with regard to governmental procurements; and

This exemption does not apply to any officer, employee, agent or independent contractor who is registered as a lobbyist because of his or her procurement lobbying activity under §1-c(c)(v).

(Q) Persons who communicate with public officials where such communications are limited to obtaining factual information related to benefits or incentives offered by a state or municipal agency and where such communications do not include any recommendations or advocate governmental action or contract provisions, and further where such communications are not otherwise connected with pending legislative or executive action or determinations; provided, however, that any person who is otherwise required to file a statement or report pursuant to this article by virtue of engaging in lobbying activities as defined in this section shall not be deemed to fall within the exception provided for under this paragraph.

(d) The term ***"organization"*** shall mean any corporation, company, foundation, association, college as defined by section two of the education law, labor organization, firm, partnership, society, joint stock company, state agency or public corporation.

(e) The term ***"state agency"*** shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary, or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the judicial branch or agencies created by interstate compact or international agreement.

(f) The term ***"commission"*** shall mean the commission on public integrity created by section ninety-four of the executive law.

(g) The term ***"expense"*** or ***"expenses"*** shall mean any expenditures incurred by or reimbursed to the lobbyist for lobbying but shall not include contributions reportable pursuant to article fourteen of the election law.

(h) The term ***"compensation"*** shall mean any salary, fee, gift, payment, benefit, loan, advance or any other thing of value paid, owed, given or promised to the lobbyist by the client for lobbying but shall not include contributions reportable pursuant to article fourteen of the election law.

(i) The term ***"public corporation"*** shall mean a municipal corporation, a district corporation, or a public benefit corporation as defined in section sixty-six of the general construction law.

(j) The term ***"gift"*** shall mean anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise, having a monetary value. The following are excluded from the definition of a gift:

The value of a gift shall be its fair market value. Whenever applicable, fair market value is the price charged in an arm's length transaction. The value of private air transportation is the airplane charter cost at the time of the actual travel.

If a public official makes a payment to a donor in consideration for anything of more than nominal value contemporaneously with the offer or promptly thereafter, it is not deemed to be a gift. This does not apply in the event that the public official makes a payment to a donor after an investigation has commenced.

(i) complimentary attendance, including food and beverage, at bona fide charitable or political events;

If a public official attends a bona fide charitable or political event and receives an item of more than nominal value that he or she takes from the event, such item shall be considered to be a gift unless otherwise permitted as an exclusion from the definition of a gift under this subdivision.

A bona fide charitable event shall mean a function initiated and organized by a charitable organization exclusively to advance and promote its charitable purposes. For clarification purposes, a charitable organization shall mean an entity, as defined in Executive Law §171-a(1), that is registered with the Office of Attorney General, as required by Executive Law §172, unless otherwise exempted from filing pursuant to Executive Law §172-a.

A bona fide political event shall mean a function initiated and organized by a political organization exclusively to advance and promote its political purposes or political candidates. For clarification purposes, a political organization shall mean any organization that is affiliated with or a

subsidiary of a political party including, without limitation, a partisan political club or committee, or a campaign or fundraising committee for a political party or a political candidate.

(ii) complimentary attendance, food and beverage offered by the sponsor of a widely attended event. The term ***"widely attended event"*** shall mean an event: (A) which at least twenty-five individuals other than members, officers, or employees from the governmental entity in which the public official serves attend or were, in good faith, invited to attend, and (B) which is related to the attendee's duties or responsibilities or which allows the public official to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a public official's duties or responsibilities shall include but not be limited to either (1) attending an event or a meeting at which a speaker or attendee addresses an issue of public interest or concern as a significant activity at such event or meeting; or (2) for elected public officials, or their staff attending with or on behalf of such elected officials, attending an event or a meeting at which more than one-half of the attendees, or persons invited in good faith to attend, are residents of the county, district or jurisdiction from which the elected public official was elected;

Complimentary attendance does not include travel reimbursement or payment for travel or accommodations.

(iii) awards, plaques, and other ceremonial items which are publicly presented, or intended to be publicly presented, in recognition of public service, provided that the item or items are of the type customarily bestowed at such or similar ceremonies and are otherwise reasonable under the circumstances, and further provided that the functionality of such items shall not determine whether such items are permitted under this paragraph;

(iv) an honorary degree bestowed upon a public official by a public or private college or university;

(v) promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(vi) goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as

a public official and offered on the same terms and conditions as the goods or services are offered to the general public or segment thereof;

(vii) gifts from a family member, member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or family social events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor; in determining motivation, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether or not items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether or not the donor at the same time gave similar items to other public officials; the transfer shall not be considered to be motivated by a family, household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client;

A family member is a person who is a direct descendant of the public official's grandparents or the spouse of such descendant.

(viii) contributions reportable under article fourteen of the election law, including contributions made in violation of that article of the election law;

(ix) travel reimbursement or payment for transportation, meals and accommodations for an attendee, panelist or speaker at an informational event or informational meeting when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the public official may only accept lodging from an institution of higher education: (A) at a location on or within close proximity to the host campus; and (B) for the night preceding and the nights of the days on which the attendee, panelist or speaker actually attends the event or meeting;

(x) provision of local transportation to inspect or tour facilities, operations or property located in New York state, provided, however, that such inspection or tour is related to the individual's official duties or responsibilities and that payment or reimbursement for expenses for lodging or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision;

(xi) meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants; and

A professional program shall mean a program such as a conference, meeting, seminar, teleconference, videoconference or webinar that provides information on a broad range of services or products, or trends in an industry or discipline that would benefit the administration or operation of a State agency or would enable a group of State officers or employees to perform their duties more effectively. An educational program shall mean a program that provides continuing education credits or certification to attendees.

(xii) food or beverage valued at fifteen dollars or less.

(k) The term ***"municipality"*** shall mean any jurisdictional subdivision of the state, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population of more than fifty thousand, and industrial development agencies in jurisdictional subdivisions with a population of more than fifty thousand; and public authorities, and public corporations, but shall not include school districts.

(l) The term ***"public official"*** shall mean:

(i) the governor, lieutenant governor, comptroller or attorney general;

(ii) members of the state legislature;

(iii) state officers and employees including:

(A) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis,

(B) officers and employees of statewide elected officials,

(C) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies,

(D) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, and employees of such authorities, corporations and commissions;

(iv) officers and employees of the legislature; and

(v) municipal officers and employees including an officer or employee of a municipality, whether paid or unpaid, including members of any

administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

(m) The term ***"restricted period"*** shall mean the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (s) of this section, and ending with the final contract award and approval by the state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (s) of this section, and, where applicable, the state comptroller.

The restricted period is not identical to the longer time frame of a governmental procurement as defined in subdivision 1-c(p). Lobbying and lobbying activity requiring registration can take place at any time during a governmental procurement.

(n) The term ***"revenue contract"*** shall mean any written agreement between a state or municipal agency or a local legislative body and an offerer whereby the state or municipal agency or local legislative body gives or grants a concession or a franchise.

(o) The term ***"article of procurement"*** shall mean a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.

(p) The term ***"governmental procurement"*** shall mean:

(i) the public announcement, public notice, or public communication to any potential vendor of a determination of need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract,

The activities described in paragraph (i), and therefore the commencement of a governmental procurement, occur prior to the restricted period as defined in subdivision 1-c(m).

A governmental procurement begins when a governmental entity makes a determination of need relating to an article of procurement. A determination of need generally occurs when a governmental entity decides to begin the preparation of the specifications, bid documents, requests for proposals or evaluation criteria for the procurement of an article of procurement. A contact intended to generate interest in an offerer's product or service that occurs prior to the governmental entity's having made a determination of need for the product or service is not lobbying activity. An inquiry as to whether a governmental entity has made a determination of need is not lobbying activity.

(ii) solicitation for a procurement contract,

(iii) evaluation of a procurement contract,

(iv) award, approval, denial or disapproval of a procurement contract, or

(v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.

An assignment, amendment, renewal or extension that was not contemplated in the original procurement contract would not fall within the exemption and would be subject to a restricted period, if it meets the definition of a procurement contract in subdivision 1-c(r). The restricted period would begin with the earliest written notice that an assignment, amendment, renewal or extension is being requested.

(q) The term ***"offerer"*** shall mean the individual or entity, or any employee, agent or consultant of such individual or entity, that contacts a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body about a governmental procurement provided, however, that a governmental agency or its employees that communicate with the procuring agency

regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer.

(r) The term ***"procurement contract"*** shall mean any contract or other agreement, including an amendment, extension, renewal, or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the comptroller, as applicable), for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article XI-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article XI-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for state participation in trade shows, and eminent domain transactions shall not be deemed procurement contracts.

(s) The term ***"municipal agency"*** shall mean: (i) any department, board, bureau, commission, division, office, council, committee or officer of a municipality, whether permanent or temporary; or (ii) an industrial development agency, located in a jurisdictional subdivision of the state with a population of more than fifty thousand, or local public benefit corporation, as that term is defined in section sixty-six of the general construction law.

(t) The term ***"local legislative body"*** shall mean the board of supervisors, board of aldermen, common council, council, commission, town board, board of trustees or other elective governing board or body of a municipality now or hereafter vested by state statute, charter or other law with jurisdiction to initiate and adopt local laws and ordinances, whether or not such local laws or ordinances require approval of the elective chief executive officer or other official or body to become effective.

(u) The term ***"commission salesperson"*** shall mean any person the primary purpose of whose employment is to cause or promote the sale of, or to influence or induce another to make a purchase of an article of procurement, whether such person is an employee (as that term is defined for tax purposes) of or an independent contractor for a vendor, provided that an independent contractor shall have a written contract for a term of not less than six months or for an indefinite term, and which person shall be compensated, in whole or in part, by the payment of a percentage amount of all or a substantial part of the sales which such person has

caused, promoted, influenced or induced, provided, however, that no person shall be considered a commission salesperson with respect to any sale to or purchase by a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body if the percentage amount of any commission payable with respect to such sale or purchase is substantially in excess of any commission payable with respect to any comparable sale to a purchaser that is not a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body; further, provided, however, that any person that is required to file a statement or report pursuant to this article by virtue of engaging in lobbying activities as defined in paragraphs (i) through (iv) and (vi) through (x) of subdivision (c) of this section shall not be deemed to be a ***"commission salesperson"*** for purposes of this article.

(v) The term ***"unified court system"*** shall, for the purposes of this article only, mean the unified court system of the state of New York, or the office of court administration, where appropriate, other than town and village justice courts in jurisdictions with a population under fifty thousand, when it acts solely in an administrative capacity to engage in governmental procurements and shall not include the unified court system or any court of the state judiciary when it acts to hear and decide cases of original or appellate jurisdiction or otherwise acts in its judicial, as opposed to administrative, capacity.

(w) The term ***"reportable business relationship"*** shall mean a relationship in which compensation is paid by a lobbyist or by a client of a lobbyist, in exchange for any goods, services or anything of value, the total value of which is in excess of one thousand dollars annually, to be performed or provided by or intended to be performed or provided by (i) any statewide elected official, state officer, state employee, member of the legislature or legislative employee, or (ii) any entity in which the lobbyist or the client of a lobbyist knows or has reason to know the statewide elected official, state officer, state employee, member of the legislature or legislative employee is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange).

§1-d. Lobby-related powers of the commission. In addition to any other powers and duties provided by section ninety-four of the executive law, the commission shall, with respect to its lobbying-related functions only, have the power and duty to:

(a) administer and enforce all the provisions of this article;

JCOPE's authority to conduct investigations related to lobbying is set forth in Executive Law §94(13).

(b) conduct a program of random audits subject to the terms and conditions of this section. Any such program shall be carried out in the following manner:

(i) The commission may randomly select reports or registration statements required to be filed by lobbyists or clients pursuant to this article for audit. Any such selection shall be done in a manner pursuant to which the identity of any particular lobbyist or client whose statement or report is selected for audit is unknown to the commission, its staff or any of their agents prior to selection.

(ii) The commission shall develop protocols for the conduct of such random audits. Such random audits may require the production of books, papers, records or memoranda relevant and material to the preparation of the selected statements or reports, for examination by the commission. Any such protocols shall ensure that similarly situated statements or reports are audited in a uniform manner.

(iii) The commission shall contract with an outside accounting entity, which shall monitor the process pursuant to which the commission selects statements or reports for audit and carries out the provisions of paragraphs (i) and (ii) of this subdivision and certifies that such process complies with the provisions of such paragraphs.

(iv) Upon completion of a random audit conducted in accordance with the provisions of paragraphs (i), (ii) and (iii) of this subdivision, the commission shall determine whether there is reasonable cause to believe that any such statement or report is inaccurate or incomplete. Upon a determination that such reasonable cause exists, the commission may require the production of further books, records or memoranda, subpoena witnesses, compel their attendance and testimony and administer oaths or affirmations, to the extent the

commission determines such actions are necessary to obtain information relevant and material to investigating such inaccuracies or omissions;

(c) conduct hearings pursuant to article seven of the public officers law. Any hearing may be conducted as a video conference in accordance with the provisions of subdivision four of section one hundred four of the public officers law;

(d) prepare uniform forms for the statements and reports required by this article;

(e) meet at least once during each bi-monthly reporting period of the year as established by subdivision (a) of section one-h of this article and may meet at such other times as the commission, or the chair and vice-chair jointly, shall determine;

(f) issue advisory opinions to those under its jurisdiction. Such advisory opinions, which shall be published and made available to the public, shall not be binding upon such commission except with respect to the person to whom such opinion is rendered, provided, however, that a subsequent modification by such commission of such an advisory opinion shall operate prospectively only; and

(g) submit by the first day of March next following the year for which such report is made to the governor and the members of the legislature an annual report summarizing the commission's work, listing the lobbyists and clients required to register pursuant to this article and the expenses and compensation reported pursuant to this article and making recommendations with respect to this article. The commission shall make this report available free of charge to the public.

(h) provide an online ethics training course for individuals registered as lobbyists pursuant to section one-e of this article. The curriculum for the course shall include, but not be limited to, explanations and discussions of the statutes and regulations of New York concerning ethics in the public officers law, the election law, the legislative law, summaries of advisory opinions, underlying purposes and principles of the relevant laws, and examples of practical application of these laws and principles. The commission shall prepare those methods and materials necessary to implement the curriculum. Each individual registered as a lobbyist pursuant to section one-e of this article shall complete such training course at least once in any three-year period during which he or she is registered as a lobbyist.

§1-e. Statement of registration.

(a) (1) Every lobbyist shall annually file with the commission, on forms provided by the commission, a statement of registration for each calendar year; provided, however, that the filing of such statement of registration shall not be required of any lobbyist who (i) in any year does not expend, incur or receive an amount in excess of two thousand dollars for years prior to two thousand six and in excess of five thousand dollars in the year two thousand six and the years thereafter of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section one-h of this article, for the purposes of lobbying or (ii) is an officer, director, trustee or employee of any public corporation, when acting in such official capacity; provided however, that nothing in this section shall be construed to relieve any public corporation of the obligation to file such statements and reports as required by this article. The amounts expended, incurred, or received of reportable compensation and expenses for lobbying activities shall be computed cumulatively for all lobbying activities when determining whether the thresholds set forth in this section have been met.

(2) (i) Through calendar year two thousand three, such filing shall be completed on or before January first by those persons who have been retained, employed or designated as lobbyist on or before December fifteenth who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars; for those lobbyists retained, employed or designated after December fifteenth, and for those lobbyists who subsequent to their retainer, employment or designation reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(ii) For calendar year two thousand four, such filings shall be completed on or before January first by those persons who have been retained, employed or designated as lobbyist on or before December fifteenth, two thousand three who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars; for those lobbyists retained, employed or designated after December fifteenth, two thousand three, and

for those lobbyists who subsequent to their retainer, employment or designation reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(3) Commencing calendar year two thousand five and thereafter every lobbyist shall biennially file with the commission, on forms provided by the commission, a statement of registration for each biennial period beginning with the first year of the biennial cycle commencing calendar year two thousand five and thereafter; provided, however, that the biennial filing of such statement of registration shall not be required of any lobbyist who (i) in any year prior to calendar year two thousand six does not expend, incur or receive an amount in excess of two thousand dollars of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section one-h of this article, for the purposes of lobbying and commencing with calendar year two thousand six does not expend, incur or receive an amount in excess of five thousand dollars of reportable compensation, as provided in paragraph five of subdivision (b) of section one-h of this article for the purposes of lobbying or (ii) is an officer, director, trustee or employee of any public corporation, when acting in such official capacity; provided however, that nothing in this section shall be construed to relieve any public corporation of the obligation to file such statements and reports as required by this article.

(4) Such biennial filings shall be completed on or before January first of the first year of a biennial cycle commencing in calendar year two thousand five and thereafter, by those persons who have been retained, employed or designated as lobbyist on or before December fifteenth of the previous calendar year and who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars in years prior to calendar year two thousand six and five thousand dollars commencing in two thousand six; for those lobbyists retained, employed or designated after the previous December fifteenth, and for those lobbyists who subsequent to their retainer, employment or designation reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

Registration Fees for 2011-2012 and later:

- A $200 non-refundable registration fee payable in U.S. dollars is required to be submitted with each registration statement filed for the biennial period that a lobbyist reasonably anticipates exceeding $5,000 in compensation and expenses for any year in the biennial period. No registration fee is required to be submitted with a biennial registration statement if the lobbyist will not exceed $5,000 in compensation and expenses for that client. Any biennial Lobbyist Statement of Registration submitted after January 1 of the second year of the biennial period shall be accompanied by a prorated registration fee of $100.
- Biennial registration statements that are filed late and cover the entire biennial period or a portion of both years within the biennial period shall not be prorated. In this case, a $200 fee is due at the time of submission. In general, no fee is required when filing a registration amendment, provided an original is on file for that same biennial period. However, if subsequent to the filing of a biennial registration statement for which no fee was submitted, the lobbyist later exceeds the $5,000 threshold, a registration amendment must be filed within 10 days accompanied by a $200 registration fee (or a $100 fee in the case where a prorated fee is applicable).
- No registration fee is required of any public corporation required to file a biennial public corporation registration statement.

(b) **(i)** Such statements of registration shall be kept on file for a period of three years for those filing periods where annual statements are required, and shall be open to public inspection during such period;

(ii) Biennial statements of registration shall be kept on file for a period of three biennial filing periods where biennial statements are required, and shall be open to public inspection during such period.

Registration Statement Requirements.

The following must register:

- Every lobbyist that reasonably anticipates expending, incurring, or receiving, or who actually expends, incurs, or receives, more than $5,000 in combined reportable compensation and expenses for lobbying activity

on a state and/or local level in any year during the biennial period, is required to file a biennial registration statement .

- Every public corporation that employs or designates an officer, director, trustee, or employee of the corporation to lobby on its behalf, and that reasonably anticipates expending, incurring, or receiving, or who actually expends, incurs or receives, more than $5,000 in combined reportable compensation and expenses for lobbying activity on a state and/or local level in any year during the biennial period, is required to file a biennial public corporation registration statement. The name of each officer, director, trustee, or employee of the public corporation who will be engaged in lobbying must be disclosed in the registration statement.
- Every lobbyist or public corporation that reasonably anticipates exceeding the $5,000 threshold in any year during the biennial period shall file a biennial registration statement (2011-12, 2013-2014, etc.) regardless of when they reach the threshold during the biennial period.

The following are not required to register:

- Persons who lobby or petition the state or local government, or any agency thereof, for the redress of grievances and to express freely to appropriate officials their opinions on legislative and governmental operations need not register.
- Any officer, director, trustee, employee, counsel, or agent of the State of New York or any municipality or subdivision thereof in New York, who lobbies on behalf of same when discharging his or her official duties need not register; however, officers, directors, trustees, employees, counsels, or agents of colleges, as defined by § 2 of the Education Law, must register when they meet the requirements of the Lobbying Act.

Any officer, director, trustee, or employee of a public corporation who lobbies on behalf of the corporation when acting in the official capacity need not register separately with the Commission. However, the identity of such person must be disclosed in the public corporation registration statement. (Lobbyists retained by a public corporation must register separately with the Commission).

When is a lobbyist required to register?

All registration statements are required to be filed on a biennial basis as follows:

If the lobbyist has been retained, employed or designated to lobby on or before December 15, and the lobbyist reasonably anticipates combined reportable compensation and expenses in excess of $5,000 for lobbying activities, the registration statement must be filed by January 1 of the first year of the biennial period.

If the lobbyist has been retained, employed, or designated to lobby on a date after December 15, the registration statement together with the written agreement or authorization for lobbying services shall be filed within 15 days of the "start date" memorialized in such agreement or authorization. The "start date" of any agreement or authorization is the first date that the agreement or authorization is effective.

If the lobbyist incurs or receives combined compensation and expenses in excess of $5,000, the registration statement shall be filed within 10 days of the date that the lobbyist actually incurs or receives such combined compensation and expenses.

Registration statements that are not received within these time periods are subject to a late fee and/or a civil penalty.

(c) Such statement of registration shall contain:

(1) the name, address and telephone number of the lobbyist, and if the lobbyist is an organization the names, addresses and telephone numbers of any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization;

(2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) if such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, a copy of such shall also be attached and if such retainer or employment is oral, a statement of the substance thereof; such

written retainer, or if it is oral, a statement of the substance thereof, and any amendment thereto, shall be retained for a period of three years;

(4) a written authorization from the client by whom the lobbyist is authorized to lobby, unless such lobbyist has filed a written agreement of retainer or employment pursuant to paragraph three of this subdivision;

Evidence of the agreement or authorization for lobbying services must be submitted with each registration statement. Such agreement or authorization must specify the exact term with a "start date" and an "end date" that the agreement or authorization is in effect during the biennial period, the amount of compensation, and any other provisions agreed upon. Such agreement or authorization shall be exclusive of any other non-related lobbying services provided by the lobbyist to the client.

If the lobbyist is retained by the organization, the actual compensation must be reported. If the retainer is based on a daily or hourly rate, the fee per day or per hour must be reported. If the lobbyist is a salaried employee of the organization, the lobbyist's prorated salary for lobbying activity must be reported. Registration statements are not deemed to be complete without a copy of the agreement or written authorization to lobby from the client.

A lobbyist may not engage in lobbying activity or receive compensation prior to filing a complete registration statement, and, as stated above, the registration statement is not complete until an executed copy of the agreement or a written authorization is received by JCOPE.

If a written agreement does not exist, a written authorization, signed by the chief administrative officer of the client or employer, may substitute for a written agreement and must be submitted together with a written summary of any oral agreement. The term, compensation or salary and other agreed upon provisions must be disclosed in the written authorization. Authorizations that are not signed by the chief administrative officer of the client will not be accepted.

(5) the following information on which the lobbyist expects to lobby:

(i) a description of the general subject or subjects,

(ii) the legislative bill numbers of any bills,

(iii) the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality,

(iv) the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. § 2701,

(v) the rule, regulation, and ratemaking numbers of any rules, regulations, rates, or municipal ordinances and resolutions, or proposed rules, regulations, or rates, or municipal ordinances and resolutions, and

(vi) the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body in connection with a governmental procurement;

(6) the name of the person, organization, or legislative body before which the lobbyist is lobbying or expects to lobby;

(7) if the lobbyist is retained, employed or designated by more than one client, a separate statement of registration shall be required for each such client.

(8) (i) the name and public office address of any statewide elected official, state officer or employee, member of the legislature or legislative employee and entity with whom the lobbyist has a reportable business relationship;

(ii) a description of the general subject or subjects of the transactions between the lobbyist or lobbyists and the statewide elected official, state officer or employee, member of the legislature or legislative employee and entity; and

(iii) the compensation, including expenses, to be paid and paid by virtue of the business relationship.

(d) Any amendment to the information filed by the lobbyist in the original statement of registration shall be submitted to the commission on forms supplied by the commission within ten days after such amendment, however, this shall not require the lobbyist to amend the entire registration form.

JCOPE is authorized to issue late fees and/or civil penalties for any registration amendment that is received past its due date. JCOPE generally

levies late fees in accordance with the Late Fee Schedule on page 30 of these Lobbying Guidelines.

For the purpose of assessing late fees for late registration amendments, registration amendments are considered due within 10 days of the date that an event occurs which necessitates a change in any of the required information set forth in Lobbying Act 1-e(c) above.

For example, some of the events that would necessitate a change in the required information and thus a registration amendment within 10 days include but are not limited to: the retaining, employing or designating of a new or additional lobbyist; a change in the compensation of a lobbyist; a change in the time period in which the lobbyist shall lobby; and when the lobbyist advocates before a different governmental entity other than the entity named in the original registration.

An event is deemed to have occurred on the first date that such change in the required information has been implemented. For example, if the event necessitating the registration amendment is a change in the lobbyist's compensation, then the registration amendment reporting such change is due 10 days after the first date that the lobbyist began to earn the different compensation amount.

If the time period set forth in the agreement or authorization filed with the original registration statement expires before the end of the biennial registration period, and the lobbyist anticipates that the time period will be extended, a registration amendment must be filed with an amended agreement or authorization that extends the time period. Therefore, if the agreement or authorization to lobby has been renewed or continued, an amended agreement or authorization to lobby shall be submitted within 10 days of such amendment. If such amendment is oral, a written statement of substance shall be submitted within the 10 day period.

Alternatively, if the time period set forth in the agreement or authorization expires and/or is terminated prior to the end of the biennial registration period, and it is not anticipated that the time period will be extended, a termination shall be filed within 30 days.

(e) **(i)** The first statement of registration filed annually by each lobbyist for calendar years through two thousand three shall be accompanied by a

registration fee of fifty dollars except that no registration fee shall be required of a public corporation. A fee of fifty dollars shall be required for any subsequent statement of registration filed by a lobbyist during the same calendar year;

(ii) The first statement of registration filed annually by each lobbyist for calendar year two thousand four shall be accompanied by a registration fee of one hundred dollars except that no registration fee shall be required from any lobbyist who in any year does not expend, incur or receive an amount in excess of five thousand dollars of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section one-h of this article, for the purposes of lobbying or of a public corporation. A fee of one hundred dollars shall be required for any subsequent statement of registration filed by a lobbyist during the same calendar year;

(iii) The first statement of registration filed biennially by each lobbyist for the first biennial registration requirements for calendar years two thousand five and two thousand six and thereafter, shall be accompanied by a registration fee of two hundred dollars except that no registration fee shall be required from any lobbyist who in any year does not expend, incur or receive an amount in excess of five thousand dollars of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section one-h of this article, for the purposes of lobbying or of a public corporation. A fee of two hundred dollars shall be required for any subsequent statement of registration filed by a lobbyist during the same biennial period; (iv) The statement of registration filed after the due date of a biennial registration shall be accompanied by a registration fee that is prorated to one hundred dollars for any registration filed after January first of the second calendar year covered by the biennial reporting requirement. In addition to the fees authorized by this section, the commission may impose a fee for late filing of a registration statement required by this section not to exceed twenty-five dollars for each day that the statement required to be filed is late, except that if the lobbyist making a late filing has not previously been required by statute to file such a statement, the fee for late filing shall not exceed ten dollars for each day that the statement required to be filed is late.

Additional explanation and clarification on the late filing of Registration Statements, Registration Amendments, Bimonthly Reports, Client Semi-Annual Reports, and Lobbyist Disbursement of Public Monies Reports:

JCOPE is authorized to issue late fees and/or civil penalties for any required filing that is received past its due date.

First-time filers are charged a late filing fee of up to $10 per day for each day the required filing is late.

Non first-time filers are charged a late filing fee of up to $25 per day for each day the required filing is late.

For the purpose of assessing late fees for late registration statements, registration statements are considered due within 15 days of the "start date" contained in the lobbying agreement or authorization. The "start date" is the first date that the agreement or authorization of such lobbying activity is in effect.

JCOPE is authorized by statute to issue late fees in an amount up to $25 per day ($10 per day for first-time filers); however, in the absence of excessive lateness or a prior history of late filing, late fees are generally levied in accordance with the late fee schedule below:

Late Fee Schedule for all late filings including Registration Statements and Amendments, Bi-Monthly Reports, Client Semi-Annual Reports and Lobbyist Disbursement of Public Monies Reports

Days Late	Amount
1 – 2 days (First-time filer)	**$10 per day**
1 – 7 days	**$25 flat late fee**
8 – 14 days	**$75 flat late fee**
15 – 30 days	**$150 flat late fee**
31 – 90 days	**$300 flat late fee**
91 – 180 days	**$500 flat late fee**
181 days and more	**$1,000 flat late fee**

Please note that despite the late fee schedule above, JCOPE retains the discretion to charge the maximum amount ($25 per day for non first time

filers, $10 per day for first time filers) and to refer excessive lateness for a substantial basis investigation, which may subject the filer to a civil penalty in an amount the greater of $25, 000 or the amount the lobbyist or client has failed to report properly.

In very limited instances, JCOPE's executive director is authorized to issue discretionary waivers from late fees, for good cause, in connection to the late filing of any required registration statement, registration amendment, bimonthly report, client semi-annual report or lobbyist disbursement of public monies report.

Only applications received on a completed waiver form will be considered. The form can be found at the link below:

http://www.jcope.ny.gov/forms/lob/pdf/WaiverForm.html

§1-f. Monthly registration docket.

It shall be the duty of the commission to compile a monthly docket of statements of registration containing all information required by section one-e of this article. Each such monthly docket shall contain all statements of registration filed during such month and all amendments to previously filed statements of registration. Copies shall be made available for public inspection.

§1-g. Termination of retainer, employment or designation.

Upon the termination of a lobbyist's retainer, employment or designation, such lobbyist and the client on whose behalf such service has been rendered shall both give written notice to the commission within thirty days after the lobbyist ceases the activity that required such lobbyist to file a statement of registration; however, such lobbyist shall nevertheless comply with the bi-monthly reporting requirements up to the date such activity has ceased as required by this article and both such parties shall each file the semi-annual report required by section one-j of this article. The commission shall enter notice of such termination in the appropriate monthly registration docket required by section one-f of this article.

Termination

- If the retainer, employment, or designation of a lobbyist is terminated or expires at any time before the end of the biennial registration period,

both the lobbyist and the client (or employer) must give written notice to the Commission no later than 30 days after such termination or expiration. In the case of an officer, director, trustee, or employee of a public corporation who lobbies on behalf of the corporation, only the public corporation must give such written notice to the Commission. No notice need be filed if the termination of retainer, employment, or designation takes effect at the end of the biennial registration period.

- Termination of retainer, employment, or designation of a lobbyist does not relieve a lobbyist, client, or a public corporation from filing the applicable reports that are required within the reporting period in which the termination becomes effective.

§1-h. Bi-monthly reports of certain lobbyists.

(a) Any lobbyist required to file a statement of registration pursuant to section one-e of this article who in any lobbying year reasonably anticipates that during the year such lobbyist will expend, incur or receive combined reportable compensation and expenses in an amount in excess of five thousand dollars, as provided in paragraph five of subdivision (b) of this section, for the purpose of lobbying, shall file with the commission a bi-monthly written report, on forms supplied by the commission, by the fifteenth day next succeeding the end of the reporting period in which the lobbyist was first required to file a statement of registration. Such reporting periods shall be the period of January first to the last day of February, March first to April thirtieth, May first to June thirtieth, July first to August thirty-first, September first to October thirty-first and November first to December thirty-first.

The first bi-monthly report is due by the 15th day of the month following the end of the reporting period in which the lobbyist was first required to file a Statement of Registration; bi-monthly reports must be filed for each subsequent bi-monthly period thereafter. THERE IS NO MINIMUM REPORTING THRESHOLD FOR COMPENSATION OR EXPENSES.

(b) Such bi-monthly report shall contain:

(1) the name, address and telephone number of the lobbyist;

This entry must include the names of all employees who have engaged in lobbying on behalf of their employer, except that the name of any such employee shall not be disclosed if that person has registered separately as lobbyist for the same client or employer.

(2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) the following information on which the lobbyist has lobbied:

- **(i)** a description of the general subject or subjects,
- **(ii)** the legislative bill numbers of any bills,
- **(iii)** the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality,
- **(iv)** the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. §2701,
- **(v)** the rule, regulation, and ratemaking or municipal ordinance or resolution numbers of any rules, regulations, or rates or ordinance or proposed rules, regulations, or rates or municipal ordinances or resolutions, and
- **(vi)** the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body in connection with a governmental procurement;

(4) the name of the person, organization, or legislative body before which the lobbyist has lobbied;

(5) **(i)** the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying.

(ii) expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

The bi-monthly reports setting forth reportable compensation and expenses must disclose the entire fee, salary, or other compensation, if any, paid or owed to the lobbyist, together with all expenses, which were received, incurred, or reimbursed for the purpose of lobbying during the bi-monthly reporting period. Such report must include all salaries and other compensation paid to staff such as those of lobbying employees or clerical assistants.

Reportable expenses shall include expenses related to activities that may not constitute lobbying, but when undertaken as part of a larger lobbying effort become reportable expenses.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist;

(B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars shall be paid by check or substantiated by receipts and such checks and receipts shall be kept on file by the lobbyist for a period of three years.

Reportable Compensation and Reportable Expenses

- Reportable compensation shall mean and include any salary, fee, gift, payment, benefit, loan, advance, or any other thing of value paid, owed, given, or promised to the lobbyist by the client or employer for lobbying. For reporting purposes, "Reportable Compensation" shall include any such compensation paid or owed to the lobbyist for the purpose of lobbying. All reportable compensation in any form must be recorded during the calendar year when it was accrued.
- Reportable expenses shall mean any expenditure incurred by or reimbursed to the lobbyist for the purpose of lobbying. Reportable expenses include, but are not limited to, expenses related to the following: advertising, telephone, electronic advocacy, food, beverages, tickets, entertainment, parties, receptions or similar events, advocacy rallies, consultant services, expenses for non-lobbying support staff, and courier services when said expenses are part of a lobbying effort.
- In cases where it is not possible for a lobbyist, client, or public corporation to determine exact dollar amounts or values of expenses relating to the printing, reproduction, or mailing of letters, memoranda, or other written communications (for example, when such printing or reproduction was produced "in-house"), good faith estimates of such

costs, based on generally recognized accounting procedures, may be utilized provided the expenses are identified as estimates in the bi-monthly report and records in support of such estimates are retained.

Reportable Expenses do not include:

- Payments or expenses incurred by the lobbyist for their own sustenance, lodging and travel;
- Expenses directly incurred for the printing, reproduction, and mailing of letters, memoranda, or other written communications, which do not exceed $500 in any calendar year. Once the $500 threshold is met, however, the entire cost must be reported;
- Contributions reportable pursuant to Article 14 of the Election Law; and
- Ordinary membership dues paid to an organization that is registered to lobby to the extent said dues are not directed by the payor to be expended as part of the payor's lobbying effort.

(c) **(1)** All such bi-monthly reports shall be subject to review by the commission.

(2) Such bi-monthly reports shall be kept on file for three years and shall be open to public inspection during such time.

(3) In addition to the filing fees authorized by this article, the commission may impose a fee for late filing of a bi-monthly report required by this section not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the lobbyist making a late filing has not previously been required by statute to file such a report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

JCOPE is authorized to issue late fees and/or civil penalties for any bi-monthly report that is received past its due date. JCOPE generally levies late fees in accordance with the Late Fee Schedule on page 30 of these Lobbying Guidelines.

(4) * Any lobbyist registered pursuant to section one-e of this article whose lobbying activity is performed on its own behalf and not pursuant to retention by a client:

(i) that has spent over fifty thousand dollars for reportable compensation and expenses for lobbying either during the calendar year, or during the twelve-month period, prior to the date of this bi-monthly report, and

(ii) at least three percent of whose total expenditures during the same period were devoted to lobbying in New York shall report to the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding.

This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.

The disclosure shall not apply to:

(i) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. § 501(c)(3);

(ii) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. § 501(c)(4) and whose primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties and any other area of public concern determined pursuant to regulations promulgated by the commission to form a proper basis for exemption on this basis from this disclosure requirement; or

(iii) any governmental entity. The joint commission on public ethics shall promulgate regulations to implement these requirements.

**** NB Effective June 1, 2012***

§1-i. Bi-monthly reports of public corporations.

(a) Every public corporation required to file a statement of registration pursuant to section one-e of this article which in any lobbying year reasonably anticipates that during the year it will expend or incur expenses in an amount in excess of five thousand dollars, as provided in paragraph six of subdivision (b) of this section, for the purpose of lobbying shall file with the commission a bi-monthly written report, on forms supplied by the commission, by the fifteenth day next succeeding the end of the reporting period in which the public corporation was first required to file a statement of registration. Such reporting periods shall be the period of January first to the last day of February, March first to April thirtieth, May first to June thirtieth, July first to August thirty-first, September first to October thirty-first and November first to December thirty-first.

The first bi-monthly report is due by the 15th day of the month following the end of the reporting period in which the public corporation was first required to file a Statement of Registration; bi-monthly reports must be filed for each subsequent bi-monthly period thereafter. THERE IS NO MINIMUM REPORTING THRESHOLD FOR COMPENSATION OR EXPENSES.

(b) Such bi-monthly report shall contain:

(1) the name, address and telephone number of such public corporation;

(2) the name, address and telephone number of each lobbyist retained, employed or designated by such public corporation;

A public corporation shall file bi-monthly reports that disclose the public corporation's lobbying expenses, which shall include the fee, salary, or other compensation paid or owed to any lobbyist retained, employed or designated by the public corporation, and any expenses expended, received or incurred by any such lobbyist for the purpose of lobbying, as well as any other reportable lobbying expenses of the public corporation itself during the bi-monthly reporting period.

Such bi-monthly report shall include the names of all employees who have engaged in lobbying on behalf of the public corporation. In the case of any salaried employees of the public corporation who are engaged in lobbying, the proportionate share of the salaries of such employees attributable to lobbying activity shall be disclosed.

For public corporations only, each bi-monthly report of the public corporation must also disclose the names of all lobbyists retained by the public corporation and shall file the reportable expenses and compensation paid or owed to each such lobbyist shall be reported. Accordingly, when a public corporation retains a lobbyist and so discloses on its bimonthly reports, the public corporation does not have to submit a client semi-annual report.

(3) copies of any amendments relating to a retainer, employment or designation, as filed in the original statement of registration pursuant to section one-e of this article;

(4) a description of the general subject or subjects, the legislative bill numbers of any bills and the rule, regulation, and ratemaking numbers of any rules, regulations, or rates or proposed rules, regulations, or rates on which the lobbyist has lobbied, and on which such public corporation has lobbied;

(5) the name of the person, organization or legislative body before which the public corporation, or its lobbyists, has lobbied;

(6) (i) the compensation paid or owed to the lobbyist and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying; provided, however, any such expenses paid by such public corporation to a lobbyist for the purpose of lobbying on behalf of such public corporation shall be itemized in the same manner as if such public corporation had directly paid or incurred such expenses.

(ii) any expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expenses are more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

The bi-monthly reports setting forth reportable compensation and expenses must disclose the entire fee, salary, or other compensation, if any, paid or owed to the lobbyist, together with all expenses, which were received, incurred, or reimbursed for the purpose of lobbying during the bi-monthly reporting period. Such report must include all salaries and other

compensation paid to staff such as those of lobbying employees or clerical assistants.

Reportable expenses shall include expenses related to activities that may not constitute lobbying, but when undertaken as part of a larger lobbying effort become reportable expenses.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of each such lobbyist;

(B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for compensation other than that of each lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars must be paid by check or substantiated by receipts and such checks and receipts shall be kept on file by such public corporation for a period of three years.

Reportable Compensation and Reportable Expenses

- Reportable compensation shall mean and include any salary, fee, gift, payment, benefit, loan, advance, or any other thing of value paid, owed, given, or promised to the lobbyist by the public corporation for lobbying. For reporting purposes, "Reportable Compensation" shall include any such compensation paid or owed to the lobbyist for the purpose of lobbying. All reportable compensation in any form must be recorded during the calendar year when it was accrued.
- Reportable expenses shall mean any expenditure incurred by the public corporation or reimbursed to the lobbyist for the purpose of lobbying. Reportable expenses include, but are not limited to the following: advertising, telephone, electronic advocacy, food, beverages, tickets, entertainment, parties, receptions or similar events, advocacy rallies, consultant services, expenses for non-lobbying support staff, and courier services when said expenses are part of a lobbying effort.

- In cases where it is not possible for a lobbyist, client, or public corporation to determine exact dollar amounts or values of expenses relating to the printing, reproduction, or mailing of letters, memoranda, or other written communications (for example, when such printing or reproduction was produced "in-house"), good faith estimates of such costs, based on generally recognized accounting procedures, may be utilized provided the expenses are identified as estimates in the bi-monthly report and records in support of such estimates are retained.

Reportable Expenses do not include:

- Payments or expenses incurred by the lobbyist for their own sustenance, lodging and travel;
- Expenses directly incurred for the printing, reproduction, and mailing of letters, memoranda, or other written communications, which do not exceed $500 in any calendar year. Once the $500 threshold is met, however, the entire cost must be reported;
- Contributions reportable pursuant to Article 14 of the Election Law; and
- Ordinary membership dues paid to an organization that is registered to lobby to the extent said dues are not directed by the payor to be expended as part of the payor's lobbying effort.

(c) (1) All such bi-monthly reports shall be subject to review by the commission.

(2) Such bi-monthly reports shall be kept on file for a period of three years and shall be open to public inspection during such period.

(3) In addition to the filing fees authorized by this article, the commission may impose a fee for late filing of a bi-monthly report required by this section not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the public corporation making a late filing has not previously been required by statute to file such a report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

JCOPE is authorized to issue late fees and/or civil penalties for any bi-monthly report that is received past its due date. JCOPE generally levies late fees in accordance with the Late Fee Schedule on page 30 of these Lobbying Guidelines.

§1-j. Semi-annual reports.

(a) Semi-annual reports shall be filed by any client retaining, employing or designating a lobbyist or lobbyists, whether or not any such lobbyist was required to file a bi-monthly report, if such client reasonably anticipates that during the year such client will expend or incur an amount in excess of five thousand dollars of combined reportable compensation and expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying.

Any client retaining, employing or designating a lobbyist or lobbyists is required to file a semi annual report, whether or not such lobbyist was required to file a bimonthly report, if the client reasonably anticipates that during the year in excess of $5,000 in combined reportable expenses and compensation for lobbying will be expended or incurred.

The first semi-annual report is due by the 15th day of the month following the end of the reporting period in which the client was first required to file a semi-annual report. If the threshold is exceeded in the January through June period, a July/December Client Semi-Annual Report is required to be filed, even if no further monies are expended; unless the agreement or authorization with your lobbyist terminated on or before June 30. If a January/June Client Semi-Annual Report is filed, and the threshold has not been met for the year, a July/December Client Semi-Annual Report is NOT required.

The amounts expended, incurred, or received of reportable compensation and expenses for lobbying activities must be computed cumulatively for all lobbying activities when determining whether the thresholds have been met.

(b) Such report shall be filed with the commission, on forms supplied by the commission, by the fifteenth day of July of the year and by the fifteenth day of January next following the year for which such report is made and shall contain:

(1) the name, address and telephone number of the client;

(2) the name, address and telephone number of each lobbyist retained, employed or designated by such client;

In addition to retained lobbyists, this entry must include the names of all employees who have engaged in lobbying on behalf of their client.

(3) the following information on which each lobbyist retained, employed or designated by such client has lobbied, and on which such client has lobbied:

- **(i)** a description of the general subject or subjects,
- **(ii)** the legislative bill numbers of any bills,
- **(iii)** the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality,
- **(iv)** the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. 2701,
- **(v)** the rule, regulation, and ratemaking or municipal resolution or ordinance numbers of any rules, regulations, or rates, or municipal resolutions or ordinances or proposed rules, regulations, or rates, or municipal ordinances or resolutions and
- **(vi)** the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body in connection with a governmental procurement;

(4) the name of the person, organization, or legislative body before which such client has lobbied;

(5) (i) the compensation paid or owed to each such lobbyist, and any other expenses paid or incurred by such client for the purpose of lobbying.

(ii) any expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expenses are more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

The semi-annual reports setting forth reportable compensation and expenses must disclose the entire fee, salary, or other compensation, if any, paid or owed to the lobbyist, together with all expenses, which were received, incurred, or reimbursed for the purpose of lobbying during the semi-annual reporting period. Such report must include all salaries and other

compensation paid to staff such as those of lobbying employees or clerical assistants.

Reportable expenses shall include expenses related to activities that may not constitute lobbying, but when used as part of a larger lobbying effort become reportable expenses.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist and client;

(B) expenses, not in excess of five hundred dollars, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars must be paid by check or substantiated by receipts and such checks and receipts shall be kept on file by such client for a period of three years.

Reportable Compensation and Reportable Expenses

- Reportable compensation shall mean and include any salary, fee, gift, payment, benefit, loan, advance, or any other thing of value paid, owed, given, or promised to the lobbyist by the client for lobbying. For reporting purposes, "Reportable Compensation" shall include any such compensation paid or owed to the lobbyist for the purpose of lobbying. All reportable compensation in any form must be recorded during the calendar year when it was accrued.
- Reportable expenses shall mean any expenditure incurred by the client or reimbursed to the lobbyist for the purpose of lobbying. Reportable expenses include, but are not limited to the following: advertising, telephone, electronic advocacy, food, beverages, tickets, entertainment, parties, receptions or similar events, advocacy rallies, consultant services, expenses for non-lobbying support staff, and courier services when said expenses are part of a lobbying effort.
- In cases where it is not possible for a lobbyist, client, or public corporation to determine exact dollar amounts or values of expenses

relating to the printing, reproduction, or mailing of letters, memoranda, or other written communications (for example, when such printing or reproduction was produced "in-house"), good faith estimates of such costs, based on generally recognized accounting procedures, may be utilized provided the expenses are identified as estimates in the semi-annual report and records in support of such estimates are retained.

Reportable Expenses do not include:

- Payments or expenses incurred by the lobbyist for their own sustenance, lodging and travel;
- Expenses directly incurred for the printing, reproduction, and mailing of letters, memoranda, or other written communications, which do not exceed $500 in any calendar year. Once the $500 threshold is met, however, the entire cost must be reported;
- Contributions reportable pursuant to Article 14 of the Election Law; and
- Ordinary membership dues paid to an organization that is registered to lobby to the extent said dues are not directed by the payor to be expended as part of the payor's lobbying effort.

(6) **(i)** the name and public office address of any statewide elected official, state officer or employee, member of the legislature or legislative employee and entity with whom the client of a lobbyist has a reportable business relationship;

(ii) a description of the general subject or subjects of the transactions between the client of a lobbyist and the statewide elected official, state officer or employee, member of the legislature or legislative employee and entity; and

(iii) the compensation, including expenses, to be paid and paid by virtue of the business relationship.

(c) **(1)** All such semi-annual reports shall be subject to review by the commission.

(2) Such semi-annual reports shall be kept on file for a period of three years and shall be open to public inspection during such period.

(3) Each semi-annual report filed by a client pursuant to this section shall be accompanied by a filing fee of fifty dollars. In addition to the filing fees authorized by this article, the commission may impose a fee for late filing of a semi-annual report required by this section not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the client making a late filing has not previously been required by statute to file an annual or semi-annual report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

JCOPE is authorized to issue late fees and/or civil penalties for any client semi-annual report that is received past its due date. JCOPE generally levies late fees in accordance with the Late Fee Schedule on page 30 of these Lobbying Guidelines.

(4) * Any client of a lobbyist that is required to file a semi-annual report and:

(i) that has spent over fifty thousand dollars for reportable compensation and expenses for lobbying either during the calendar year, or during the twelve-month period, prior to the date of this semi-annual report, and

(ii) at least three percent of whose total expenditures during the same period were devoted to lobbying in New York shall report to the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding.

This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting client or lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.

The disclosure shall not apply to:

(i) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. § 501(c)(3);

(ii) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. § 501(c)(4) and whose primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties and any other area of public concern determined pursuant to regulations promulgated by the commission to form a proper basis for exemption on this basis from this disclosure requirement; or

(iii) any governmental entity.

The joint commission on public ethics shall promulgate regulations to implement these requirements.

**** NB Effective June 1, 2012***

§1-k. Contingent retainer.

As used in §1-k(a), "compensation" includes any fee, bonus, stock option, equity inducement or other form of remuneration. The prohibition on contingent retainers does not apply to the commission income of commission salespersons.

A discretionary bonus which is based on factors that include success in meeting sales targets, but which is not calculated as a percentage of sales, does not constitute a contingent retainer.

(a) No client shall retain or employ any lobbyist for compensation, the rate or amount of which compensation in whole or part is contingent or dependent upon:

(1) (A) the passage or defeat of any legislative bill or the approval or veto of any legislation by the governor, (B) the terms, issuance, modification or rescission of a gubernatorial executive order, (C) the terms, approval or

disapproval, or the implementation and administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any state actions related to class III gaming as provided in 25 U.S.C. 2701, or (D) the adoption or rejection of any code, rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency;

(2) (A) the passage or defeat of any local law, ordinance, regulation or resolution by any municipality or subdivision thereof, (B) the terms, issuance, modification or rescission of an executive order issued by the chief executive officer of a municipality, or (C) the adoption, rejection or implementation of any rule, resolution or regulation having the force and effect of a local law, ordinance or regulation or any rate making proceeding by any municipality or subdivision thereof;

(3) any determination by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body with respect to a governmental procurement or a grant, loan or agreement involving the disbursement of public monies.

(b) No person shall accept such a retainer or employment. A violation of this section shall be a class A misdemeanor.

§1-l. Reports of lobbying involving disbursement of public monies.

(a) Any lobbyist required to file a statement of registration pursuant to section one-e of this article who in any lobbying year reasonably anticipates that during the year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of five thousand dollars shall file with the commission, on forms supplied by the commission, a report of any attempts to influence a determination by a public official, or by a person or entity working in cooperation with a public official, with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies in excess of fifteen thousand dollars other than a governmental procurement as defined in section one-c of this article.

- Lobbyist disbursement of public monies bi-monthly reports are to be filed only by registered lobbyists, including public corporations.
- No corresponding client reports are required to be filed.

- Lobbyist disbursement of public monies bi-monthly reports are required regardless of whether the grant, loan or agreement payment is received.
- The threshold amount of five thousand dollars relates only to compensation and expenses attributable to the activities described in section 1-l, and is in addition to and separate from the similar threshold for lobbyist registration required by section 1-e.
- For the purposes of this section, "public monies" are funds that have been appropriated as part of the State's Annual Enacted Budget; which are designated for programs, grants or are discretionary funds, but which have not been allocated to specific recipients.

(b) Such public monies lobbying reports shall contain:

(i) the name, address and telephone number of the lobbyist and the individuals employed by the lobbyist engaged in such public monies lobbying activities;

(ii) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated on whose behalf the lobbyist has engaged in lobbying reportable under this paragraph;

(iii) a description of the grant, loan, or agreement involving the disbursement of public monies on which the lobbyist has lobbied;

(iv) the name of the person, organization, or legislative body before which the lobbyist has engaged in lobbying reportable under this paragraph; and

(v) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying reportable under this paragraph.

(c) Public monies lobbying reports required pursuant to this section shall be filed in accordance with the schedule applicable to the filing of bi-monthly reports pursuant to section one-h of this article and shall be filed not later than the fifteenth day next succeeding the end of such reporting period.

Unlike lobbyist and public corporation bi-monthly reports required by sections 1-h and 1-i, the lobbyist disbursement of public monies bi-monthly reports are to be filed only for bi-monthly periods during which the lobbyist engages in activities described in section 1-l, or receives compensation or reimbursement of expenses for such activities.

In any year, the due dates for lobbyist disbursement of public monies bi-monthly reports mirrors the due dates for lobbyist bi-monthly reports such that a lobbyist disbursement of public monies bi-monthly report is due on

March 15 for applicable activity in January through February; on May 15 for applicable activity in March and April; and July 15 for applicable activity in May and June; and etc.

(d) In addition to any other fees authorized by this section, the commission may impose a fee for late filing of a report required by this subdivision not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the lobbyist making a late filing has not previously been required by statute to file such a report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

JCOPE is authorized to issue late fees for the late filing of lobbyist disbursement of public monies reports and generally levies fees in accordance with the Late Fee Schedule set forth on page 30 of these Lobbying Guidelines .

(e) All reports filed pursuant to this subdivision shall be subject to review by the commission. Such reports shall be kept in electronic form by the commission and shall be available for public inspection.

§1-m. Prohibition of gifts.

No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to any public official as defined within this article, unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official. No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to the spouse or unemancipated child of any public official as defined within this article under circumstances where it is reasonable to infer that the gift was intended to influence such public official. No spouse or unemancipated child of an individual required to be listed on a statement of registration pursuant to this article shall offer or give a gift to a public official under circumstances where it is reasonable to infer that the gift was intended to influence such public official. This section shall not apply to gifts to officers, members or directors of boards, commissions, councils, public authorities or public benefit corporations who receive no compensation or are compensated on a per diem basis, unless the person listed on the statement of registration appears or has matters pending before the board, commission or council on which the recipient sits.

See paragraphs 1-e(c)(1) and (2) for individuals and entities required to be listed on a statement of registration.

The prohibition applies to the offer as well as the giving of a gift.

In determining whether there was an intention to influence the public official, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether or not items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether or not the donor contemporaneously gave similar items to other public officials.

The gift shall be presumed to have been intended to influence the public official if the donor seeks to charge or deduct the value of such gift as a business expense or seeks reimbursement from a client.

§1-n. Restricted contacts.

1. During the restricted period, no person or organization required to file a statement or report pursuant to this article shall engage in lobbying activities concerning a governmental procurement by a state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (s) of section one-c of this article, by contacting a person within the procuring entity who has not been designated pursuant to section one hundred thirty-nine-j of the state finance law to receive communications relative to the governmental procurement. Further, during the restricted period, no person or organization required to file a statement or report pursuant to this article shall engage in lobbying activities concerning a governmental procurement by contacting any person in a state agency other than the state agency conducting the governmental procurement about that governmental procurement. The prohibitions set forth in this subdivision shall not apply to any contacts described in subdivision two or three of this section.

Subdivision 1 does not prohibit lobbying activity during the restricted period; rather, the subdivision requires that lobbying activity during the restricted period be addressed only to the designated contact. Such activity must be reported to the Commission.

While the Lobbying Act generally applies to all municipal agencies as defined in subdivision (s) of section 1-c, the prohibition in subdivision 1 applies only to those municipal agencies defined in paragraph (ii) of subdivision (s) of section 1-c.

2. A complaint by an offerer regarding the failure of the person or persons designated by the procuring entity pursuant to section one hundred thirty-nine-j of the state finance law to respond in a timely manner to authorized offerer contacts shall not be deemed to be "lobbying" or "lobbying activities" and shall be exempt from the provisions of subdivision one of this section and shall be made in writing to the office of general counsel of the state agency, either house of the state legislature or the unified court system that is conducting the procurement. Further, the following contacts shall not be deemed to be "lobbying" or "lobbying activities" and shall be exempt from the provisions of subdivision one of this section:

(a) contacts by offerers in protests, appeals or other review proceedings (including the apparent successful bidder or proposer and his or her representatives) before the governmental entity conducting the procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) complaints of alleged improper conduct in a governmental procurement to the attorney general, inspector general, district attorney, or court of competent jurisdiction; or

(c) written protests, appeals or complaints to the state comptroller's office during the process of contract approval, where the state comptroller's approval is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to section one hundred sixty-three of the state finance law; or

(d) complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office; provided, however, that nothing in this subdivision shall be construed as recognizing or creating any new rights, duties or responsibilities or abrogating any existing rights, duties or responsibilities of any governmental entity as it pertains to implementation and enforcement of article eleven of the state finance law or any other provision of law dealing with the governmental procurement process.

In order to qualify for an exemption referred to in subdivision 2, protests, appeals or complaints must be addressed only to the governmental entities referenced in the subdivision and in writing, if required.

3. Nothing in this section shall be deemed to prohibit a person or organization required to file a statement or report pursuant to this article from contacting a member of the state legislature concerning a governmental procurement in a state agency, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (s) of section one-c of this article.

While contacting a member of the state legislature is not prohibited by this section, such a contact would be reportable lobbying activity.

§1-o. Penalties.

(a) (i) Any lobbyist, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-m of this article shall be guilty of a class A misdemeanor; and

(ii) any lobbyist, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-m of this article, after having previously been convicted in the preceding five years of the crime described in paragraph (i) of this subdivision, shall be guilty of a class E felony. Any lobbyist convicted of or pleading guilty to a felony under the provisions of this section may be barred from acting as a lobbyist for a period of one year from the date of the conviction. For the purposes of this subdivision, the chief administrative officer of any organization required to file a statement or report shall be the person responsible for making and filing such statement or report unless some other person prior to the due date thereof has been duly designated to make and file such statement or report.

(b) (i) A lobbyist, public corporation, or client who knowingly and wilfully fails to file a statement or report within the time required for the filing of such report or knowingly and wilfully violates section one-m of this article shall be subject to a civil penalty for each such failure or violation, in an amount not to exceed the greater of twenty-five thousand dollars or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, to be assessed by the commission.

Regulations governing the conduct of adjudicatory proceedings by the Joint Commission on Public Ethics can be found in Title 19 NYCRR Part 941 at www.jcope.ny.gov/law/ethc/Part941.html.

(ii) A lobbyist, public corporation, or client who knowingly and wilfully files a false statement or report shall be subject to a civil penalty, in an amount not to exceed the greater of fifty thousand dollars or five times the amount the person failed to report properly, to be assessed by the commission.

(iii) (A) A lobbyist or client who knowingly and wilfully violates the provisions of subdivision one of section one-n of this article shall be subject to a civil penalty not to exceed ten thousand dollars for an initial violation.

(B) If, after a lobbyist or client has been found to have violated subdivision one of section one-n of this article, a lobbyist or client knowingly and wilfully violates the provisions of subdivision one of section one-n of this article within four years of such finding, the lobbyist or client shall be subject to a civil penalty not to exceed twenty-five thousand dollars.

(iv) Any lobbyist or client that knowingly and wilfully fails to file a statement or report within the time required for the filing of such report, knowingly and wilfully files a false statement or report, or knowingly and wilfully violates section one-m of this article, after having been found by the commission to have knowing and wilfully committed such conduct or violation in the preceding five years, may be subject to a determination that the lobbyist or client is prohibited from engaging in lobbying activities, as that term is defined in paragraph (v) of subdivision (c) of section one-c of this article, for a period of one year.

(v) Any lobbyist or client that knowingly and wilfully engages in lobbying activities, as that term is defined in paragraph (v) of subdivision (c) of section one-c of this article, during the period in which they are prohibited from engaging in lobbying activities, as that term is defined in paragraph (v) of subdivision (c) of section one-c of this article pursuant to this subdivision, may be subject to a determination that the lobbyist or client is prohibited from engaging in lobbying activities, as that term is defined in paragraph (v) of subdivision (c) of section one-c of this article, for a period of up to four years, and shall be subject to a civil penalty not to exceed fifty thousand dollars, plus a civil penalty in an amount equal to five times the value of any gift, compensation or benefit received as a result of the violation.

(vi) A lobbyist, public corporation, or client who knowingly and wilfully fails to retain their records pursuant to paragraph three of subdivision (c) of section one-e of this article, subparagraph (v) of paragraph five of subdivision (b) of section one-h of this article, or paragraph five of subdivision (b) of section one-j of this article shall be subject to a civil penalty in an amount of two thousand dollars per violation to be assessed by the commission.

(c) (i) Any assessment or order to debar shall be determined only after a hearing at which the party shall be entitled to appear, present evidence and be heard. Any assessment or order to debar pursuant to this section may only be imposed after the commission sends by certified and first-class mail written notice of intent to assess a penalty or order to debar and the basis for the penalty or order to debar. Any assessment may be recovered in an action brought by the attorney general.

(ii) In assessing any fine or penalty pursuant to this section, the commission shall consider:

(A) as a mitigating factor that the lobbyist, public corporation or client has not previously been required to register, and

(B) as an aggravating factor that the lobbyist, public corporation or client has had fines or penalties assessed against it in the past. The amount of compensation expended, incurred or received shall be a factor to consider in determining a proportionate penalty.

(iii) Any lobbyist, public corporation or client who receives a notice of intent to assess a penalty for knowingly and wilfully failing to file a report or statement pursuant to subdivision (b) of this section and who has never previously received a notice of intent to assess a penalty for failing to file a report or statement required under this section shall be granted fifteen days within which to file the statement of registration or report without being subject to the fine or penalty set forth in subdivision (b) of this section. Upon the failure of such lobbyist, public corporation or client to file within such fifteen day period, such lobbyist, public corporation or client shall be subject to a fine or penalty pursuant to subdivision (b) of this section.

(d) All moneys recovered by the attorney general or received by the commission from the assessment of civil penalties authorized by this section shall be deposited to the general fund.

§1-p. Enforcement.

(a) All statements and reports required under this article shall be subject to a declaration by the person making and filing such statement and report that the information is true, correct and complete to the best knowledge and belief of the signer under the penalties of perjury.

(b) The commission shall be charged with the duty of reviewing all statements and reports required under this article for violations, and it shall be their duty, if they deem such to be wilful, to report such determination to the attorney general or other appropriate authority.

(c) Upon receipt of notice of such failure from the commission, the attorney general or other appropriate authority shall take such action as he deems appropriate to secure compliance with the provisions of this article.

§1-q. Record of appearances.

The commission shall promulgate all rules or regulations and any procedures, forms, or instructions necessary to implement the provisions of section one hundred sixty-six of the executive law relating to the quarterly filing of the record of appearances before regulatory agencies.

§1-r. Publication of statement on lobbying regulations.

The commission shall publish a statement on lobbying regulations setting forth the requirements of this article in a clear and brief manner. Such statement shall contain an explanation of the registration and filing requirements and the penalties for violation thereof, together with such other information as the commission shall determine, and copies thereof shall be made available to the public at convenient locations throughout the state.

§1-s. Public access to records; format of records and reports.

The commission shall make information furnished by lobbyists and clients available to the public for inspection and copying in electronic and paper formats. Access to such information shall also be made available for remote computer users through the internet network.

§1-t. Advisory council on procurement lobbying.

(a) There is hereby established an advisory council on procurement lobbying. The council shall be composed of eleven members as follows:

- **(1)** the commissioner of the office of general services, or his or her designee, who shall be chair;
- **(2)** the commissioner of the state department of transportation, or his or her designee;
- **(3)** the director of the division of the budget, or his or her designee;
- **(4)** three members appointed by the governor as follows: (i) one member shall be representative of public authorities or public benefit corporations, (ii) one member shall be a representative of local governments, and (iii) one member shall be a representative of the contracting community;
- **(5)** one member appointed by the temporary president of the senate;
- **(6)** one member appointed by the speaker of the assembly;
- **(7)** one member appointed by the chief judge of the court of appeals;
- **(8)** the state comptroller, or his or her designee;
- **(9)** one member appointed by the mayor of the city of New York.

(b) The members of the council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(c) The council shall provide advice to the commission with respect to the implementation of the provisions of this article as such provisions pertain to procurement lobbying.

(d) The council shall annually report to the legislature any problems in the implementation of the provisions of this article as such provisions pertain to procurement lobbying. The council shall include in the report any recommended changes to increase the effectiveness of that implementation.

(e) The council may, pursuant to section one hundred thirty-nine-j of the state finance law, establish model guidelines for:

- **(1)** contacts during the restricted period between designated staff of a state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of this article, involved in governmental procurements and officers or employees of offerers, or officers or employees of subcontractors of

offerers, who are charged with the performance of functions relating to contracts and who are qualified by education, training or experience to provide technical services to explain, clarify or demonstrate the qualities, characteristics or advantages of an article of procurement. Such authorized contacts shall: (i) be limited to providing information to staff of a state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of this article, to assist them in understanding and assessing the qualities, characteristics or anticipated performance of an article of procurement, (ii) not include any recommendations or advocate any contract provisions, and (iii) occur only at such times and in such manner as authorized under the procuring entity's solicitation or guidelines and procedures. For the purposes of this paragraph, the term ***"technical services"*** shall be limited to analysis directly applying any accounting, engineering, scientific, or other similar technical disciplines;

(2) contacts between offerers and public officials and officers or employees of the unified court system during the preparation of specifications, bid documents or request for proposals, invitation for bids, or any other method for soliciting a response from offerers for a procurement contract prior to the restricted period.

(f) The council shall:

(1) December thirty-first, two thousand five submit a preliminary report to the governor and legislature on potential implementation issues arising out of the procurement lobbying provisions as set forth in this article that were added by a chapter of the laws of two thousand five that added this section that are to take effect on January first, two thousand six, and

(2) by October thirtieth, two thousand seven, submit a report to the governor and legislature on the effects of the procurement lobbying provisions as set forth in this article including but not limited to any changes in the number and nature of offerers after January first, two thousand six.

§1-u. Applicability of certain laws.

The provisions of this article including, but not limited to, any proceeding or hearing conducted pursuant hereto, shall be subject to the applicable provisions of the state administrative procedure act and section seventy-three of the civil rights law.

§1-v. Separability clause.

If any part or provision of this article or the application thereof to any person or organization is adjudged by a court of competent jurisdiction to be unconstitutional, such judgment shall not affect or impair any other part or provision or the application thereof to any other person or organization, but shall be confined in its operation to the part, provision, person or organization directly involved in the controversy in which such judgment shall have been rendered.