

THE STAFF DRAFT REGULATIONS BELOW ARE NOT PART OF THE RULEMAKING PROCESSES CURRENTLY UNDERWAY FOR PARTS 938 AND 941 PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT, AND DO NOT REFLECT ADOPTION OR ANY OTHER ACTION BY THE COMMISSION.

THIS DRAFT IS OFFERED BY STAFF FOR PUBLIC DISCUSSION PURPOSES ONLY.

New York Codes, Rules and Regulations, Title 19, Part 942

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Title 19 NYCC Part 942 is added to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 942: LOBBYING

942.1 Purpose and Effect of Regulations.

- a. The purpose of these regulations is to provide those regulated by the Joint Commission on Public Ethics, as well as the public, a consolidated resource for understanding and complying with the requirements of Article 1-A of the Legislative Law (the “Lobbying Act”), as authorized by section 94 of the Executive Law and the Lobbying Act. These regulations also serve to codify the constitutional authority to regulate grassroots lobbying that was recognized in *United States v. Harriss* (347 U.S. 612) in 1954, and exercised by the Commission’s predecessor agencies in accordance with the 1982 decision in *New York State Temporary Commission on Lobbying v. CICU* (534 F. Supp. 489).
- b. The regulations supercede any prior guidelines, advisory opinions, or other instructions, to the extent such guidelines, opinions, or instructions are inconsistent with this Part.

942.2 General Provisions

- a. The Joint Commission on Public Ethics has jurisdiction over Lobbyists, Clients of Lobbyists, and Public Corporations pursuant to Section 1-d of the Lobbying Act and Section 94 of the Executive Law.
- b. Pursuant to Section 1-s of the Lobbying Act, all documents submitted as part of a Lobbyist or Client statement or report are available for public inspection.

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942.3 Definitions.

The following definitions are applicable throughout Part 942, unless otherwise specified:

- a. *Affiliated* means two or more entities that are related by common shareholders, officers, or other means of ownership or control. Affiliations may be formed among parent, subsidiary, and sibling corporations.
- b. *Attempt to Influence* means an activity intended to support, oppose, modify, delay, expedite, or otherwise affect an action enumerated in sections 1-c(c)(i)-(x) of the Lobbying Act.
- c. (i) *Beneficial Client* means an individual or organization on whose behalf Lobbying Activity is conducted. An individual or organization that lobbies on its own behalf is the Beneficial Client.

(ii) While a Contractual and Beneficial Client must be identified for every lobbying arrangement, the Contractual Client may also be the Beneficial Client.
- d. *Client* includes both Contractual Clients and Beneficial Clients.
- e. *Contractual Client* means an individual or organization that retains the services of a Lobbyist for the benefit of itself or another.
- f. *Designated Lobbyist* is a person who lobbies on behalf of a client as an internal board member, volunteer, or by virtue of some other affiliated but non-employed status, but does not offer services to other Clients as a Retained Lobbyist. Designated Lobbyist may also include an elected official who Lobbies on behalf of a Public Corporation
- g. *Employed Lobbyist* is a person who lobbies on behalf of the organization by which he is employed.
 - a. A person who is paid by an Organizational Lobbyist as an independent contractor, may be considered an Employed Lobbyist if the person meets the following criteria:
 1. The independent contractor's only source of lobbying compensation is from the Organizational Lobbyist;
 2. The independent contractor's Lobbying Activities are supervised by the Organizational Lobbyist; and
 3. The independent contractor is not otherwise identified as an Individual Lobbyist on a Statement of Registration.
 - b. A person who is paid by an Organizational Lobbyist as an independent contractor but does not meet the criteria in paragraph (i) above is a Retained Lobbyist.

- h. *Individual Lobbyist* is one who personally engages in Direct or Grassroots Lobbying. Individual Lobbyist includes officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the education law, but does not include any other officer, director, trustee, employee, counsel or agent of the state, or any municipality or subdivision thereof of New York when discharging their official duties.
- i. *Lobbying or Lobbying Activity* includes both Direct and Grassroots Lobbying.
- j. *Lobbying Act* means Article 1-A of the Legislative Law.
- k. *Lobbyist* is a person or organization who engages in Lobbying Activity and includes Retained, Employed, and Designated Lobbyists. Lobbyist includes officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the education law, but does not include any other officer, director, trustee, employee, counsel or agent of the state, or any municipality or subdivision thereof of New York when discharging their official duties.
- l. (i) *Municipal Officers and Employees* include:
- a. An officer or employee of a Municipality, whether paid or unpaid;
 - b. Local elected officials;
 - c. Members of an administrative board, commission, or other agency of a Municipality; and
 - d. In the case of a county, an officer or employee paid from county funds.
- (ii) 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. *Municipality* means a jurisdictional subdivision of the state, including:
- a. Counties, cities, towns, villages, improvement districts, and special districts with a population of more than 5,000;
 - b. Industrial development agencies in jurisdictional subdivisions with a population of more than 50,000;
 - c. Public authorities;
 - d. Public Corporations; and
 - e. School districts of any size.
- n. *Organizational Lobbyist* is a company, firm, entity, or other organization (including a Coalition, as described in Part 942.9) that utilizes Employed or Designated Lobbyists to Lobby on its behalf.
- o. *Principal Lobbyist* includes:

- i. In the case of a Retained Lobbyist, the entity that has entered into an agreement with a Client to provide Lobbying services;
 - ii. In the case of an Employed Lobbyist, the name of the employer Organizational Lobbyist; and
 - iii. In the case of a Designated Lobbyist, the Organizational Lobbyist that has designated the Lobbyist.
- p. *Public Corporation* means the definition as provided in Section 66 of the General Construction Law.
- q. *Public Official* means:
 - i. The governor, lieutenant governor, comptroller, or attorney general;
 - ii. Members of the state legislature;
 - iii. Officers and employees of the legislature;
 - iv. State officers and employees; and
 - v. Municipal officers and employees.
- r. *Responsible Person* means the Chief Administrative Officer for a Lobbyist or Client, or the person who exercises the equivalent authority.
- s. *Retained Lobbyist* is a person or organization engaged to lobby for the benefit of an unaffiliated Client, and any person is paid by an Organizational Lobbyist as an independent contractor but does not meet the criteria in subparagraph (f)(i) of this subpart.
- t. (i) *State Agency* means a department, board, bureau, commission, division, office, council, committee, or officer of the state, whether permanent or temporary; a public benefit corporation; or a 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.

(ii) State agency does not include the judicial branch or agencies created by interstate compact or international agreement.
- u. *State Officers and Employees* includes:
 - i. 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;
 - ii. Officers and employees of statewide elected officials;
 - iii. Officers and employees of state departments, boards, bureaus, divisions, commissions, councils, or other state agencies;
 - iv. 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;

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942.4 Statutory Exceptions.

The following activities are not Lobbying Activities:

a. *Non-lobbying legal services.*

- i. 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.
- ii. If a Lobbyist provides both Lobbying and non-lobbying legal services to a Client, the Lobbyist is not required to identify as an Individual Lobbyist any person who *only* provides non-lobbying legal services for the Client.
- iii. To qualify for this exception, a person cannot also provide services to a Client which meet the test for Direct or Grassroots Lobbying.

b. *News gathering and publication.*

- i. 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 (as defined in subpart 942.8), 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. *Contacts with the media.*

- i. Communications with a professional journalist, or newscaster, including an editorial board or editorial writer of a newspaper, magazine, news agency, press association or wire service, relating to news, as these terms are defined in section seventy-nine-h of the civil rights law, and communications relating to confidential and non-confidential news as described in subdivisions (b) and (c) of section seventy-nine-h of the civil rights law respectively and communications made

pursuant to community outreach efforts for broadcast stations required by federal law.

d. *Participation at certain public proceedings.*

- i. 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.
- ii. This exception does not apply to legislative branch public proceedings.
- iii. This exception does not apply if the person otherwise engages in Lobbying in connection with the subject of the person's participation in the public proceeding.
- iv. This exception does not apply to ratemaking proceedings.

e. *Adjudicatory Proceedings.*

- i. Persons who attempt to influence a State or Municipal Agency in an adjudicatory proceeding, as defined by section one hundred two of the state administrative procedure act.
- ii. This exception does not apply to adjudicatory proceedings that may occur before the state legislature, or other State or Local Legislative Body (as defined in Section 942.8).

f. *Response to requests for information/comments.*

- i. Persons who prepare or submit a response to a specific 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.
- ii. This exception applies only if:
 1. The response is pursuant to an explicit request for information;
 2. The response is directed only to the requesting party;
 3. The information contained in the response is not more than what was sought in the request;
 4. The person did not urge the requesting party to make the request; and
 5. The person is not otherwise engaged in Lobbying in connection with the subject of the request or the response.

g. *Local lobbying by 6033(a) religious organizations.*

- i. 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.

h. *Licenses and Permitting.*

- i. Unless otherwise provided by law, applications for licenses, certificates, and permits authorized by statutes or local laws or ordinances.
- ii. This exception includes applications for special permits, variances, and revocable consents.

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942.5 Lobbying Activities - Generally.

- a. All Lobbying Activities are either Direct or Grassroots Lobbying.
- b. All Lobbying Activity is conducted by a Lobbyist for the benefit of a Beneficial Client, but a Lobbyist and Beneficial Client can be the same person or organization.
- c. Reporting requirements under the Lobbying Act are not necessarily triggered by engaging in Lobbying Activity alone, but rather when the criteria established in subpart 942.9(a)(i) have been satisfied.

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942.6 Direct Lobbying

All definitions in subpart 942.3 are in effect unless otherwise noted below.

a. Definitions.

i. *Direct contact*

1. Direct contact may include any or all of the following:

- A. Verbal communications;
- B. Written communications;
- C. Electronic communications, including electronic mail, social media communications, and Internet communications;
- D. Attendance at a meeting with a Public Official; or
- E. Presence on a phone call with a Public Official, when the Official is aware of such presence.

2. Direct contact with a Public Official also includes direct contact with the members of the Public Official's staff.

ii. *Preliminary contact* includes any of the following, when the Lobbyist knows or has reason to know that the Client will advocate before the Public Official:

- 1. Scheduling a meeting or telephone call with a Public Official and a Client;
- 2. Introducing a Client to a Public Official; or
- 3. Any other contact with a Public Official on behalf of a Client.

b. Lobbying by Direct Contact.

i. A person is engaged in Direct Lobbying when the person:

- 1. has Direct Contact with a Public Official to Attempt to Influence an action enumerated in section 1-c(c)(i)-(x) of the Lobbying Act; or
- 2. has Direct or Preliminary Contact with a Public Official to enable or facilitate an Attempt to Influence.

ii. A person is not engaged in Direct Lobbying when the person:

- 1. attends a meeting with a Public Official simply to provide technical information or address technical questions; and
- 2. plays no role in the strategy, planning, messaging or other substantive aspect of the overall lobbying effort.

- ii. Direct Lobbying can include Direct Contact with a Public Official who is not adverse to the position being advocated by the Lobbyist or his Client.
- c. Direct Lobbying through social media
- 1. A social media communication constitutes Direct Contact for purposes of Direct Lobbying when such communication:
 - A. is directly sent to a social media account owned or controlled by a Public Official; or
 - B. creates a direct electronic link to any social media account owned or controlled by a Public Official.
 - 2. Direct Contact with a Public Official through a social media communication also includes contact that is targeted and directed to members of the Public Official's staff through a social media communication and done with the knowledge that such persons are members of the Public Official's staff.
- ii. Examples
- 1. Any of the following could be Direct Lobbying through social media if all of the required elements of Direct Lobbying are otherwise present:
 - A. A direct message sent to a Public Official through social media (e.g., through Facebook Messenger, Twitter Direct Message);
 - B. A post on a Public Official's social media page;
 - C. A post on a person's own social media page that tags a Public Official; or
 - D. A tweet tagging a Public Official.
 - 2. The following, standing alone, would not constitute Direct Lobbying:
 - A. A post on a person's own social media page that references, but does not tag, a Public Official, even if the Public Official is among the person's friends or followers;
 - B. A post on a person's own social media page that takes a clear position on an action enumerated in section 1-c(c)(i)-(x) of the Lobbying Act that does not tag a Public Official, even if the Public Official is among the person's friends or followers; or
 - C. A tweet that references, but does not tag, a Public Official, even if the Public Official is among the poster's followers.

942.7 Grassroots Lobbying

a. Principle.

While Direct Lobbying attempts to influence a Public Official through a Direct Contact by the Lobbyist, Grassroots Lobbying attempts to influence a Public Official indirectly, or through another.

b. Definitions.

- i. *Grassroots Lobbying* means an attempt to indirectly influence an action enumerated in section 1-c(c)(i)-(x) of the Lobbying Act through a Grassroots Lobbying Communication.
- ii. *Grassroots Lobbying Communication* means a communication that:
 1. References or otherwise implicates an action enumerated in section 1-c(c)(i)-(x) of the Lobbying Act;
 2. Takes a clear position on that action; and
 3. Includes a Call to Action.
- iii. *Call to action* means a solicitation, exhortation, or encouragement to the public, a segment of the public, or an individual to contact a Public Official.

c. Standard.

A person is engaged in Grassroots Lobbying as an Individual Lobbyist if the person participates in:

- i. delivering a Grassroots Lobbying Communication on behalf of the Client; and
- ii. shaping the substantive message expressed in the communication.

d. Participation in Delivery.

- i. A person who participates in the delivery of a Grassroots Lobbying Communication must be identifiable as a representative of or agent for a Client.
- ii. A person acting on behalf of a Client may participate in the delivery of a Grassroots Communication if the person:
 1. Serves as a spokesperson for the Client;
 2. Speaks to the public or a segment of the public;
 3. Participates in a social media campaign as defined in subpart 942.7(f);

4. Exhorts, encourages, or otherwise solicits a municipal official to contact a state Public Official on a matter covered by §1-c(c); or
5. Exhorts, encourages, or otherwise solicits state official to contact a municipal public official on a matter covered by §1-c(c)

e. Shaping the message.

A person must serve more than a clerical function but need not have full or final decision-making authority over the communication to qualify as a Grassroots Lobbyist.

f. Examples.

i. Any of the following could be Grassroots Lobbying if all of the required elements of a Grassroots Lobbying Communication are otherwise present:

1. Rallies;
2. Billboards;
3. Print media advertisements;
4. Websites;
5. Social media communications;
6. Television and radio commercials;
7. Letter writing campaigns; or
8. Personal requests by a Lobbyist for another person to contact a public official

ii. The following functions or roles, standing alone, would not constitute Grassroots Lobbying:

1. Billboard or sign owners;
2. Copy editing;
3. Advertisement writers;
4. Storyboard artists;
5. Film crews;
6. Photographers;
7. Video editors;
8. Website managers, hosts, or internet service providers;
9. Media outlets or broadcasters;
10. Media buyers or placement agents;
11. Delivery services; or
12. Secretaries, clerical, and ministerial staff.

f. Grassroots Lobbying through social media

i. Definitions

1. A *Social Media Communication* constitutes a Grassroots Lobbying Communication when it satisfies the criteria set forth in subpart 942.7(b).
2. A *Social Media Campaign* means a Lobbying campaign carried out using one or more social media platforms.

ii. Standard for Individual Lobbyists

A person acting on behalf of a Client is engaged in Grassroots Lobbying through social media if the person is participating in:

1. delivering a Grassroots Lobbying Communication through social media on behalf of the Client; and
2. shaping the substantive message expressed in the communication.

iii. Participation in delivery

A person participates in the delivery of a Grassroots Lobbying Communication through social media when the person:

1. is personally identifiable as a representative of or agent for a Client; and
2. disseminates the Grassroots Lobbying Communication using one or more social media platforms.

iv. Shaping the message

A person must serve more than a clerical function but need not have full or final decision-making authority over the Social Media Communication to qualify as a Grassroots Lobbyist.

g. Attribution of social media activities for Organizational Lobbyists

i. Standard

For purposes of determining whether activities constitute reportable Lobbying by an organization, the personal social media activities of an individual member or employee of the organization are attributable to that organization only when those activities:

1. are required as part of such member or employee's job duties; or
2. are encouraged by the organization as part of a Social Media Campaign.

942.8 Procurement Lobbying

a. Definitions.

- i. *Procurement Lobbying* means an Attempt to Influence a determination related to a Governmental Procurement by:
 1. A Public Official, or a person or entity working with a Public Official; or
 2. An officer or employee of the Unified Court System, or a person or entity working with an officer or employee of the Unified Court System.

- ii. *Procurement Contract* means a 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 of more than \$15,000, but does not include:
 1. Grants;
 2. Article XI-B State Finance Law contracts;
 3. Program contracts between not-for-profit organizations, as defined in article XI-B of the State Finance Law, and the Unified Court System;
 4. Intergovernmental agreements;
 5. Railroad and utility force accounts;
 6. Utility relocation project agreements or orders;
 7. Contracts governing organ transplants;
 8. Contracts allowing for state participation in trade shows; or
 9. Eminent domain transactions.

- iii. *Governmental Procurement* means any activity that occurs during the:
 1. 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;
 2. solicitation for a Procurement Contract;
 3. evaluation of a Procurement Contract;
 4. award, approval, denial or disapproval of a Procurement Contract; or
 5. 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.

iv. *Article of Procurement* means a:

1. commodity;
2. service;
3. technology;
4. public work;
5. construction;
6. revenue contract;
7. purchase, sale, or lease of real property; or
8. granting or acquisition of other interest in real property that is the subject of a Governmental Procurement.

v. *Determination of Need* means a public communication of a decision by a governmental entity to procure an Article of Procurement. A governmental entity may also communicate a Determination of Need privately, but only the recipient of private communication is subject to lobbying regulation until the public announcement occurs. Determination of Need may be indicated by the governmental entity's preparation of one or more of the following:

1. Specifications;
2. Bid documents;
3. Requests for proposals;
4. Evaluation criteria;
5. Requests for information; or
6. Statements of intent to proceed with a Procurement.

vi. *Local Legislative Body* means 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.

vii. *Municipal Agency* means a department, board, bureau, commission, division, office, council, committee, or officer of a Municipality, whether permanent or temporary; or an industrial development agency located in a jurisdictional subdivision of the state with a population of more than 50,000, or a local public benefit corporation, as that term is defined in section 66 of the general construction law.

viii. *Offerer* means the individual or entity, or 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.

1. Offerer does not include a governmental agency or its employees that communicate with the procuring agency regarding a Governmental Procurement in the exercise of the governmental agency's oversight duties.

ix. *Restricted Period* means the period of time commencing with the earliest Determination of Need, as evidenced by a 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, 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, and, where applicable, the state comptroller.

The Restricted Period is not identical to the longer time frame of a Governmental Procurement as defined in this subpart.

- x. *Revenue Contract* means a 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.
- xi. *Unified Court System* means 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 50,000, when it acts solely in an administrative capacity to engage in Governmental Procurements. Unified Court System does 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.

b. Restricted period

i. Prohibited contacts

During the Restricted Period, a person engaged in Procurement Lobbying shall not contact the following in connection with such lobbying:

1. A person within the procuring entity who has not been designated pursuant to section 139-j of the State Finance Law to receive communications relative to the Governmental Procurement; or
2. A person in a State Agency other than the State Agency conducting the Governmental Procurement.

- ii. Paragraph (i) does not prohibit Lobbying during the Restricted Period, but it requires that such Lobbying be directed only to the person within the procuring entity designated to receive communications relative to the Governmental Procurement. Such Lobbying must be disclosed in accordance with these regulations.
 - iii. The prohibitions set forth in paragraph (i) do not apply to municipal agencies, unless it is an industrial development agency located in a jurisdictional subdivision of the state with a population of more than 50,000, or a local public benefit corporation, as that term is defined in section 66 of the general construction law.
- c. Exceptions. The following do not constitute Procurement Lobbying or Lobbying Activities:
- i. *Pre-determination of need.* Contacts that occur before a governmental entity has made a Determination of Need, including:
 - 1. A contact intended to generate interest in an Offerer's product or service that occurs before the governmental entity has made a Determination of Need for the product or service; and
 - 2. An inquiry as to whether a governmental entity has made a Determination of Need.
 - ii. *Commission Salespersons.* The activities of persons who are commission salespersons with respect to Governmental Procurements.
 - 1. *Commission Salesperson* means a person who meets the following criteria:
 - A. The primary purpose of the person's employment is to cause or promote the sale of, or influence or induce another to make a purchase of, an Article of Procurement;
 - B. The person is an employee (as that term is defined for tax purposes) of a vendor, or an independent contractor for a vendor, pursuant to a written contract for a term of not less than six months or an indefinite term;
 - C. The person receives a commission for sales the person has caused, promoted, influenced, or induced;
 - D. Commissions paid as portion of sales constitute at least 50% of the person's total annual compensation;
 - E. The percentage amount of commissions payable to the person for sales or purchases to a State Agency, either house of the state legislature, the Unified Court System, a Municipal Agency, or Local Legislative Body, is not substantially greater than any commission payable for comparable sales by another purchaser; and

F. The person is not otherwise required to file a statement of registration by virtue of the person's Lobbying Activity.

iii. *Complaints and Appeals.*

1. Complaints by an Offerer regarding the failure of the person or persons designated by the procuring entity pursuant to section 139-j of the State Finance Law to respond in a timely manner to authorized Offerer contacts, provided that such complaints are made in writing and addressed only 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;
2. Contacts by Offerers in protests, appeals, or other review proceedings (including the apparent successful bidder or proposer and that person's representatives) before the procuring entity seeking a final administrative determination, or in a subsequent judicial proceeding;
3. Complaints of alleged improper conduct in a Governmental Procurement to the Attorney General, inspector general, district attorney, or court of competent jurisdiction; or
4. 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, provided that such protests, appeals, or complaints are made in writing and entered in the procurement record pursuant to section 163 of the State Finance Law;
5. Complaints of alleged improper conduct in a Governmental Procurement conducted by a Municipal Agency or Local Legislative Body to the state comptroller's office.
6. 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;
7. 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;
8. 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

9. 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.

iv. *State Finance Law Section 162 preferred service provider contracts*

1. Any activity relating to Governmental Procurements made under section one hundred sixty-two of the State Finance Law undertaken by:
 - A. 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
 - B. the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profitmaking agencies for other severely disabled persons as identified in subdivision two of section one hundred sixty-two of the State Finance Law.
2. 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 subpart.

- v. *Bidders' Conferences.* 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.

vi. *Post-award Negotiations.*

1. 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;

2. Offerers who are engaged in communications with the procuring entity solely for the purpose of negotiating terms applicable to that purchase; or
3. 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.

vii. *Submission of bids*

1. 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.
2. This exclusion applies to preparation and associated costs with the bid. Any activity beyond what is required to submit a bid will not qualify for the exclusion.

- viii. *Public communications to agencies.* 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.

ix. *Technical Experts.*

1. 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.
2. Such authorized contacts shall:

- A. 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;
 - B. not include any recommendations or advocate any contract provisions; and
 - C. occur only at such times and in such manner as authorized under the procuring entity's solicitation or guidelines and procedures.
 - 3. 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.
- x. *Post-award communications.*
 - 1. 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:
 - A. an officer or employee whose primary purpose of employment is to engage in Lobbying Activities with regard to Governmental Procurements, or
 - B. an agent or independent contractor hired by an Offerer and whose primary duty is to engage in Lobbying Activities with regard to Governmental Procurements.
 - 2. This exception does not apply to an officer, employee, agent, or independent contractor who is registered as a Lobbyist because of that person's Procurement Lobbying Activity.
- xi. *Benefits and Incentives.* 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 exceptions set forth in the preceding paragraphs shall not 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 11 of the State Finance Law or any other provision of law dealing with the Governmental Procurement process.

STAFF DRAFT

942.9 Reportable Lobbying Activity

- a. General Reporting Obligations.
 - i. The Lobbying Act requires public disclosure of the identities, activities and expenditures of Lobbyists and Clients. To constitute reportable Lobbying, there must be (1) an attempt to influence an activity listed in §1-c(c) of the Lobbying Act, and (2) the cumulative Compensation and Expenses received, expended or incurred for any such activities must exceed \$5,000 in any calendar year during a biennial period.
 - ii. Lobbying Activity may be Direct or Grassroots Lobbying.
 - iii. Lobbying Activity that includes only Grassroots Lobbying may not require the identification or disclosure of any Individual Lobbyists.
- b. Liability. All Reports required under the Lobbying Act must be signed by the Responsible Person for the Lobbyist, or another who has been designated to sign and file required Report. Such a designation must be signed by the Responsible Person and Designee, completed and submitted to the Commission before the due date of such Reports, and does not relieve the Responsible Person of liability from a failure to file, late filing or false filing of any report(s).
- c. Cumulative threshold. For purposes of calculating total Compensation and Expenses received, expended or incurred by a Lobbyist or Client, the \$5,000 annual threshold shall be computed cumulatively for all Lobbying Activities undertaken by the Lobbyist or Client.
- d. Accounting Methods.
 - i. All Compensation and Expenses associated with Lobbying Activity should be accounted for using accrual basis accounting, i.e., costs are reported in the period in which they are accrued.
 - ii. A Lobbyist or Client has a duty to amend a bi-monthly or client semi-annual report after a previously reported payment is written down, written off, or otherwise modified for bookkeeping purposes.
- e. Expenses.
 - i. Definition
 1. An Expense is any cost of Lobbying Activity that is not Lobbyist Compensation.
 2. An Expense can only be incurred in connection with a Lobbying Activity.

ii. Types

1. Non-lobbying staff salaries. Non-lobbying staff salaries include Compensation paid to those professional and clerical employees who do not engage in Direct or Grassroots Lobbying Activity.
 - A. Salaries of non-lobbying staff should be reported in the aggregate.
 - B. Lobbyist filer should have a good faith methodology that demonstrates how the allocation of non-lobbying staff time was reached.
2. Aggregated. Expenses of \$75 or less may be reported as a single aggregate total.
3. Itemized. Expenses valued at more than \$75 must be itemized – reporting the payee, the nature of the expense, and the value.
 - A. Client Filer should indicate if the Expense was a reimbursement to the Lobbyist.
 - B. Lobbyist filer should indicate whether the Expense was reimbursed by the Client.
4. Reimbursed. Lobbyist should report the aggregate value of all Expenses (regardless of value of the individual Expenses) that were reimbursed by the Client.

iii. Exclusions. The following are not reportable Expenses:

1. State or local lobbying filing fees;
 2. Postage that does not exceed \$500 in the aggregate;
 3. Travel, lodging, or meals for a Lobbyist and any non-lobbying employees; and
 4. Any expense that is incurred in the ordinary course of business, regardless of the nature of business - for example, rent, utilities, telephones, computers.
- f. Compensation. Compensation includes all direct or indirect payments of salaries or other things of value in exchange for services by a Lobbyist.
- g. Record Keeping.
- i. All expenditures of \$50 or more related to Lobbying Activity must be paid by check or supported by receipt.
 - ii. Such checks or receipts must be maintained for three years from the date the expense was required to be reported.

h. Requirements for Filing for Third Party Filers and Coalitions.

Some Lobbyist/Client relationships include multiple Lobbyists, multiple Clients, or other associated third parties, and all of these entities must be disclosed in Lobbying reports filed with the Commission.

- i. Contractual vs. Beneficial Client. All reports requiring disclosure of the Client must include both the Contractual and Beneficial Client(s).
- ii. Multiple Lobbyists. All reports must disclose all Lobbyists performing services, whether on a single contract or through a subcontracting relationship.
 1. Subcontracting.
 - A. A Lobbyist who, after entering into a Lobbying agreement with a Contractual Client, retains the services of another to perform a portion of the services within the scope of the agreement, is a Prime Lobbyist.
 - B. A Lobbyist who is engaged to perform services by a Prime Lobbyist, as part of an agreement between the Prime Lobbyist and the Contractual Client, is a Sub-Lobbyist.
 - C. A Prime Lobbyist and Sub-Lobbyist are both subject to the reporting requirements of the Lobbying Act, to be filed on forms provided by the Commission, but are only required to disclose compensation and expenses related to the services they each provided, respectively.
 - D. On any bi-monthly report or statement of registration, the Prime Lobbyist must disclose all Sub-Lobbyists engaged on behalf of the Client, but a Sub-Lobbyist need only disclose itself and the Prime Lobbyist.
 2. Co-Lobbyist.
 - A. All Lobbyists who are retained by a Client on the same single retainer agreement or contract are Co-Lobbyists, and must file individual Lobbying reports with the Commission. Co-Lobbyists must identify other Co-Lobbyists but need disclose only their own activity and Compensation and Expenses.
- iii. Coalitions.

1. Definition.
 - A. *Coalition* is formed when a group of otherwise-unaffiliated entities or members agree to engage in common activities which include, but are not limited to, acting as or engaging a Lobbyist on behalf of all members of the Coalition.
 - B. *Affiliated* has the meaning described in subpart 942.3 of this Title.
 - C. *Pass-through* means a Coalition that expends more than 90 percent of its expenditures on Lobbying Activity.
 2. A Coalition shall file a Lobbying report with the Commission identifying itself as a Lobbyist and/or a Client, provided the Coalition maintains an up-to-date written instrument with the Commission disclosing all Coalition members.
 3. Except as provided in subpart 942.9(h)(iii)(4) (“Pass-Through Coalitions”), a member’s contribution to a Coalition is not considered a Lobbying expenditure for purposes of determining whether the member must itself register as a Lobbyist or file Client Semi-Annual Reports.
 4. Pass-Through Coalitions. Contributions made to Pass-Through Coalitions are considered Lobbying Compensation paid by a Client for purposes of determining whether the member must file a Client Semi-Annual Report, and accordingly, whether the member meets the Expenditure Threshold for purposes of reporting Sources of Funding, per Part 938 of this Title.
- i. Except as other provided in this Part, all references to Lobbyists and Clients include Public Corporations.

942.10 Lobbyist Statement of Registration

- a. Purpose. The purpose of the Statement of Registration is to memorialize the engagement of the Lobbyist by the Client, and only evolves inasmuch as the terms of the engagement change.
- b. Reporting Threshold.
 - i. Pursuant to §1-e of the Lobbying Act, every Lobbyist that incurs, expends, or receives or reasonably anticipates incurring, expending, or receiving more than \$5,000 in combined Reportable Compensation and Expenses for Lobbying Activity on a state and/or local level, in any calendar year during the biennial period, must file a biennial Statement of Registration with the Commission.
 - ii. For purposes of determining whether the thresholds have been met, the amounts incurred, expended or received shall be computed cumulatively for all Lobbying Activities.
 - iii. Once a Lobbyist has exceeded the cumulative \$5,000 threshold, a Lobbyist must file a registration for any Client for whom he lobbies, regardless of Compensation or Expenses.
- c. For purposes of this section, “biennial” shall mean every two-year period commencing with the January 1, 2005 – December 31, 2006 period, and so on thereafter.
- d. A Registration Statement must be filed by a Lobbyist for every Client for whom the Lobbyist lobbies, once the Lobbyist reasonably anticipates exceeding \$5,000 in combined compensation and expenses for a calendar year.
- e. Due Dates. All Statements of Registration must be filed on a biennial basis by the following deadlines (“Due Dates”):
 - i. January 1st of the first year of the biennial period, if:
 1. the Lobbyist has been retained, employed, or designated to Lobby on or before December 15th immediately prior to the first year of a biennial period; and
 2. the Lobbyist reasonably anticipates combined Reportable Compensation and Expenses in excess of \$5,000 for Lobbying Activities to be undertaken in the coming year;
 - ii. within 15 days of being retained, employed, or designated to Lobby, if:

1. the Lobbyist has been retained, employed, or designated to Lobby after December 15th of the year preceding the first year of the biennial period, for activity in either year of the biennial period; but
- iii. within 10 days of exceeding the \$5,000 threshold, if:
1. the Lobbyist actually incurs or receives combined Compensation and Expenses in excess of \$5,000 before filing a Statement of Registration.
- iv. A Lobbyist who is required to file a Statement of Registration within 15 days of reasonably anticipating exceeding the \$5,000 threshold should file the Statement within 15 days of the earliest of:
1. The date on which the Lobbyist has agreed to – or been authorized to – begin Lobbying Activity;
 2. The date a Lobbying agreement or authorization has been executed by both the Lobbyist and Client (or only the Lobbyist in the case of an Employed Lobbyist);
 3. Engaging in Direct or Grassroots Lobbying; or
 4. Allocating resources in a manner that has previously generated an annual *pro rata* salary apportionment in excess of \$5,000.
- f. Required Statements of Registration must be filed within the Due Dates regardless of whether there is a written authorization signed by the Client by whom the Lobbyist is authorized to Lobby or a written agreement of retainer or employment signed by both parties.
- g. Except as provided in subpart 942.10(i), a Lobbyist may avoid a civil penalty for knowing and willful failure to timely file by submitting a Statement of Registration, even without an authorization or contract to lobby, by the appropriate deadline above; however, such a Statement of Registration must include all other required information.
- h. Any submitted Statement of Registration that does not include all required information, including an authorization or agreement to Lobby, will be deemed late, and subject to the late fee schedule set forth below:

<u>Days Late</u>	<u>Action</u>
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

- i. If JCOPE determines that the Lobbyist had access to the information that was not filed, and knowingly and willfully failed to include the information, the Lobbyist may be subject to a civil penalty not to exceed \$25,000 for a failure to timely file a complete and accurate statement.
- j. Filing Fee.
 - i. A \$200 filing fee (payable in U.S. dollars) must be submitted with each Statement of Registration for the biennial period that the Lobbyist reasonably anticipates exceeding \$5,000 in combined Reportable Compensation and Expenses for any year in the biennial period. A Statement of Registration submitted without such a filing fee shall be deemed incomplete.
 - ii. No fee is required if the Lobbyist will not exceed \$5,000 in such Compensation and Expenses for that Client, however, a fee is required if the Lobbyist later exceeds the \$5,000 threshold.
 - iii. Any biennial Statement of Registration submitted to cover Lobbying conducted only during the second year of the biennial period shall be accompanied by a prorated registration fee of \$100.
 - iv. Statement of Registrations that are filed late and cover either the entire biennial period or a portion of both years within the biennial period shall not be prorated.
 - v. No filing fee is required of any Public Corporations required to file a biennial public corporation registration statement.
 - vi. Filings fees are non-refundable.
- k. Required Contents of a Statement of Registration
 - i. Rule. Every Statement of Registration filed shall include the following:
 - 1. A copy of a signed, written Lobbying agreement or written authorizatiuon which must contain the following:

- A. A start date, which is the first date the Lobbyist has agreed to or been authorized to Lobby;
 - B. signatures of the Responsible Person for the Client and Lobbyist, or another person with the authority to enter the Lobbyist into a binding contract;
 - C. the date(s) of execution;
 - D. any services to be provided in addition to Lobbying;
 - E. an end date, which is the last date the Lobbyist has agreed to or been authorized to Lobby; and
 - F. the compensation to be paid specifically for Lobbying services, including pay frequency and/or rate of pay.
 - I. If the Lobbyist is retained for Lobbying, the actual Compensation must be reported.
 - II. If the retainer is based on a daily or hourly rate, the fee per day or per hour must be reported.
 - III. If the Lobbyist is a salaried employee, the Lobbyist's prorated salary for Lobbying Activity must be reported.
 - G. If the Lobbyist is retained under terms of an oral agreement, a written summary of such terms may be submitted with a Statement of Registration. In addition to the requirements listed in Part 942.10(1)(i)(1) such authorization must be signed by the chief administrative officer of the Client or employer (or one with the authority to enter into such an agreement);
2. The name of the Principal Lobbyist.
- A. If an individual Lobbyist is an employee or partner of a lobbying firm, the lobbying firm should always be identified as the Principal Lobbyist unless the individual has been retained in his individual capacity.
 - B. The Principal Lobbyist should only be listed as an individual if the Lobbyist conducts business in his own name.
 - C. A Public Corporation that lobbies on its own behalf is the Principal Lobbyist.
3. The name of all Individual Lobbyists to perform lobbying services on behalf of the Client; provided, however:
- A. in the case of an Organizational Lobbyist who incurs no Compensation for Individual Lobbyists and only Expenses, no Individual Lobbyists need be identified on the Statement of Registration; and

B. an independent contractor may only be identified as an Employed Lobbyist if the person meets the criteria established in subpart 942.4(f)(i).

4. The subject matter on which the Lobbyist expects to Lobby;
5. The target(s) of the expected Lobbying, including the person, organization, entity, or legislative body before which the Lobbyist intends to Lobby.
6. The government activity on which the lobbying is expected to occur, which shall include the following, as known at the time of filing:
 - A. bill, rule, regulation, rate number or brief description relative to the introduction or intended introduction of legislation or a resolution;
 - B. the title and identifying numbers of Procurement Contracts/documents or a general description of the Procurement;
 - C. the number or subject matter of an Executive Order of the Governor or Municipality; and
 - D. the subject matter of and tribes involved in tribal-state compacts.
7. Client information for all Contractual and Beneficial Clients, which shall include the Clients' names, business addresses, phone and email contacts, the natures of business, and the Chief Administrative Officers' names and titles;
8. The level of government expected to be lobbied which shall indicate whether the expected Lobbying will be State lobbying, Local Lobbying or both; and
9. The identities of any third parties to the Lobbying, as described in Part 942.9., including all Lobbyists, Clients, and Coalitions.
 - A. In the case of a Coalition, a list of all members of the Coalition.
10. Any Reportable Business Relationships in accordance with and as defined in Part 942.14.

1. Amendments to Lobbyist Statement of Registration

- i. Except as provided in subpart 942.10(m)(iii), any change – permanent or temporary – to the terms of an agreement or authorization for Lobbying requires an amended Lobbyist Statement of Registration form, which must be completed and filed with the Commission within 10 days of the change. Such amendment must include:

1. The name of the Lobbyist and Client;
 2. The new or changed information; and
 3. The signature of the Responsible Person or designee, if applicable.
- ii. A Lobbyist must amend a Statement of Registration to reflect any changes to the Individual Lobbyists authorized to Lobby for the Client, the level of Lobbying (state vs. local), the terms of Compensation, or engagement start and end dates.
 - iii. Changes to the subject matter, targets, or type of Lobbying (Procurement vs. non-procurement) do not require an amended Statement of Registration.
 - iv. No filing fee is required for the Registration Amendment provided the original Statement of Registration filing fee has already been paid for the applicable biennial period.
 - v. *After* the termination of the Agreement, any decision by a Lobbyist to waive, write-down, or otherwise reduce the prior compensation and expenses owed to the Lobbyist by the Client does not require an Amended Statement of Registration.
- m. Termination of Lobbying Agreement/Authorization
- i. If a Lobbying agreement or authorization is terminated, both the Lobbyist and the Client must notify the Commission in writing within 30 days after the Lobbyist ceases Lobbying Activity. However, if the termination takes effect at the end of the biennial registration cycle, written notification of termination is not required.
 - ii. A Lobbyist may submit a request to the Commission in writing or by email requesting withdrawal of a termination if Lobbying will resume during the biennial registration period.
 1. Such request must be signed/submitted by the Responsible Person or designee;
 2. An amended Statement of Registration must also be completed and filed with the Commission within 10 days of the change and include a new written agreement or authorization from the Client.

942.11 Lobbyist Bi-Monthly Report

- a. Purpose. Lobbyist Bi-Monthly Reports record all actual Lobbying Activity during the relevant filing period.
- b. Any Lobbyist required to file a Statement of Registration for a Client for any biennial period must also file Bi-Monthly Reports in accordance with this section, regardless of Compensation, Expenses, or Lobbying Activity.
- c. Due date.
 - i. Lobbyists must file a Bi-Monthly Report by the 15th of the month following the end of the bi-monthly reporting period in which the Lobbyist was first required to register. A schedule of the bi-monthly reporting periods is set forth below:
 1. January/February, Due March 15th
 2. March/April, Due May 15th
 3. May/June, Due July 15th
 4. July/August, Due September 15th
 5. September/October, Due November 15th
 6. November/December, Due January 15th
 - ii. All reports must be received by the Commission on or before the due date.
 - iii. If a report is due on a weekend or a State holiday, it must be received by the Commission on the first business day following the weekend or State holiday.
- d. Filing Fee. There is no filing fee for a Lobbyist Bi-Monthly Report.
- e. Contents. All Bi-Monthly Reports must include the following information to the maximum extent practicable:
 - i. The name, address, e-mail address, and telephone number of the Principal Lobbyist;
 - ii. The names of all Individual Lobbyists who personally engaged in Lobbying Activity during the filing period;
 - iii. The name, address, e-mail address, and contact information of all Contractual and Beneficial Clients;
 - iv. The identities of any third parties to the Lobbying, as described in Part 942.9, including all Lobbyists, Clients, and Coalitions;
 - v. The subject matter(s) on which Lobbying occurred; and
 - vi. The governmental action that the Lobbyist Attempted to Influence which shall include the following, as applicable:
 1. The bill, rule, regulation, or rate number, if available, on which Lobbying occurred;

2. The title and identifying numbers of Procurement Contracts/documents on which Lobbying occurred;
 3. The number or subject matter of an Executive Order of the Governor or Municipality on which Lobbying occurred;
 4. The subject matter of and tribes involved in tribal-state compacts on which Lobbying occurred; and /or
 5. In the event Lobbying is conducted in order to influence the introduction, intended introduction, or issuance of State legislation or a State resolution, a brief description of such activity.
- vii. The name of the person, organization, or legislative body before which the Lobbyist has lobbied, and:
1. In the case of Direct Lobbying, the names of all individuals with whom the Lobbyist engaged in direct communication;
 2. In the case of Grassroots Lobbying, the intended target of the Lobbying Activity, which may be a person, State Agency, Municipality or legislative body; and
- viii. The reportable Compensation and Expenses related to the Lobbying as defined in Part 942.9.
1. Any reportable Compensation and Expenses incurred by an Organizational Lobbyist must be included in the Bi-Monthly Report, regardless of whether the Organizational Lobbyist also files a Client Semi-Annual Report.
- f. If the first required Bi-Monthly Report filed by a Lobbyist for a calendar year is not the Report covering the January-February period (due March 15), the Report should disclose all activities engaged in, Compensation received, and expenditures incurred during the year up to and including the period covered by the Report.
- For example:** if a Lobbyist does not anticipate receiving \$5,000 in Compensation and Expenses before the start of the calendar year, but does exceed \$5,000 on April 15, the first required Bi-Monthly Report is the Report due May 15, covering the March-April Bi-Monthly Period. The March-April Report should thus include all activity, Compensation, and Expenses for the calendar year, from January 1 until the end of the March-April Bi-Monthly Period, *i.e.*, April 30.
- g. Public Corporations. Notwithstanding the provisions in this subpart, a Public Corporation that is required to file a Statement of Registration under section 1-e of the Lobbying Act must also include information pertaining to the activity, compensation and expenses for any Retained Lobbyists in the Bi-Monthly Report.

942.12 Client Semi-Annual Report

- a. Reporting Periods and Due Dates. The two reporting periods for Client Semi-Annual Reports are as follows:
 - i. January 1 – June 30, for which the Report is due by July 15th; and
 - ii. July 1 – December 31, for which the Report is due by January 15th.
- b. Late Fees and Penalties. Failure to file a Client Semi-Annual Report in a timely manner as required by this subpart subjects the Client to civil penalties as prescribed by Legislative Law § 1-o(b)(i) and/or late fees as prescribed in Legislative Law § 1-j(c)(iii) and subpart 942.10 of this Title. In addition, the submission of false filings subjects the Lobbyist or Client to a civil penalty as prescribed by Legislative Law § 1-o(b)(ii).
- c. Filing Fee. Each Client Semi-Annual Report must be accompanied by a \$50 non-refundable filing fee (payable in US dollars). No additional filing fee is required for amended Client Semi-Annual Reports provided an original fee is on file for that period.
- d. When Required.
 - i. A Client Semi-Annual Report must be filed by any Client retaining, employing or designating a Lobbyist or Lobbyists, whether or not any such Lobbyist was required to file a Statement of Registration or Bi-Monthly Report, if it is reasonably anticipated that during the year an amount in excess of \$5,000 in combined Reportable Compensation and Expenses for Lobbying will be expended or incurred.
 1. If a Client is required to file a Semi-Annual Report *solely* by virtue of its status as an Organizational Lobbyist, i.e., through its use of Employed or Designated Lobbyists, and the Client has filed Lobbyist Bi-Monthly Reports for the bi-monthly reporting periods that fall in the same Client semi-annual reporting period, then no Client Semi-Annual Report is required, other than disclosures prescribed by Part 938 of this Title and section 1-j(c)(4) of the Lobbying Act.
 - ii. If the \$5,000 reporting threshold is exceeded in the January/June period, then a July/December Client Semi-Annual Report must be filed even if no further monies are expended, unless the written agreement or authorization with the Client's Lobbyist is terminated on or before June 30th.
 - iii. If a January/June Client Semi-Annual Report is filed and the \$5,000 reporting threshold has not been met for the year, then a July/December Client Semi-Annual Report is not required.
- e. Responsible Person. The Responsible Person of the Client or another duly designated and reported to the Commission (prior to the due date for such Report) is responsible for

signing and filing all Client reports. Any such designation must be signed by the Responsible Party and Designee.

- f. Contents of a Client Semi-Annual Report. A Client Semi-Annual Report must include the following information:
- i. The type of Lobbying which shall indicate whether the Lobbying involved non-procurement Lobbying, Procurement Lobbying or both;
 - ii. the Client Information which shall include the Client's name, address, e-mail address, and business and fax numbers;
 - iii. the Lobbyist Information which shall include the type of Lobbyist, level of government lobbying (state and/or local), Lobbyist name and address, and Compensation paid to the Lobbyist for the current period only;
 - iv. Expenses incurred for Lobbying for the current period;
 - v. All Lobbying Compensation paid to Lobbyists, including Retained Lobbyists, Employed Lobbyists, and Designated Lobbyists.
 - vi. The identities of all parties to the Lobbying, as described in Part 942.9(h), including all Lobbyists, Clients, and Coalitions;
 - vii. The subject matter(s) on which Lobbying occurred;
 - viii. The governmental action that the Client or the Client's Lobbyist Attempted to Influence which shall include the following, as applicable:
 1. The bill, rule, regulation, or rate number, if available, on which Lobbying occurred;
 2. The title and identifying numbers of Procurement Contracts/documents on which Lobbying occurred;
 3. The number or subject matter of an Executive Order of the Governor or Municipality on which Lobbying occurred; and/or
 4. The subject matter of and tribes involved in tribal-state compacts on which Lobbying occurred.
 5. In the event Lobbying is conducted in order to influence the introduction, intended introduction, or issuance of State legislation or a State resolution, a brief description of such activity.
 - ix. The name of the person, organization, or legislative body before which the Client or Client's Lobbyist has lobbied, and:
 1. In the case of Direct Lobbying, the names of all individuals with whom the Client or Client's Lobbyist engaged in direct communication;

3. In the case of Grassroots Lobbying, the intended target of the Lobbying Activity, which may be a person, State Agency, Municipality or legislative body; and
 - i. The reportable Compensation and Expenses related to the Lobbying as defined in Part 942.9; and
 - ii. Any Reportable Business Relationships in accordance with and as defined in Part 942.14, provided, however, Clients who Lobby on their own behalf need only report such relationships in their Lobbyist Statement of Registration.
- h. Public Corporations. Notwithstanding the provisions of this subpart, a Public Corporation that is required to file a Statement of Registration under section 1-e of the Lobbying Act is required to file Bi-Monthly Reports that disclose information on any Retained Lobbyists; as a result, the Public Corporation is not required to file a Client Semi-Annual Report.

942.13 Lobbyist Disbursement of Public Monies Report

- a. *Public Monies* are funds that have been designated for programs, grants or discretionary funds, but which have not been allocated by law to specific recipients and are not part of a Governmental Procurement (as defined in Part 942.7).
- b. Required Filers. A Disbursement of Public Monies Report is only required of a Lobbyist otherwise required to file a Statement of Registration who in any year reasonably anticipates that they will expend, incur or receive combined Reportable Compensation and Expenses in an amount in excess of \$5,000 in connection with 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 \$15,000 will be required to file a Disbursement of Public Monies Report.
- c. Threshold for Filing. Disbursement of Public Monies Reports are only required if Attempts to Influence the disbursement have occurred during the relevant filing period.
- d. Due Dates. Disbursement of Public Monies Reports are to be filed bi-monthly in accordance with the same schedule applicable to the filing of Bi-monthly Reports provided in Part 942.11.
- e. Filing Fee. There is no filing fee for a Disbursement of Public Monies Report.
- f. Contents. Each Disbursement of Public Monies Report must include:
 - i. the name, address, e-mail 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, e-mail 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 subpart.

942.14 Reportable Business Relationships

- a. **Purpose.** Disclosure of business relationships between Lobbyists or Clients of Lobbyists and State Persons will increase transparency in government.
- b. **Definitions.**
- i. *Calendar Year* means the time period of January 1st through December 31st of any given year.
 - ii. *Client* includes every person or organization that retains, employs or designates any person or organization to carry on Lobbying Activities on behalf of such Client. With respect to an organization, the term Client also includes proprietors, partners, directors, or executive management of the organization.
 - iii. *Compensation* means any salary, fee, gift, payment, benefit, loan, advance or any other thing of value. It does *not* include commercially available consumer and business loans or lines of credit as available to the general public, goods and services and discounts available to the general public, dividends or payments related to stock purchases, or contributions reportable under Article 14 of the New York State Election Law.
 - iv. *Intended to be performed or provided* means the goods, services or anything of value have not yet been performed or provided, but the Lobbyist or Client, as applicable, reasonably anticipates such goods, services, or value to be performed or provided in the future.
 - iv. *Performed or provided* means that a State Person or an entity in which the State Person has the Requisite Involvement either actually performed or provided the goods, services, or anything of value, or had a significant, but not necessarily exclusive or primary role, in performing or providing the goods, services or anything of value.
 - v. *Reason to know* means a Lobbyist or Client has reason to know that an individual is a State Person or that a State Person has the Requisite Involvement with an entity because a reasonable person, based on the totality of the facts and circumstances, would conclude that the Lobbyist or Client should know such fact. The following factors may be considered to determine whether a Lobbyist or Client had reason to know:
 1. Origins of the relationship between the parties;
 2. Length of such relationship;
 3. The type and actual value of the goods, services or items provided; and/or

4. Whether the fact that the individual is a State Person or the Requisite Involvement of the State Person with the entity at issue is generally known to the public.
 - viii. *Reportable Business Relationship* means a relationship that meets all the criteria listed in Part 942.15(c)(i).
 - ix. *Reportable Business Relationship Form* means the form so entitled available on the Commission's website.
 - x. *Requisite Involvement* in an entity exists when a State Person is a proprietor, partner, director, officer, or manager of a non-governmental entity, or owns or controls 10% or more of the stock of a non-governmental entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange).
 - xi. *State Person* means an individual who is a statewide elected official, state officer or employee as defined in Part 942.3(b), member of the legislature or legislative employee.
- c. Disclosing a Reportable Business Relationship.
- i. Elements of a Reportable Business Relationship.

A business relationship must be reported, regardless of when the relationship commenced, if at any time during a Calendar Year, all of the following criteria are met:

1. A formal or informal agreement or understanding exists in which a Lobbyist or Client of a Lobbyist pays, has paid or promises Compensation to:
 - A. An individual whom the Lobbyist or Client knows or has *Reason to Know* is a State Person;
 - B. A non-governmental entity for which the Lobbyist or Client knows or has *Reason to Know* that the State Person has the Requisite Involvement; or
 - C. A third-party as directed by the State Person or as directed by the entity;
2. The payment or promise of Compensation is or was in exchange for goods, services, or anything of value either *Performed or Provided* or *Intended to be Performed or Provided* by the State Person or an entity in which the State Person has the Requisite Involvement; and
3. The total value of the Compensation paid to the State Person or an entity in which the State Person has the Requisite Involvement, which must be aggregated if applicable in accordance with Part 942.15(c)(ii), exceeds \$1,000

within a Calendar Year. Such threshold is met once more than \$1000 in Compensation is:

- A. Paid to such State Person or entity for services Performed or Provided or Intended to be Performed or Provided; or
- B. Owed to such State Person or entity for services already Performed or Provided.

ii. Aggregation of Compensation.

If a Lobbyist or Client has multiple business relationships with the same State Person, the same entity in which a State Person has the Requisite Involvement, or entities in which the same State Person has the Requisite Involvement, then the value of the Compensation paid for goods, services or anything of value relating to such relationships must be aggregated. If the aggregated value of such Compensation is more than \$1,000 within a Calendar Year, then *each* relationship is a Reportable Business Relationship assuming all other criteria are satisfied.

iii. How and When to Report.

Once a Reportable Business Relationship exists a Lobbyist or Client must complete a Reportable Business Relationship Form and submit it to the Commission within 10 days of the Reportable Business Relationship's existence. For ongoing business relationships that constitute Reportable Business Relationships, Lobbyists and Clients must submit a new Reportable Business Relationship Form each Calendar Year, as appropriate.

iv. Reportable Business Relationship Form Considered Part of Filing.

In accordance with Legislative Law §§1-e and 1-i, which requires Lobbyists and Clients to disclose Reportable Business Relationships within their respective filings, a Reportable Business Relationship Form shall be considered a part of the Lobbyist's Statement of Registration or the Client's Semi-Annual Report, as applicable.

v. Information Required in a Reportable Business Relationship Form

For each Reportable Business Relationship, a Lobbyist or Client must provide the following information within the Reportable Business Relationship Form:

1. The name and public office address of the State Person or entity with which the State Person has the Requisite Involvement;
2. A description of the general subject or subjects of the transactions between the Lobbyist or Client and the State Person (or the entity with which the State Person has the Requisite Involvement); and
3. The actual or anticipated amount of Compensation, including reimbursable Expenses, to be paid and paid to the State Person (or entity with which the State Person has the Requisite Involvement) by virtue of the business relationship.

vi. Reportable Business Relationships of Client Organizations.

1. For organizations that constitute a Client of a Lobbyist, each Reportable Business Relationship of all proprietors, partners, directors or persons within the executive management of such organization (hereinafter referred to as “high-level members of the Client organization”) must be reported by the Client organization.
2. If a high-level member of the Client organization is connected to an outside company, firm, partnership, or other such business that has a Reportable Business Relationship with a State person or entity with Requisite Involvement, such relationship must be reported only if:
 - A. such high-level member of the Client organization is also a proprietor, partner, director or executive manager of such outside business; and
 - B. the business relationship is between the company, firm, partnership, or business as a whole and the State Person or entity with Requisite Involvement.

vii. Duty to Amend Report.

If a material change occurs relating to information reported in the Reportable Business Relationship Form after it has been submitted, including material changes in the actual or anticipated amount of Compensation paid, an amended Reportable Business Relationship Form must be submitted to the Commission within 10 days of such change.

viii. Exclusions from Reportable Business Relationship Requirements

Relationships between a Lobbyist or Client and a State Person or entity in which a State Person has Requisite Involvement that relate to the following are excluded from reporting requirements:

1. Medical, dental and mental health services and treatment; and
2. Legal services with respect to investigation or prosecution by law enforcement authorities, bankruptcy and domestic relations matters.

d. Penalties.

Failure to report a Reportable Business Relationship in a timely manner as required by this sub-section subjects the Lobbyist or Client to civil penalties as prescribed by Legislative Law §1-o(b)(i) and/or late fees as prescribed in Legislative Law §§1-e(e)(iii) and 1-j(c)(iii) and subpart 942.10 of this Title. In addition, the submission of false filings

subjects the Lobbyist or Client to a civil penalty as prescribed by Legislative Law §1-o(b)(ii).

STAFF DRAFT