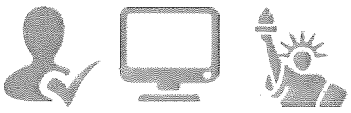
New Mexico
Office of the Secretary of State
MAGGIE TOULOUSE OLIVER

Lobbyist Regulation Act

Reporting Guidelines



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The information in this guide is intended for use as a reference for lobbyists, lobbyist employers, and other interested individuals for the 2017-2018 legislative and election cycles. We encourage you to always refer to the Lobbyist Regulation Act, NMSA Sections 2-11-1 through 2-11-9 (the "Act") as the ultimate legal authority.

The Secretary of State's Office ("SOS") will assist lobbyists and lobbyist employers with the requirements of the Act. If you are already a lobbyist or lobbyist employer, or are interested in being either one, we strongly recommend you review the Lobbyist Regulation Act as well as this guide before engaging in any potential lobbyist activities.

You are welcome to contact the SOS's Ethics Bureau for further information. Please visit our website, and you will find a link to the Act, forms, and other helpful information. Our contact information can be found below:

New Mexico State Capitol North
325 Don Gaspar, Suite 300
Santa Fe, NM 87501
(505) 827-3600 / (800) 477-3632
sos.ethics@state.nm.us

Please visit our website for additional lobbyist information at:
http://www.sos.state.nm.us/Lobbyist_Information/default.aspx.

Am I a Lobbyist?

If you are compensated for attempting to influence any legislative matter or any "official action," you are a lobbyist. "Official action" includes action or non-action of a state official or state agency, board, or commission acting in a rulemaking proceeding.

You are not a lobbyist if you are:

- Appearing on your own behalf regarding legislation or official action;
- Acting in your official capacity as a state, local government, or tribal official;
- A government employee appointed by an elected or appointed official appearing before a legislative committee or administrative agency to explain the effect of legislation upon your employing agency and are registered as such by the appointing official with the SOS;[1]
- Staff of an elected state official and are registered as such by the appointing official with the SOS;[1]
- A legislator or legislative staff;
- A witness called to testify before a legislative committee or agency in connection with legislation;
- Providing testimony in a legislative or rulemaking proceeding; or
- Media or press reporting on the governmental goings on as a usual course of business.

Essentially, if you are employed by a governmental entity or the media and are taking part in activities as described above, you are likely not a lobbyist. If you have any doubt as to whether you need to adhere to the Act, please contact the Ethics Bureau.

When does a Lobbyist have to register?

A lobbyist may register at any time during the year. However, NMSA 1978 §2-11-3 requires lobbyists to register in the month of January prior to the legislative session or prior to providing any services for an employer.

Lobbyists must register with the Secretary of State's Office prior to engaging in activities covered by the Act. It is also possible that the lobbyist employer(s) will need to register as well, depending upon their activities.

[1] A designation form is available on the website for government employees and elected officials' staff which must be submitted to the SOS for individuals who represent government entities.

What is the registration process for a Lobbyist?

The Secretary of State provides all necessary forms for a lobbyist to register and maintain registration on the SOS website. The forms required to register are the Lobbyist Registration Form and the Lobbyist Authorization Form. NMSA 1978 §2-11-3

- The Lobbyist Registration Form requires:
  - Lobbyist name, email address[2] (required for accessing the electronic report filing system – CFIS), permanent business address, business address while lobbying, and the name and address of each employer;
  - Whether the lobbyist will incur expenditures or make contributions on behalf of each employer;
  - Whether the lobbyist is compensated by the employers; and
  - The notarized signature of the lobbyist.

- The Lobbyist Authorization Form must be filed for each of the lobbyist employers. The form contains:
  - A full disclosure of the sources of funds used for lobbying; i.e. membership dues, corporate funds, etc.;
  - A description of the matters for which the lobbyist will provide services to the employer;
  - The name and address of the records custodian of the documents required under the Act; and
  - The signature of the employer or the employer's authorized agent.

Along with the initial forms, a lobbyist must submit a fifty dollar ($50.00) filing fee for each employer, i.e. $50.00 for each Lobbyist Authorization Form a lobbyist files. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no compensation or salary for lobbying.

All required forms and fees must be received in order for a registration to be processed. If we do not have an employer authorization on file, you will be contacted, and your registration will not be processed until it is received

What happens next?

Once the forms and fees are submitted to the Secretary of State, the information is entered into the lobbyist module of the Campaign Finance Information System (CFIS) by Ethics Bureau staff. When submission is complete, you will receive an email with a username and password to access your new CFIS account. If you already have a CFIS user name and password, you will use those for system access. A 'forgot password' feature is available on the CFIS login screen in case you

[2] It is important that the email address provided upon registration is kept current, this email address is used by SOS staff to contact lobbyists regarding important deadlines and other notifications.

forget your login credentials. When you request a new password, you will receive an email with instructions and a link for password reset.

What happens when I am retained by additional employers after the initial filing?

If you are retained by additional employers after registration, you must submit Supplemental Lobbyist Registration Forms, Lobbyist Authorization Forms and a $50.00 fee for each new employer. The new disclosures must be filed prior to lobbying on behalf of any new employer.

Do registrations expire?

Yes, registration is only good for the calendar year in which you register. In January of each subsequent year prior to the commencement of the legislative session, lobbyists must file a Lobbyist Renewal Form for each employer the lobbyist will continue to represent, as well as a $50.00 renewal fee per employer. The SOS mails lobbyist renewal forms to current lobbyists each December to facilitate renewal for the upcoming calendar year.

The Lobbyist Registration Form has a "Registration Year" area and a services commencement date area. If a lobbyist wishes to register prior to January of the following year, you will need to make sure the "Registration Year" and service commencement areas states the following year and not the current year.

Since registration is by calendar year, if you submit your registration before December 31, make sure you have indicated the proper year on the Lobbyist Registration Form. You'll also need to be attentive to the "Date Services Begin" box on each lobbyist employer information section of the registration form.

Example A: A lobbyist is retained in September to lobby a legislative interim committee. The lobbyist must register with Secretary of State prior to representing the employer before the interim committee. The lobbyist will list the current year on the form as the "Registration Year" and the current date when the lobbyist will begin providing services for the employer. If the lobbyist will continue to represent the employer in the following year, the lobbyist will have to fill out a renewal form for the employer, because the current year registration expires on December 31.

Example B: A lobbyist wants to assure registration is completed timely and decides to file registration prior to the month of January. The lobbyist may file in December, but indicate January 1 of the following year as the date services begin.

What happens when the Lobbyist information changes or, when the Lobbyist is no longer employed by a registered employer?

Within one week of a change to the information in your file, contact the Secretary of State and provide your changes. A termination form is available from the Ethics Bureau, and can also be found on the SOS website.

What are the responsibilities of a Lobbyist Employer?

Lobbyist employers are responsible for several components of the Act and are integral to assuring the campaign finance system is transparent.

Employer registration:

This is initiated by the employer making a lobbying expenditure without involving the lobbyist. For example, suppose the employer has dinner with a candidate to whom the employer decides to make a contribution, and the employer writes a business check to candidate at the end of the dinner. The employer does not report the contribution to lobbyist. Since the lobbyist does not have knowledge of the contribution and therefore does not report it, the employer must register with the SOS and report the contribution. Otherwise, said candidate reports the contribution from the employer that would not be reported elsewhere as an expenditure creating inconsistent reporting within the Campaign Finance Information System.

Employers who require lobbyists to turn over all receipts and information regarding expenditures are responsible for registration, filing, and maintenance of the records.

Further, the employer must register if the employer engages in lobbying separate from the purpose of the lobbyist. For example, assume an employer hires a lobbyist to engage in activity related to a specific subject matter. The lobbyist is not authorized by the employer to make political contributions or expenditures in support of or opposition to any other subject matter. If the employer lobbies for other issues independently, the employer must register and report lobbying activities pertaining to those other issues.

Employer Disclosures to Lobbyists:

Employers shall be aware of what they report to their lobbyists and assure they do not report the same expenditures as the lobbyist. This action will lead to double reporting and will create the appearance that a candidate received two contributions, but only reported one and in fact, only one contribution was made.

In order to avoid double reporting or non-reporting, employers are urged to timely provide their lobbyists with all expenditures and contributions made independent from the lobbyist and allow the lobbyist to correctly and timely report any lobbying-related contributions and expenditures.

Likewise, employers with multiple lobbyists shall not report single contributions and expenditures to multiple lobbyists. Instead, employers need to formulate an internal policy on how to best report expenditures to their various lobbyists. The SOS recommends employers report to lobbyists the expenditures incurred for supporting or opposing the specific subject matter for which each lobbyist is employed. For example, assume an employer has three lobbyists, one for environmental issues, public safety issues, and educational issues. The employer hosts a dinner of legislators discussing legislation related to revising the criminal code, which is a public safety matter. The employer should report that expenditure to the public safety lobbyist and not to either of the other lobbyists.

When do I file reports?

The Act requires lobbyists to file reports three times annually and within 48 hours of making an expenditure during the legislative session[3]. The deadlines to file the reports are:

- by 11:59 p.m. on the first Wednesday after the first Monday in October for all expenditures and political contributions made or incurred through the first Monday in October of the current year and not previously reported;.
- by 11:59 p.m. on January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;
- by 11:59 p.m. on the first Wednesday after the first Monday in may for all expenditures and political contributions made or incurred through the first Monday in May of the current year and not previously reported; and
- **Within 48 hours** for each separate expenditure made or incurred during a legislative session.
    - While the Act only requires that lobbyists report expenditures of $500.00 or more on the 48 hour reports during the legislative session, the SOS encourages lobbyist reporting of all expenditures to make the reporting system more transparent.

Timeliness of filing reports is important. Reports filed after the deadlines will accrue a $50.00 fine for each day the report is late. Reports are due by 11:59 p.m. on the day they are due.

Where do I file reports?

Lobbyists receive login information for the campaign finance reporting system once they are registered. Training sessions on the system are available through webinars scheduled throughout the year and upon request. SOS encourages lobbyists to become familiar with the CFIS system and statutory requirements to avoid errors in filing reports. Fines are levied for late reports, as well as reports that contain false or incomplete information.

What do I report?

NMSA 1978 §2-11-6 outlines what a lobbyist or lobbyist employer must report. The Act was amended with the passage of HB 105 of the 2016 Legislative Session. [3]

[3] House Bill 105 of the 2016 Legislative Session implemented a new filing deadline for the first Wednesday after the first Monday in October. Further, HB 105 mandates expenditures of one hundred dollars ($100.00) or more made or incurred by the employer or lobbyist during the covered reporting period, indicating the amount spent and a description of the expenditure and eliminates the allowance for bundling.

Lobbyists report any expenditure or political contribution that is:

- For the benefit of or in opposition to;
- A state legislator, a candidate for the legislature, a state public officer, a candidate for state public office, a board or commission member, or state employee;
- Who is involved in an official action;

- That affects the Lobbyist's employer; or
- In support of or opposition to a ballot issue, pending legislation, or official action.

A **political contribution** as defined in the Act is any provision of funds, promise of funds, or action which supports or opposes any candidate for the purpose of influencing any ballot item, whether candidate or question, that appears on either a primary or general election ballot.

Lobbyists are required to disclose the name of the employer providing a political contribution on their reports. This eliminates the confusion caused by a candidate reporting a contribution from the employer, while the expenditure is reported solely under the name of the lobbyist.

The SOS also encourages lobbyists and their employers to reconcile their political contributions and subsequent report filings with their bank records. Doing so will assist with internal bookkeeping, such as identifying a check that was not deposited, whether misplaced or never received, by the candidate and therefore not reported by the candidate.

Finally, please proofread your reports prior to filing them to avoid typographical errors and missed or duplicated entries.

Expenditure is also defined in the Act. Note that "expenditure" is defined differently in the Campaign Reporting Act used by candidates, elected officials, and PACs than for Lobbyists. For lobbyists, an expenditure is defined as a payment, transfer, or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include the following:

- A lobbyist's own personal living expenses;
- The expenses incidental to establishing and maintaining an office for lobbying activities; or
- Compensation paid to a Lobbyist by the Lobbyist employer.

What's in the report?

There are categories of reporting in NMSA 1978 §2-11-6(A)[3]; they are:

Each expenditure of $100.00 or more made or incurred by the lobbyist or employer during the covered reporting period, indicating the amount spent and a description of the expenditure. The list shall be separated into three categories:

- Meals and beverages;
- Other entertainment expenditures; and
- Other expenditures.

Political contributions made by the lobbyist or lobbyist's employer must include the amount, date, and candidate name or ballot issue the contribution supports or opposes.

Lobbyists must report the names, addresses, employers and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions. These

"other contributors" are individuals or entities, other than the lobbyist's employers, who use the lobbyist as a third party conduit for delivering contributions.

For special events to which all members of the legislature or legislative committees are invited, the lobbyist need not allocate an expenditure to each member of the group, but instead report the date, location, name of body invited, and the total expenses incurred. Special events include, but are not limited to parties, dinners, athletic events, other entertainment or functions
While the Act specifies only three categories of expenditures, lobbyists are encouraged to be detailed in this portion of the disclosure for transparency.

What supporting documentation do I need to retain?

The lobbyist or the employer must obtain and preserve all records, accounts, bills, receipts, books, papers, and documents necessary to substantiate the filings in the campaign finance reporting system.

The records have a retention period of two years from the date of filing the report to which the records relate. The lobbyist or the employer of such records must provide the Secretary of State or Attorney General with these records upon request.

Who else is required to register and file reports?

Any organization or individual acting as an organization who expends in excess of $2,500.00 in one calendar year, which is not otherwise reported by a lobbyist, on an advertising campaign for the purpose of lobbying must register and report. The Lobbyist Advertising Campaign Registration and the Lobbyist Advertising Campaign Reporting forms may be found at http://www.sos.state.nm.us/Lobbyist_Information/Lobbyist_Forms.aspx.

- Registration is required within 48 hours of passing the threshold amount of $2,500.00
- Registration includes, the organization name, its principals, organizers and officers with their addresses and occupations and whether any member of the organization is a lobbyist or a lobbyist employer.
- These organizations must report their expenditures, contributions, pledges to contribute and commitments to expend for the advertising campaign for the purpose of lobbying within 15 days of the conclusion of the legislative session as outlined in NMSA 1978 §2-11-6(I).

Is there a list of registered Lobbyists?

Yes, the SOS maintains an index of all registered Lobbyists and their employers in the campaign finance reporting system. The Lobbyist Index may be found at https://www.cfis.state.nm.us/media/.

What are the limits or restrictions applicable to Lobbyists?

There are several provisions of the Act, as well as other statutes that place limits on both lobbyists and their employers.

Contingency Employment: Lobbyists may not accept employment on a contingency basis whereby the lobbyist's compensation is based on the outcome of lobbyist contracted activities before the legislative branch, or on the approval or veto of any legislation by the governor. NMSA 1978 §2-11-8

The Prohibited Period: The Campaign Reporting Act specifically states a blackout period in which legislators or candidates for the legislature are prohibited from soliciting contributions either in person or through an agent. The Act has a corresponding period of time within which lobbyists are prohibited from making contributions or acting as an intermediary for others' contributions to members of the legislature, any statewide elected official, or a candidate.

The prohibited period is based on the dates of regular and special legislative sessions. Each year the prohibited period begins on January 1 and ends upon the adjournment of the session for members of the legislature, statewide officials (except the governor), and candidates. When a special session is called, the period begins upon issuance of the proclamation and ends when the special session adjourns. The prohibited period for contributions to the governor ends on the twentieth day following adjournment of the legislature, regardless of whether it is a regular or special session. NMSA 1978 §2-11-8.1

Contribution Limits: Contribution limits apply to lobbyists. For the 2016-17 election cycle, the contribution limits are as follows:

- From an individual (person/entity) to a candidate for a non-statewide office: **$2,600**
- From an individual (person/entity) to a candidate for a statewide office: **$5,700**
- From a person not including a PAC to a PAC: **$5,700**
- From a PAC to a candidate or another PAC: **$5,700**

Campaign Work: Lobbyists are prohibited from serving as a chairman, treasurer, or fundraising chair for a candidate for the legislature or statewide office. NMSA 1978 §2-11-8.1(A)

The Gift Act: While the SOS does not regulate or administer the Gift Act, we advise all lobbyists to abide by the Act. For further information on the Gift Act, please contact the Office of the Attorney General.

What type of action is being taken regarding harassment?

The SOS will provide resources to combat this issue and ensure a professional and productive work environment throughout the legislative process. We encourage you to take advantage of the useful tools being provided through our office and partners in this initiative. You may find helpful information and training resources on our website at www.sos.state.nm.us.

We are now asking lobbyists to provide information to our office of their existing sexual harassment policies and training. Please complete the appropriate check box found on all registration related documents. Your responses will be made available to the public in a searchable format on our website.

What happens if I don't comply with the Act?

The SOS is required to advise and educate all persons required to perform duties under the Act. Further, the SOS shall seek to ensure voluntarily compliance of the Act and failure to comply could result in negative consequences, including fines, suspension of your lobbyist registration, and referral to a district attorney or attorney general for injunctive enforcement.

Any lobbyist or lobbyist employer who files a report after the deadline imposed by the Act, or any person who files a false or incomplete report, shall be liable for and pay $50.00 per day for each regular working day after the deadline up to a maximum of $5,000.00.

In addition to any other penalties, any person who knowingly and willfully violates any provision of the Act shall be fined up to $5,000. Further, the lobbyist's registration may be revoked and suspended for up to three years.

Complaints: The SOS also receives and investigates complaints regarding violations of the Act. Additional information on our complaint process can be found on our website.