



Lawyers Alliance
for New York

Connecting lawyers, nonprofits, and communities

MEMORANDUM

TO: Clients and Friends

FROM: Lawyers Alliance for New York

RE: NYC Lobbying Law Amendments—Local Laws 15, 16 and 17

DATE: June 22, 2006

On June 13, 2006 Mayor Bloomberg signed into law three bills that amend the New York City Lobbying Act (the “Lobbying Law”) and local campaign finance laws. Highlights of the new laws include: (i) the enhancement of the New York City Clerk’s authority to enforce the law, including to prosecute violations of the law, (ii) the requirement for greater specificity and greater disclosure in reporting lobbying activity, (iii) the doubling of maximum penalties for violations and addition of penalties for late filed statements and reports, (iv) the application of the law in significant ways to spouses, domestic partners and unemancipated children of lobbyists, as well as others not previously affected by the Lobbying Law, (v) the prohibition of gifts by lobbyists and others to public servants and (vi) the elimination of public matching funds for contributions by lobbyists and others.

Mayor Bloomberg and City Council Speaker Quinn first publicized the amendments, a bi-partisan effort, on February 16, 2006. Three pieces of draft legislation were introduced at City Council, were subsequently amended several times, and passed City Council vote on May 25, 2006: Int. No. 190-A, which relates to reporting of lobbyist activities and enforcement of the lobbying law, Int. No. 191-A, which relates to gifts by lobbyists, and Int. No. 192-A, which relates to campaign contributions by lobbyists. In signing the three bills, which became Local Law 15, Local Law 16 and Local Law 17, respectively, Bloomberg articulated a desire to “strengthen the integrity of government by raising the standards by which we are bound.”¹

This memorandum discusses the provisions of Local Laws 15, 16 and 17 that are pertinent to nonprofits that lobby in New York City.

¹ Mayor's Office Press Release, PR-199-06, June 13, 2006.

I. Current Law

The New York City Lobbying Act² defines “lobbying” activity as “any attempt” to influence: i. the passage or defeat of any local law or resolution by the city council; ii. the approval or disapproval of any local law or resolution by the mayor; iii. any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services, or construction; iv. zoning or land use determinations by the mayor, city council, city planning commission, a borough president, a borough board or community board; v. determinations as to the disposition or lease of real property by the city or with respect to a franchise concession or revocable consent; vi. the adoption, amendment or rejection of any agency rule having the force of law; vii. the outcome of any ratemaking proceeding before a city agency; or viii. any determination of a board or commission. The Lobbying Law applies to both individual lobbyists and their employers. Lobbyists and lobbying clients, including nonprofit organizations, that spend more than \$2,000 in a calendar year for the purposes of lobbying must register as lobbyists and file periodic and annual financial disclosure reports with the New York City Clerk.

The City Clerk is responsible for enforcing the current Lobbying Law. With limited staff and other responsibilities, the City Clerk does little more than collect lobbying statements and reports. We are not aware of any lobbyist, whether a nonprofit organization or a private lobbying firm, having been subject to penalties for lobbying violations. The City Clerk’s lack of enforcement is in contrast to the actions of the New York Temporary State Commission on Lobbying, which has been known for active enforcement in recent years.

II. Local Law 15: Reporting of Lobbyist Activities and the Enforcement of the Lobbying Law

To increase the City Clerk’s monitoring and enforcement capabilities, the legislation:

- directs the City Clerk to perform random audits of the statements and reports required to be filed by lobbyists and clients, prepare and post on the internet an annual report relating to the administration and enforcement of the law no later than March 1 of each year and post on the internet information identifying a lobbyist or client who committed a violation.
- requires that any statements or reports that are required to be filed must be filed by electronic transmission and both requires the City Clerk to conform the periodic report forms to those of the New York Temporary State Commission on Lobbying and permits the City Clerk to modify the existing filing schedule for such reports.

² NYC Admin. Code Title 3, §3-211 *et seq.*

- requires statements of registration to list the name, address and telephone number of the lobbyist and spouse or domestic partner and unemancipated children of the lobbyist, and for organization lobbyists, such information for any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees *but* provides that "the addresses and telephone numbers of spouses, domestic partners and unemancipated children shall not be made available to the public but may be accessed by the campaign finance board for the sole purpose of determining whether a campaign contribution is matchable."
- requires statements of registration and periodic reporting requirements to include information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist is lobbying or expects to lobby.
- requires a fundraising and/or political consulting report for any registered lobbyist that engages in fundraising or political consulting activities.
- doubles the existing penalties for violations from either ten to twenty thousand dollars or fifteen to thirty thousand dollars and permits the City Clerk to assess penalties for late filing of any statement or report.
- authorizes the City Clerk to report what it deems to be a willful violation to the Department of Investigation.
- authorizes the Department of Investigation to provide training assistance to the City Clerk personnel with respect to administration and enforcement.
- requires the Mayor and City Council to jointly appoint a commission to review and evaluate the activities and performance of the city clerk in implementing the provisions within two years after the effective date of the proposed legislation.

For the most part, this law is effective on the 180th day from the date the three bills were signed by Mayor Bloomberg (which occurred on June 13, 2006), except for (1) the requirement that registered lobbyists file fundraising and/or political consulting reports and the requirement that statements and reports be filed electronically, which are effective one year from the laws' enactment, and (2) the provision requiring the appointment of a commission, the deadline for which is within two and one-half years of the legislation's enactment. We have attached to this memorandum a chart setting forth the effective dates for various provisions of each of the Local Laws discussed herein.

1. Greater disclosure.

The new law's requirement for broader disclosure on statements of registration may be viewed as burdensome and unduly intrusive. A registered lobbyist and certain officers and employers of the lobbyist will have to disclose the name, address and phone number of spouses or domestic partners and unemancipated children on a statement of registration. Under the new law, statements and reports will be publicly available in electronic form. Fortunately, just prior to passing the bill, City Council included language to protect the privacy of telephone numbers and addresses (but not the names) of spouses, domestic partners and unemancipated children, providing that such information will only be available to the campaign finance board for purposes of determining whether contributions to political campaigns can be matched from public funds.

However, an organization lobbyist must disclose the name, telephone number and address of any employee or officer "who engages in any lobbying activities." There is no requirement here that the lobbying activities have to be on behalf of the organization. A lobbyist must also disclose this information about employees and officers employed in an organization's division that engages in lobbying activities of the organization and their spouse or domestic partner and/or unemancipated children. The new law fails to define what a "division" is in this context and therefore potentially affects all employees of a lobbying organization and certain of their immediate family members. In addition, the privacy protection extended to spouses, domestic partners and unemancipated children does not extend to the officers and employees themselves.

The new law also requires the subject of lobbying to be described with increased specificity. Paragraph 5 of subdivision (c) of section 3-213 of the administrative code has been amended to delete the word "general" in brackets and add the underlined language as follows: "a description of the [general] subject or subjects on which the lobbyist is lobbying or expects to lobby, including information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist is lobbying or expects to lobby."

The goal seems to be to prevent lobbyists from providing such vague information so as to render useless the reports of their lobbying activity. This provision is comparable to section 1-h(b)(3) of the New York State Lobbying Act, which requires lobbyists to report "a description of the general subject or subjects" *and* "the legislative bill number of any bills" that are the subject of the reported activity. It appears that this requirement would be satisfied by reference to proposed legislation's introductory number, existing legislation's section of the administrative code or, if the subject relates to a proposed budget, by reference to the budget as a whole without requiring further information. However, what is not clear is the information required as to any proposal that has not yet been formally introduced, including (but not limited to) advocacy on behalf of ideas that are not currently the subject of an existing provision of the Administrative Code.

2. Enforcement mechanisms. As noted above, the old Lobbying Law was not enforced by any government agency, resulting in widespread noncompliance by

legislative advocates of all kinds, including nonprofits. The new law alters that situation by creating two enforcement mechanisms in two different city agencies.

The new law authorizes and directs the City Clerk to conduct random audits of lobbyists and lobbying clients, with training from the Department of Investigation. The office of the City Clerk will be required to post information about offenders on its web site and to report “knowing and willful” violations to the Department of Investigation. Upon referral from the City Clerk, the Department of Investigation will have the authority to assess more severe penalties and pursue misdemeanor criminal penalties (presumably by referral to the appropriate District Attorney).

What remains to be seen is the funding for these enforcement mechanisms, presumably to be found in separate budget legislation. “Random audits” cannot be conducted to any meaningful extent without a staff to perform the field work necessary to determine the facts that are (or are not) reflected in filings by lobbyists and their clients.

3. Determination of penalties. The new law doubles the amounts of the existing penalties for violations. The amendment to Section 3-323 Penalties would change “fifteen” thousand to “thirty” thousand for “knowing and willful” violations and “ten” thousand to “twenty” thousand for other violations. Civil penalties would continue to be available only upon 14 days notice and an opportunity to be heard at a hearing. In addition, the statute would continue to provide for misdemeanor criminal penalties for the former, more serious offenses. The City Clerk would also continue to have the authority to issue an order to violators to cease all lobbying activity for a period of up to sixty days.

The new law creates an ambiguity with respect to the City Clerk’s authority to impose penalties for late filed statements and reports. It permits the City Clerk to impose a schedule of penalties for late filed statements and reports that conforms to the schedule imposed by the New York Temporary State Commission on Lobbying. The problem is that the state’s late penalties apply automatically, whereas the City’s new and old law contemplate that the City Clerk first notify the lobbyist or client of a failure to file a statement or report and wait fourteen business days before assessing a penalty. It is unclear how the City Clerk will address this inconsistency and how late penalties will be assessed under the new law.

According to testimony at a public hearing on the bills held earlier this year, there have never been any penalties imposed by the City Clerk for violations of the Lobbying Law. Therefore, it is not clear how penalties would be determined. Depending upon the exercise of enforcement discretion, these penalties are likely to have a more substantial impact on small nonprofit organizations than on private lobbying firms and their commercial clients.³ However, it is unlikely that the ability of an organization to pay any penalty will be foremost (or even relevant) in the exercise of that discretion. Much more

³ In its testimony, the Campaign Finance Board suggested that there should be further consideration as to whether nonprofit organizations should be treated the same way as for-profit lobbyists. This concern was apparently not heeded by City Council.

likely factors are the perpetrator's history of previous violations and perceived sophistication in their ability to comply with the statute.

4. Filing Schedule for Periodic Reports. The new law requires the City Clerk, to the extent practicable, to make the city's periodic reports identical in form to the periodic reporting forms used by the New York Temporary State Commission on Lobbying. It also authorizes the City Clerk to change by rule the reporting periods to conform to the reporting periods that apply under the New York State Lobbying Act. A staff member of the New York Temporary State Commission on Lobbying has indicated that such a rule is likely, in which case lobbyists would need to file six periodic reports with the City Clerk rather than the four reports required under the old lobbying law.

III. Local Law 16: Gifts by Lobbyists

The new law has a new subchapter entitled, "Prohibition of Gifts by Lobbyists" that provides that no person required to be listed on a lobbyist statement of registration shall offer or give a gift to any public servant. This provision is effective on the 180th day after Mayor Bloomberg signed the bills into law.

1. Persons Covered. Because, as discussed above, the range of individuals required to be listed on a registration statement is very broad, this prohibition will have wide affect across the nonprofit sector and outside of it. Individuals who have no involvement in an organization's lobbying will be subject to this gift ban. Casting such a wide net may capture persons who are violating the law unwittingly.

2. Definition of gift. The law offers little specific guidance on the meaning of this provision. Instead, authority to interpret the language has been delegated to the Conflicts of Interest Board.

Section 3-228 "The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including *de minimis* gifts, such as pens and mugs, gifts that public servants may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with rules and advisory opinions of such board governing receipt of valuable gifts by public servants."

At the City Council Committee on Governmental Operations public hearing on April 4, 2006, council members expressed considerable concern over the definition of "gift." Some of the council members wanted the definition of gift to match the current \$50 limit of what public servants can receive.⁴ Based on the questions asked by council members

⁴ Pursuant to section 2604(b)(5) of the New York City charter, a public servant cannot accept "any valuable gift, as defined by rule of the [Conflicts of Interest] board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family

and the testimony of the public at the hearing, it seems likely that *de minimus* benefits such as a breakfast at a widely attended public event or an insubstantial gift such as a mug or a cap would not be considered a prohibited gift under the rules that will be promulgated by the conflicts of interest board. There was a strong sentiment at the public hearing for guidance in the legislation or legislative history to assist the conflicts of interest board in drafting the rules regarding the prohibition of gifts.

The law imposes a three-tiered civil penalty for “knowing and willful” violations of this prohibition, which increase with each subsequent violation and will not exceed thirty thousand dollars, and deems second and subsequent “knowing and willful” violations to be a Class A misdemeanor. Complaints shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest.

IV. Local Law 17: Campaign Contributions by Lobbyists

Effective June 13, 2006, this bill amended section 3-720 of the administrative code to prevent the matching of contributions from “lobbyists or other persons required to be included in a statement of registration” to candidates participating in the city’s optional public financing program. The campaign finance program provides \$1,000 in public funds for every \$250 contribution. The following language, proposed as an amendment to section 3-702 Campaign Financing, broadens the definition of lobbyist.

16. The term “lobbyist” shall mean a lobbyist as defined in section 3-211 of this title and the spouse or domestic partner and unemancipated children of such lobbyist and if the lobbyist is an organization, the term “lobbyist” shall mean only that division of the organization that engages in lobbying activities and any officer or employee of such lobbyist who engages in lobbying activities of the organization or is employed in an organization’s division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children.⁵

This highly unusual law creates a nexus between two forms of activity that are regulated separately in every other statutory scheme – legislative lobbying and political campaign contributions. It is based on the belief that political campaign contributions improperly influence legislative decisions, and by its passage the city will be “promoting government integrity by reducing candidates’ reliance on contributions from special interests.” The campaign finance board is entitled to rely on the City Clerk’s database to determine which contributions can be matched and which cannot.

and social occasions.” Pursuant to 53 RCNY section 1-01 (Title 53- Rules of the City of New York) the Conflicts of Interest Board has defined “valuable gift” as “any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.”

⁵ The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. NYC Admin. Code Title 3, §3-211(a).

1. Impact on employees of nonprofits that are registered lobbyists and others. Section 501(c)(3) of the Internal Revenue Code prohibits organizations described under such section from contributing to political campaigns. On its face, the bill regarding political contributions would not seem to affect 501(c)(3) organizations. However, the inclusion of a broader definition of “lobbyist” and of persons required to be listed on a registration statement results in very broad applicability. For example, the law covers employees of an organization’s “division” that engages in lobbying activities. The private contributions by such an employee, his or her spouse or domestic partner, and unemancipated children would not be eligible for matching of public funds. This is not to say that the covered persons are prohibited from making the contribution, only that any such contribution will not be matched with public funds. Nevertheless, testimony by the New York City Bar Association at the April 4, 2006 public hearing mentioned a concern that there may be equal protection implications where a distinction is drawn between the contribution of a lobbyist and a non-lobbyist for purposes of matching contributions with public funds.

V. Conclusion

On the whole, the amendments have been described in press accounts as a positive, good-government reform.⁶ Although there is general consensus that these efforts are valuable, there is also concern that portions of the legislation are too vague or too broad.

Lawyers Alliance advises nonprofit organizations on business law matters, including compliance with laws regulating lobbying, and holds dozens of workshops on nonprofit law issues. If you have any questions about the recent amendments or any other business law needs, please contact Staff Attorney Sunita Subramanian at 212/219-1800, extension 232.

⁶ See, e.g., *A Step Toward Lobbying Reform* (New York Times, February 26, 2006).



NEW YORK CITY LOBBYING ACT

EFFECTIVE DATES OF 2006 AMENDMENTS

Prepared by: Lawyers Alliance for New York

Local Law Provision	Effective Date
<p>Campaign contributions to a candidate for public office by lobbyists and other person required to be included in a statement of registration are not matchable. <i>Proposal Int. No. 192-A, all provisions</i></p>	<p>Effective as of June 13, 2006⁷</p>
<p>Prohibition on gifts by lobbyists to any public servant and related provisions on adjudications of and penalties for violation of the law. <i>Proposal Int. No. 191-A, all provisions</i></p>	<p>180th day after enactment, or December 10, 2006</p>
<p>Enhanced enforcement authority for city clerk’s office, including mandate to conduct random audits.</p> <p>Requirement that city clerk post (i) an annual report relating to administration and enforcement of the lobbying law and (ii) the names of any lobbyist and client that is directed to cease lobbying activity or that is assessed a civil penalty. <i>Proposal Int. No. 190-A, § 2</i></p>	<p>180th day after enactment, or December 10, 2006</p>
<p>Increased disclosure in annual registration statement of lobbyist as to spouses or domestic partners and unemancipated children of (i) individual lobbyists and (ii) officers and employees of organization lobbyists who engage in any lobbying activities or who are employed in the organization’s division that engages in lobbying activities of the organization.</p> <p>Increased disclosure on registration statement and periodic reports and client annual report relating to law, resolution, procurement, etc. on which the lobbyist expects to lobby. <i>Proposal Int. No. 190-A, §§ 4, 8, 12</i></p>	<p>180th day after enactment, or December 10, 2006</p>

⁷ Mayor Bloomberg signed the bills into law on this date.

<p>Periodic reporting forms will be identical to the forms used by NYS and reporting periods may be conformed to those under the NYS Lobbying Act. <i>Proposal Int. No. 190-A, § 7</i></p>	<p>180th day after enactment, or December 10, 2006</p>
<p>Increased financial penalties for violations of the NYC Lobbying Act and imposition of late penalties for late filing of statements and reports. <i>Proposal Int. No. 190-A, § 15</i></p>	<p>180th day after enactment, or December 10, 2006</p>
<p>Department of Investigation to assist the city clerk to train personnel who will be responsible for administering and enforcing the NYC Lobbying Act and the city clerk shall develop compliance programs for lobbyists and clients. <i>Proposal Int. No. 190-A, § 16</i></p>	<p>180th day after enactment, or December 10, 2006</p>
<p>Lobbyist registration statements and periodic reports and client annual reports will be available in electronic form for public inspection in clerk's office. <i>Proposal Int. No. 190-A, §§ 3, 9, 13</i></p>	<p>180th day after enactment, or December 10, 2006</p>
<p>Fundraising and/or political consultant report required for any lobbyist required to register with the city clerk and who in the same calendar year or in the six months preceding such year engages in fundraising and/or political consulting activities. <i>Proposal Int. No. 190-A, § 10</i></p>	<p>One year from date of enactment, or June 13, 2007</p>
<p>All statements and reports required under the NYC Lobbying Act shall be filed in electronic form and shall be posted on the internet by the city clerk as soon as practicable after filed. <i>Proposal Int. No. 190-A, § 14</i></p>	<p>One year from date of enactment, June 13, 2007</p>
<p>Commission to be appointed to review and evaluate city clerk's performance. <i>Proposal Int. No. 190-A, § 2</i></p>	<p>Twenty-four months after date of enactment, or December 10, 2008</p>
<p>Commission to issue a report to the mayor and city council on its review and evaluation of the city clerk's performance. <i>Proposal Int. No. 190-A, § 2</i></p>	<p>Six months after its appointment.</p>