

**CLIENT ALERT: July 31, 2009 – Updated October 5, 2009**

**CLIENT ALERT: CHANGES TO STATE LOBBYING LAWS**

On July 1, 2009, the “Act to Improve the Laws Relating to Campaign Finance, Ethics and Lobbying”<sup>1</sup> was signed into law by Massachusetts Governor Deval Patrick (“New Law”). The New Law amends several statutes including the lobbying laws set forth in Massachusetts General Laws Chapter 3, Sections 39 to 50 (the “Lobbying Laws”). It includes more stringent provisions intended to tighten governmental regulation of lobbying and other specified activities.<sup>2</sup> The effective date of the lobbying provisions of the New Law has been extended to January 1, 2010.

The New Law clarifies the definition of an executive or legislative agent (“Lobbying Agent”) from those previously set forth in the Lobbying Laws as follows:

- A Lobbying Agent is an individual engaged in lobbying activities, which now must include at least one communication with a government employee to qualify as lobbying; and
- An individual who performs incidental lobbying is not a Lobbying Agent; lobbying is incidental if the individual performs the lobbying activities for not more than 25 hours and receives less than \$2,500 in a six month period (changed from the prior threshold of not more than 50 hours or receives less than \$5,000 in each six month reporting period). Both conditions must be met in order for the “safe harbor” for incidental lobbying to apply.

Lobbying activities may include “strategizing, planning, and research if performed in connection with, or for use in, an actual communication with a government employee.”

The New Law also requires Lobbying Agents to comply with the following new obligations:

- Complete an annual training program;
- Obtain a license, renewable annually; and

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<sup>1</sup> The New Law is codified as Chapter 28 of the Acts of 2009. This Client Alert analyzes the most salient changes in the New Law as it affects the Lobbying Laws, and does not summarize modifications of laws other than the Lobbying Laws or every modification of the Lobbying Laws. Please see the link at <http://www.mass.gov/legis/laws/seslaw09/s1090028.htm> for the full text of the New Law.

<sup>2</sup> This Client Alert analyzes changes to the lobbying provisions of the New Law; it does not analyze the ethics, campaign finance, or public meeting law provisions.

- Include more detailed information in their reporting statement.<sup>3</sup>

The New Law also establishes higher penalties for late filings<sup>4</sup> than those previously set forth in the Lobbying Laws and a new process for disqualification of Lobbying Agents.<sup>5</sup> A person who may be subject to the New Law may request an advisory opinion from the state secretary regarding the requirements of the New Law. There are also new enforcement procedures and higher penalties for violations.<sup>6</sup> Equitable or mandamus relief is now available from the Supreme Judicial Court for lobbying violations.<sup>7</sup>

The Supreme Judicial Court or Superior Court may, upon application of the Attorney General, grant equitable or mandamus relief to enforce the prohibitions on offering or giving of or paying for gifts or other items. Such relief may include an order to pay the Commonwealth an amount equal to the value of any compensation or item paid in violation of these provisions, and a penalty of up to \$10,000 for each violation of any of the lobbying laws.

The following are some of the key requirements of the Lobbying Laws that are not changed by the New Law:

- The prohibition on agreements to influence decisions of executive branch employees or legislation for any compensation or other thing of value;
- The obligation for Lobbying Agents to file an itemized statement of campaign contributions and other expenditures;
- The prohibition against gift giving by Lobbying Agents to public officials or employees;
- \*The obligation for clients of Lobbying Agents to register with the state secretary;

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<sup>3</sup> Lobbying Agents must report the following: (i) the identification of each client for whom the Lobbying Agent provided lobbying services; (ii) a list of all bill numbers and names of legislation and other governmental action that the Lobbying Agent acted to promote, oppose or influence; (iii) a statement of the Lobbying Agent's position, if any, on each such bill or other governmental action; (iv) the identification of the client or clients on whose behalf the Lobbying Agent was acting with respect to each such bill or governmental action; (v) the amount of compensation received for lobbying services; and (vi) all direct business associations with public officials.

<sup>4</sup> The penalties that can be imposed for late filing under the New Law are increased to \$50 per day up to the twentieth day and an additional \$100 per day for every day after the twentieth day until the statement is filed.

<sup>5</sup> The New Law requires that there be a preliminary inquiry followed by an adjudicatory proceeding prior to making a finding of violation by the state secretary.

<sup>6</sup> Violations of the lobbying provisions of the New Law are now punishable by a fine of up to \$10,000 or by imprisonment in state prison for up to five years, or in a jailor house of correction for not more than 2 ½ years, or both.

<sup>7</sup> The equitable and mandamus relief provisions provide for the imposition of a penalty of up to \$10,000 for each violation of any of the lobbying laws.

<sup>8</sup> The New Law retains the provision for an exception for certain not-for-profits, as follows: The state secretary may "in his discretion and upon written request, waive the filing fees not [sic] a not-for-profit client or a lobbyist entity which registers to exclusively represent not-for-profit clients."

- \*The obligation of organizations attempting to influence legislation or executive action, which expend in excess of \$250 during the calendar year for lobbying activities, to submit reports of itemized expenditures to the state secretary;
- \*The obligation of employers of Lobbying Agents to register with the state secretary; and
- The obligation to pay annual filing fees, as follows: lobbyist entities must pay \$1,000 to register; each Lobbying Agent must pay \$100, and each client must pay \$100 for each lobbyist entity hired by them.<sup>8</sup>

\* Note that an organization may fall within more than one category. For example, it may qualify as both a client of a Lobbying Agent and as an organization attempting to influence legislative or executive action; or may qualify as a client of a Lobbying Agent (which it contracts with) and an employer of a different Lobbying Agent. If an organization falls within more than one category, it must register in each capacity.

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