LOBBYING COMMISSION

FINAL REPORT OF THE NEW YORK CITY LOBBYING COMMISSION

February 27, 2013

CHAIR
Hon. Herbert Berman

MEMBERS
Jamila Ponton Bragg
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EXECUTIVE SUMMARY

In early 2006, Mayor Michael Bloomberg and New York City Council ("Council" or "City Council") Speaker Christine C. Quinn introduced legislation to strengthen New York City's laws regulating lobbyists (the "Lobbying Laws"). In hearings on the three pieces of legislation that eventually overhauled the Lobbying Laws, it became clear that the City's system was barely functioning. The New York City Clerk (the "Clerk," or the "Clerk's Office"), the agency in charge of lobbyist registration, was essentially a repository for the filings of the approximately 250 lobbyists who voluntarily chose to comply with the law. The filings were done on paper and not readily accessible to the public, and the Clerk had never assessed penalties against any lobbyist for non-compliance. The only lobbying data regularly available to the public was an annual list of the City's lobbyists ranked by earnings.

The goals of the legislation adopted by the Council and signed by the Mayor in June of 2006 were to: (1) strengthen enforcement of the Lobbying Laws; (2) create an electronic system for lobbyist filings; (3) increase transparency by making those filings and information about the operation of the Clerk's Lobbying Bureau more accessible to the public; and (4) limit the appearance of undue influence by banning gifts from lobbyists to public officials and preventing political contributions from lobbyists from being matched with public financing. The 2006 legislation did not change the main scope of, or any of the principal substantive definitions in, the Lobbying Laws. The apparent reason for this is that there had been so little experience in the actual application of those definitions and laws, that there was not enough information to make intelligent changes without the risk of unintended consequences.

The 2006 legislation called for the formation of the present joint Mayoral-Council Commission to (1) recommend any changes to strengthen the administration and enforcement of the Lobbying Laws; (2) evaluate whether or not the dollar threshold that triggers the obligation to file as a lobbyist should be increased; and (3) review and evaluate the activities and performance of the Clerk, who is charged with implementing the Lobbying Laws.

In February 2011, the Council and the Mayor appointed five members to serve on the Lobbying Commission, and since March 2011, the Commission has been reviewing the City's Lobbying Laws and the activities and performance of the Clerk. While the City's regulatory scheme for lobbyists is not perfect, it has become an actual, functioning regulatory apparatus that largely meets the goals of the amended Lobbying Laws. Since 2006, the number of registered lobbyists has increased by approximately 50% to 365.[1] The Clerk has levied over $1.1 million in penalties and fines against lobbyists who have submitted required registration statements and other filings after the statutory deadlines. The Clerk's Office investigators, who have been trained by the City's Department of Investigation ("DOI") on audit and investigatory practices, have conducted and completed over 100 audits of lobbyists. The "e-Lobbyist" electronic filing system has been implemented, hundreds of lobbyists have been trained to use it , and the Clerk has sent out over 1,500 notification letters to those who may be subject to the registration

[1] Memorandum from the Lobbying Bureau, Office of the City Clerk, to the Lobbying Commission, April 26, 2011 (attached to this Report as Exhibit B). Under the City's Lobbying Laws, lobbying firms register as a single entity, listing all individual lobbyists employed by the firm, thus the number of individual lobbyists who lobby the City is significantly higher. In addition, according to the Clerk, as of February 29, 2012, a total of 925 lobbyists have enrolled in the e-Lobbyist system since it became operational. However, not all of those enrolled have filed a statement of registration each calendar year. (Clerk's 2011 Annual Report- March 1, 2012)

requirements of the Lobbying Laws, but are not registered.[2] In addition, the Clerk reports annually on its general enforcement activities.[3]

After hearing extensively from those responsible for enforcing the Lobbying Laws, those subject to its requirements, and good government groups who follow the City and State lobbying laws closely, the Commission issued a Preliminary Report on August 9, 2011. On September 8, 2011 the Commission held a public hearing to solicit comments on the Preliminary Report. This Final Report of the New York City Lobbying Commission ("Final Report") contains the recommendations of the Commission to the Mayor and Council for strengthening the administration and enforcement of the Lobbying Laws and increasing the dollar threshold for registration. The recommendations will, in the view of the Commission, constitute the next steps to further achieving the goals set out by the Mayor and Council when they proposed and enacted the 2006 reforms to the Lobbying Laws . Those recommendations fall into four broad areas:

- Expand, and where necessary, clarify the definition of "lobbying activities" to cover additional types of advocacy activities and at the same time increase the dollar threshold so that smaller organizations, whose advocacy on their own behalf is minimal, will no longer have to register;

- Enhance the education and outreach activities by the Clerk so that those engaged in the activities covered by the expanded scope of the law and those currently operating outside of the system are aware of their filing obligations;

- Enhance enforcement efforts to target unregistered and non-compliant lobbying and bring unregistered lobbyists into the City's system; and

[2] This information on the number of penalties and fines, audits and other enforcement and outreach activities by the Clerk contained in this Final Report covers only those actions and activities up to the date of the Clerk's testimony and submission to the Commission. The Clerk's Lobbying Bureau Annual Report dated March 1, 2012 contains additional penalties and fines, audits, other enforcement and outreach efforts, some of which may have occurred after the testimony and submissions by the Clerk to the Commission.

[3] *See, e.g.,* Clerk's Lobbying Bureau Annual Report, March 1, 2011 and March 1, 2012.

- Require continuing technological changes and increase the availability of public information to facilitate the filing process and increase transparency surrounding lobbying activities in New York City.

What follows is a summary of those proposals:

1. Proposals to increase the dollar threshold and clarify and expand the definition of lobbying

   - **The dollar threshold that triggers the requirement to register should be raised from $2,000 to $5,000, and the filing process should be simplified for those organizations who expend between $5,000 and $10,000 on lobbying solely on their own behalf;**

   - **The law should be clarified to ensure that lobbying on legislation does not require the existence of an actual introduced piece of legislation; and further clarified to ensure that lobbying can occur without proposed rules or rates being published or without a proposal or formal agenda item before a board or commission;**

   - **The definition of lobbying should be extended to include attempts to influence the Council to conduct or refrain from conducting oversight or investigations and to include attempts to influence Mayoral Executive Orders;**

   - **Although the current law requires professionals such as architects, engineers, planners and financial experts to register if they are advocating on behalf of a client and reach the $2,000 threshold, it appears that there may be a failure to register because these professionals may view their role as purely "technical" in nature. The Commission recommends that the Lobbying Laws be amended to clarify which activities of architects and engineers do not constitute "lobbying activities." These amendments would include exemptions from inclusion in the definition of "lobbying activities" for: (1) design work and drafting of plans even if followed or preceded by contacts with City officials; (2) appearances before Community Boards when attempts to influence the ultimate determination on which the Community Board is making its recommendation would not be considered lobbying; (3) attempts to influence Boards or Commissions or other City Officials on Capital Projects under the direction of a City agency where those attempts are made by agents of the City; and (4) certain land use actions viewed as minor in the context of the goals of the Lobbying Laws identified by the City Clerk by rule that will be guided by explicit standards and factors set forth in the law. Significant outreach, education and training around this issue should be directed at those professionals to educate them prior to commencement of enforcement activities against unregistered lobbyists in these types of professions.**

2. Proposals to enhance education and outreach by the Clerk on the expanded reach of the law and to segments of the lobbying industry currently operating outside of the system

   - **Training should be required every two years for all registered lobbyists, to be administered by the Clerk. At such point as an anti-corruption component for an on-line training can be developed by the Clerk, DOI and DoITT, it should be included in the required training;**

   - **The Clerk's Lobbying Bureau should have a designated full-time staff person responsible for conducting education and outreach not just to registered lobbyists, but in venues where there are likely to be people who may be subject to the requirements of the Lobbying Laws but may not be registered.**

3. Proposals to enhance enforcement efforts for targeting unregistered and non-compliant lobbying and bring unregistered lobbyists into the City's registration system

   - **The Lobbying Laws should be amended to allow the Clerk to exercise limited discretion to waive or reduce late filing penalties but only when certain specifically enumerated factors, based upon documentation supplied to the Clerk, are found to mitigate the imposition of the penalties;**

   - **Legislation should provide for a one-time amnesty from late filing and civil penalties for new registrants under the Lobbying Laws who have never previously registered;**

   - **This one-time amnesty should be coupled with a new protocol for the Clerk to proactively identify individuals and organizations that should be registered as lobbyists.**

4. Proposals to require technological changes to facilitate filing and increase the availability of information about lobbying activities in New York City

   - **Changes should be made to e-Lobbyist that will make the system even more accessible to lobbyists and clients, including more pre-population of screens to capture information from prior reports and more use of drop down screens so that information is more uniform;**

   - **More information from the e-Lobbyist system should be publicly available and in an easily searchable format;**

   - **The Lobbying Laws should be clarified to ensure that lobbyists are required to report both the person before whom the lobbyist is lobbying and the agency;**

- **The Clerk should report more information about lobbying activities and benchmarks on the operations of the Clerk's office, such as the number of phone calls and emails received by the Lobbying Bureau for assistance, the response time to these inquiries and the number of first time filers. In addition, the Clerk's Office should report on issues or legislation that were the subject of the most intense lobbying, entities or officials most lobbied and other "macro" trends[4];**

- **The City should ensure that all lobbyists are listed in the Doing Business Database, even when granted a filing extension by the Clerk. If the e-Lobbyist system cannot be coordinated with the Doing Business Database, the Clerk should be required to provide information on extensions directly to the Doing Business Database to ensure that limitations on campaign contributions are observed;**

- **The City should call on the State to accept the City filings for those lobbyists who file with the State solely by virtue of their lobbying activities in New York City.**

Finally, three to four years after legislation is enacted making any, or all, of these changes to the Lobbying Laws, another lobbying commission should be empanelled to review the operations of the revised laws and the Clerk's administration of the Lobbying Laws.

INTRODUCTION

In 2006, the Council Speaker and the Mayor announced an overhaul of the laws regulating lobbying in New York City. Lobbying activity in New York City had increased dramatically over the prior decade, and the overhaul came in the wake of allegations that a federal lobbyist used gifts and campaign contributions to influence federal executive and legislative branch officials. The Speaker and the Mayor responded by introducing, passing and signing into law a package of legislation designed to strengthen the integrity, transparency and

[4] We note and commend the Clerk for closely following the proceedings of the Commission and beginning to implement changes prior to the issuance of our final recommendations. The Clerk's most recent Lobbying Bureau Annual Report dated March 1, 2012 contains several charts and lists of the type we are recommending be required by the Lobbying Laws such as the targets and the subjects most frequently lobbied.

accessibility of City government and to reassure New Yorkers that their elected representatives were acting in the City's interest and not on behalf of special interests.[5]

To accomplish this, the Lobbying Laws were amended to: (1) create a mandatory electronic filing system for lobbyists; (2) require more rigorous disclosure including full lobbyist disclosure of all fundraising and political consulting activities; (3) strengthen enforcement and penalties for violations of the Lobbying Laws; (4) ban all gifts from lobbyists to City officials; and (5) prevent lobbyists' campaign contributions from being matched with public funds under the City's public finance campaign system. Further, the 2006 amendments to the Lobbying Laws called for the creation of this Commission.

The Commissioners

The City Council and the Mayor appointed five commissioners to represent a range of experiences and perspectives, including significant experience in government and the not-for-profit sectors.

Herbert E. Berman, Chair. Herbert E. Berman served as a Member of the New York City Council for 26 years from 1975 until 2001. He chaired the City Council's Finance Committee from 1990 until 2001, which was responsible for recommending the adoption, and overseeing the City's annual expense and capital budgets. After leaving the City Council at the end of 2001, Mr. Berman became the President of the Roosevelt Island Operating Corp. Currently, Mr. Berman is the Special Assistant for Government Relations at the City University

[5] Press Release, Office of the Mayor, Mayor Bloomberg and Speaker Quinn Unveil Comprehensive and Groundbreaking Reform Package of Lobbying Reform (Feb. 16, 2006) *available at*: http://www.nyc.gov.

of New York's Graduate Center. He received his undergraduate degree from Long Island University and his law degree from New York Law School.

Jamila Ponton Bragg. Jamila Ponton Bragg has an extensive background in foundation work and not-for-profit charities. She is currently the Education Outreach Manager to Sesame Workshop, a not-for-profit organization that helps develop Sesame Street and other educational media programs. Prior to this she served as a consultant to the National Black United Fund, an organization that awards grants to improve the African American community. From 2006 to 2007 she served as special assistant to the chief executive officer of Atlantic Philanthropies, a philanthropic organization with a $4 billion endowment, where she managed grant making. Prior to that, she was a project director and program director at Girls Incorporated, a national educational, research and advocacy association for girls. She received her Bachelor of Science from Duke University and her Masters in Education from Harvard University.

Lesley C. Horton. Lesley C. Horton is an Assistant General Counsel at L + M Development Partners, a real estate development firm in New York City. Working with community, government and investment partners, L + M has built over 8,000 units of affordable and market rate housing in the tri-state area. Prior to this she was an associate at the law firm of Paul, Weiss, Rifkind, Wharton and Garrison, LLP where she practiced in the firm's real estate department. Ms. Horton is a member of the Board of Directors of Weston United Community Renewal, a not-for-profit organization that provides housing for the homeless and mentally ill, and she is a member of the Real Property Law Committee of the Association of the Bar of the

City of New York. She received her Bachelor's degree from the University of Pennsylvania and her law degree from New York University Law School.

Margaret Seay Morton. Margaret Morton is currently the Deputy Commissioner of the City's Department of Cultural Affairs where she manages the agency's funding of the City's not-for-profit cultural institutions and organizations. She formerly served as the agency's General Counsel. Prior to this she served as the Director of Human Resources for the New York State Unified Court System, as a legislative counsel for the Deputy Mayor for Public Safety in the Dinkins Administration, and as a counsel to the United States Senate Judiciary Committee. Ms. Morton received her undergraduate degree from Barnard College and her law degree from Georgetown University.

Elisa Velazquez. Elisa Velazquez has, for the last eight years, served as General Counsel to the Mayor's Office of Contract Services ("MOCS"), where she has supervised the Vendor Responsibility and Compliance functions, implemented the City's restrictions on campaign contributions from those doing business with the City, and helped in the development of a unit dedicated to reviewing and assisting not-for-profit vendors. Prior to her tenure at MOCS, Ms. Velazquez was a legislative attorney for the New York State Trial Lawyers Association and Deputy Counsel to the City's Public Advocate. Ms. Velazquez received her undergraduate degree from Fordham University and her law degree from New York Law School.

Work of the Commission

The Commission held several public meetings and hearings between March and June 2011, as well as a public hearing in September 2011 to hear comments on the Preliminary

Report. Notices of each public meeting/hearing were provided to each registered lobbyist. In addition, a letter was sent to each lobbyist inviting its participation either through the public hearings or through the submission of testimony.

The public meetings/hearings held by the Commission were as follows:

March 15, 2011 - Public Meeting. The Lobbying Bureau of the Clerk's Office and other City agencies responsible for implementing the City's Lobbying Laws testified before the Commission;

March 30, 2011 - Public Meeting. The State Public Integrity Commission, the entity responsible for implementing and enforcing the State Lobbying Act testified before the Commission;

April 27, 2011 - Public Hearing. Representatives of lobbying firms testified before the Commission;

May 3, 2011 - Public Hearing. Representatives of not-for-profit organizations engaged in lobbying testified before the Commission on issues facing not-for-profits;

May 11, 2011 - Public Hearing. The Commission held an open public hearing and heard testimony from the public on issues relating to the Lobbying Laws;

June 24, 2011 - Public Meeting. The Commission held a public meeting at which it discussed the proposals it was considering and adopted a resolution directing staff as to which proposals to include in the Preliminary Report;

September 8, 2011 - Public Hearing. The Commission held a public hearing to solicit comments on the Preliminary Report which had been made available to the public on August 9, 2011.

Transcripts of each public hearing and meeting, the resolution adopted at the June 24th Commission meeting and the Preliminary Report are available online at the Commission's website at http://www.nyc.gov/html/lobby/html/meeetings/transcripts.html .

BACKGROUND

History of Lobbying Regulation in New York City

New York City first regulated lobbying of local officials in 1972, when the Council passed Local Law 79 of 1972, and then Local Law 86 of 1973. Under this initial law regulating those who were paid to influence local legislation, identified as "municipal legislative advocates," anyone engaged for pay or other consideration for the purpose of influencing municipal legislation was required to register with the Clerk.

In 1986, the laws regulating "municipal legislative advocates" were amended.[6] While the laws regulating lobbying have been amended since 1986, the core of the Lobbying Laws -- the basic definitions, scope and coverage -- remains essentially the same. In 2006, the Lobbying Laws were amended to give force to their requirements through increased enforcement, transparency and to reduce the perception of influence by lobbyists on government. Since 1986, the Lobbying Laws have required anyone who in any calendar year expends, receives or incurs combined reportable compensation and expenses in an amount in excess of two thousand dollars for the purpose of "lobbying activities" to register and comply with the reporting and other requirements set forth in subchapter 2 of chapter 2 of title 3 of the Administrative Code.[7] The types of reports required -- an annual registration statement, periodic reports on lobbying during the calendar year, a lobbyist annual report and a client annual report – have been in place since the adoption of Local Law 14 of 1986.

The law defines "lobbying" and "lobbying activities" as "any attempt to influence":

- The passage or defeat of any local law or resolution by the City Council;

[6] New York City Local Law No. 14 for 1986.
[7] New York City Administrative Code ("NYC Ad. Code") §3-213 (a)(1); (c)(1).

- The approval or disapproval of any local law or resolution by the Mayor;
- Any determination made by an elected city official or officer or employee of the City with respect to procurement or an agreement involving the disbursement of public monies;
- Any determination with respect to zoning, or the use, development or improvement of real property subject to City regulation;
- Any determination with respect to the acquisition or disposition by the city of any interest in real property with respect to a license or permit for use of real property of or by the city, or with respect to a franchise, concession or revocable consent;
- Adoption, amendment or rejection of agency rules;
- Ratemaking proceedings;
- Determinations of a board or commission.[8]

The Lobbying Laws contain exceptions to the definition of what constitutes lobbying activities including exceptions for:

- Those advising clients, rendering opinions and drafting legislation who do not engage in attempts to influence;
- Media publishing or broadcasting news, editorials or paid advertisements;
- Witnesses and others publicly appearing before rulemaking or ratemaking proceedings;
- Those appearing before agencies in adjudicatory proceedings;
- Those providing to the Council, mayor or an agency a response to a request for information or comments;
- Contractors or prospective contractors communicating with an agency in the regular course of the procurement process;[9]

[8] NYC Ad. Code §3-211(c)(1).
[9] NYC Ad. Code §3-211(c)(3).

Since the revision of the Lobbying Laws in 1986, every lobbyist who expends, receives or incurs combined compensation and expenses greater than $2,000 has been required to file an annual statement of registration with the Clerk that includes: the name and contact information of the lobbyist and the client; information on any retainer agreement or authorization to lobby; a description of the subject matter of the lobbying[10]; the governmental target of the lobbying; and information concerning any financial interest the lobbyist has in the client.[11]

Lobbyists are also required to report to the Clerk within thirty days after the lobbyist and/or client terminates the retainer, employment or designation for which a statement of registration was filed.[12]

In addition to filing a statement of registration for each client, every lobbyist who exceeds the $2,000 threshold must file periodic reports for each reporting period that such person expends, receives or incurs combined reportable compensation and expenses in an amount in excess of five hundred dollars for the purposes of lobbying during such reporting period.[13] The periodic report must include names and contact information for the lobbyist and client; a description of the subject matter of the lobbying; the governmental target of the lobbying; and compensation paid or owed to the lobbyist and expenses expended, received or incurred by the lobbyist.[14] The law requires that every registered lobbyist file an annual report that must contain,

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[10] Prior to the 2006 reforms, only a "general" description of the subject matter was required. The 2006 reforms require more detail in the registration statement as well as other reports. See infra. at 18.
[11] *See* NYC Ad. Code §3-213(c).
[12] NYC Ad. Code §3-215.
[13] NYC Ad. Code §3-216(a)(1), (2). If the lobbyist does not expend, receive or incur combined compensation and expenses in excess of $500 for the period, the lobbyist must still file a periodic report.
[14] NYC Ad. Code §3-216(a)(2)(b).

on an annual cumulative basis, all the information required in the periodic reports.[15] In addition, if a client of a lobbyist expends, receives or incurs over $2,000 on lobbying in a given year, that client must file a client annual report.[16]

The Administrative Code also outlines the penalties for violations of subchapter 2.[17] Knowing or willful violations of the provisions of the Lobbying Laws constitute a class A misdemeanor.[18] The law also provides for additional civil penalties, to be assessed by the Clerk, and authorizes the Clerk to issue an order to "cease all lobbying activities subject to the jurisdiction of the Clerk for a period of time… not to exceed sixty days…."[19] Violation of a cease and desist order issued by the Clerk or violation of the law's prohibition against entering into contingency agreements or accepting or paying contingency fees are also punishable as class A misdemeanors,[20] as is a failure to file a statement or report within fourteen business days after notification by the Clerk.[21]

Implementation of Lobbying Laws Prior to 2007

Reports from the Lobbying Bureau, including its report to this Commission, testimony received at the Commission's hearings as well as the Council's 2006 hearings on the Lobbying Laws, all suggest that prior to the strengthening of the Lobbying Laws in 2006, the laws were

[15] NYC Ad. Code §3-217 (a) & (c). In practice, according to the Clerk, the final periodic report contains all of the information required on a cumulative basis that is required to be in the annual report and therefore, a separate annual report is often not required.
[16] NYC Ad. Code §3-217(a)(2).
[17] NYC Ad. Code §3-223.
[18] NYC Ad. Code §3-223(a).
[19] *Id*.
[20] NYC Ad. Code §3-223(b).
[21] NYC Ad. Code §3-223(c).

rarely enforced. The Clerk's Office was essentially a repository for lobbyists' filings.[22] According to the Clerk, there were two employees who worked on lobbying issues in the office – one administrative employee who received, filed and inputted the information listed in the lobbyists' and clients' required reports, and the General Counsel, who assisted in the preparation of an annual report that identified the lobbyists and their earnings for the period covered by the report.[23] There were no investigators or auditors.[24] In 2006, the Clerk's Office testified that it did not issue penalties for late filing or non-compliance and simply issued warnings to lobbyists found to be out of compliance with filing requirements.[25]

2006 Amendments to the Lobbying Laws

In 2006, the Speaker and Mayor proposed strengthening the Lobbying Laws to make government more transparent and accessible to New Yorkers and reduce the perception of undue influence by lobbyists on government decision-making. The legislative package was designed to: (1) strengthen enforcement and penalties for violations of the Lobbying Laws; (2) create a mandatory electronic filing system for lobbyists; (3) require full lobbyist disclosure of all fundraising and consulting activity; (4) prevent lobbyists' campaign contributions from being matched with public funds under the City's public campaign financing program; and (5) ban all gifts from lobbyists to City officials.[26] The Council passed, and the Mayor signed into law, three pieces of legislation in 2006: Local Law 15 dealing with lobbyist registration and enforcement;

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[22] Committee on Governmental Operations, April 4, 2006, Tr. at 83-84, Lobbying Commission Public Meeting, March 15, 2011, Tr. at 15-16; Report to the Lobbying Commission 2011, Office of the City Clerk, 3-4.
[23] Lobbying Commission Public Meeting March 15, 2011, Tr. at 11.
[24] Committee on Governmental Operations, April 4, 2006, Tr. at 24.
[25] *Id*. at 83-84.
[26] *Id*. at7, 15.

Local Law 16 prohibiting gifts from Lobbyists; and Local Law 17 eliminating public matching funds for lobbyists' campaign contributions.

Local Law 15: Strengthening the Registration Requirements and Enforcement Mechanisms

Local Law 15 of 2006 created stronger enforcement mechanisms with the Clerk's Office by: (1) increasing penalties, adding mandatory late filing penalties and requiring the Clerk to institute an auditing program; (2) broadening lobbyists' disclosure requirements by requiring more information on lobbying activities and disclosure of fundraising and political consulting activity; and (3) requiring the creation of the New York City Lobbying Commission to review the Lobbying Law's efficacy and to make recommendations on ways to strengthen or improve it.[27]

Enhanced Enforcement

Local Law 15 enhanced the Clerk's enforcement powers by equipping the Clerk's office with in-house investigators, trained by the DOI.[28] Under Local Law 15, the investigators at the Clerk's Office are not only responsible for reviewing all of the lobbyists' filings currently required by the Lobbying Laws, *i.e.*, statements of registration, periodic reports, fundraising/political consulting reports (if applicable) and annual reports, but are also required to conduct random audits of these statements and reports.[29]

Local Law 15 also increased the fines applicable for violation of the Lobbying Laws. In general, Local Law 15 increased the penalty for willful violations of the Lobbying Laws,

[27] New York City Local Law No. 15 for the Year 2006, codified at NYC Ad. Code §§ 3-211 to 3-223-7.
[28]NYC Ad Code §3-223(h).
[29]NYC Ad. Code §3-212(b).

violations of a Clerk's order to cease and desist, or violations of the prohibitions against contingency agreements and fees from a maximum of fifteen thousand dollars to a maximum of thirty thousand dollars.[30] Further, if a lobbyist does not timely file a required statement or report, the lobbyist is subject to daily penalties from the first day of delinquency.[31] The Clerk is required to conform, by rule, the amount of the daily penalties to the schedule established by the New York Temporary State Commission or any successor.[32] Local Law 15 increased the civil penalty for failure to submit statements or reports, as well as for violations that do not fit within the aforementioned categories, from a maximum civil penalty of ten thousand dollars to a maximum civil penalty of twenty thousand dollars.[33]

Increased Public Reporting and Use of Technology

Local Law 15 also substantially increased the Clerk's public reporting requirements. Specifically, the Clerk is now required to post annually on the Internet a report detailing the number of complaints received from the public and the disposition of such complaints, the number and amount of civil penalties imposed, the number and duration of cease and desist orders issued, the number of random audits conducted by the Clerk and outcomes of the audits, and compliance programs developed and implemented by the Clerk for lobbyists and clients.[34] In addition, each time an order or civil penalty is issued, the Clerk is required to post information on the Internet identifying the lobbyist or client who committed the violation, the specific

[30]NYC Ad. Code §3-223(b).
[31]NYC Ad. Code §3-223(c).
[32] Id.
[33]NYC Ad. Code §3-223(d).
[34]NYC Ad. Code §3-212(c).

provision of law violated and the duration of the order or amount of the penalty.[35] Further, Local Law 15 increased the public's access to lobbying information by requiring that all statements and reports required to be filed by lobbyists with the Clerk be filed electronically and placed on the Internet by the Clerk as soon as practicable.[36] These mandates furthered the goals of the Speaker and the Mayor by making lobbying activity in City Hall more transparent.

Increased Lobbyist Reporting Requirements

Local Law 15 increased the amount of information required to be reported by lobbyists. Local Law 15 required lobbyists filing as individuals to include their name, address and telephone number and the names, addresses and telephone numbers of their spouse or domestic partner and unemancipated children, in their statement of registration.[37] In addition, lobbying firms must include the names, addresses and telephone numbers of all of their officers and employees. Finally, if an organization has a government affairs or lobbying division, the statement of registration must include the names of the employees or members of that division of the organization. The names of spouses and domestic partners as well as unemancipated

[35] NYC Ad. Code §3-212(d).
[36] NYC Ad. Code §3-221.
[37] In 2007, the Council further amended these reporting requirements to require lobbyists to include their home and business address, business telephone number, and the name and home and business address of their spouse or domestic partner. In addition, the law was amended so that a lobbyist need only disclose the name and home address of his or her unemancipated child within 48 hours after a campaign contribution is made in the unemancipated child's name. Finally, the law was amended to keep all home addresses and the business address of the lobbyist's spouse or domestic partner confidential and not subject to public inspection except for access by the New York City Campaign Finance Board ("CFB") for purposes of determining matchability under the Campaign Finance Act, and to prohibit CFB from disclosing that any particular campaign donor is the spouse, domestic partner or unemancipated child of a lobbyist or of an officer or employee in the lobbying division. *See* NYC Ad. Code § 3-213.

children of such officers and employees required to be listed in the statement of registration must also be provided.[38]

Prior to Local Law 15, lobbyists were required to disclose general information regarding the subjects on which they lobbied or expected to lobby in their registration statements, periodic and annual reports. In practice, however, lobbyists often provided generic responses, such as "lobbied about public policy."[39] Local Law 15 made the reporting requirements much more specific. In particular, lobbyists are now required 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."[40]

Local Law 15 also created a new reporting requirement in instances where a registered lobbyist acts in the dual capacities of lobbyist and fundraiser and/or political consultant for a candidate for public office. The law requires that "any lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter who in any calendar year to which the statement of registration relates, or in the six months preceding such calendar year, engages in fundraising or political consulting activities shall file with the city clerk, on forms prescribed by the city clerk, a fundraising and/or political consulting report."[41] The lobbyist must file the fundraising and/or political consulting reports on the same schedule as the periodic reports are filed. The fundraising and/or political consulting activities must be reported, "whether they are

[38] NYC Ad. Code § 3-213.
[39] Report of the Governmental Affairs Division on Proposed Int. 190-A, 191-A and 192-A, Committee on Governmental Operations. May 24, 2006 at 9-10.
[40] NYC Ad. Code §3-213(c)(5).
[41] NYC Ad. Code §3-216.1(a).

conducted directly by the lobbyist, or through any other entity of which such lobbyist is a principal."[42] The intent of this provision is to ensure that lobbyists, who are paid by candidates or on behalf of candidates by their campaign committees, report their dual roles.

The fundraising and/or political consulting reports must include the name and contact information of the lobbyist and those employed by the lobbyist engaged in the fundraising or political consulting activity; the name and contact information for the candidate or official for whom the services were provided; the compensation paid or owed the lobbyist for the services and the expenses expended, received or incurred by the lobbyist for the services provided; and in the case of fundraising activities, the dollar amount raised for each candidate.[43] Finally, the Clerk is required to keep all fundraising and/or political consulting reports available in electronic form for inspection by the public.[44]

In order to ensure that the City's lobbying reporting periods coincide with New York State's, the law requires the Clerk to adopt rules to conform the reporting periods and reporting forms, to the extent practicable, to those used by the New York Temporary State Lobbying Commission, or any successor entity.[45]

Finally, Local Law 15 required the Mayor and the City Council to jointly appoint this Commission.

Local Law 16: Prohibiting Gifts from Lobbyists

[42] Id.
[43] NYC Ad. Code §3-216.1(b).
[44] NYC Ad. Code §3-216.1(d).
[45] NYC Ad. Code §3-216(a)(1).

Local Law 16 of 2006 prohibits the giving of gifts to a public servant by any person required to be listed on a lobbyist registration statement.[46] Unlike the Charter's Conflicts of Interest provisions that prohibit public servants from accepting "valuable gift[s],"[47] Local Law 16's ban applies only to those listed on a lobbyist registration statement (including spouse/domestic partner and unempanicated children), not to the public servant. [48]

The Conflicts of Interest Board (COIB) is responsible for receiving, investigating and adjudicating any alleged violations of these provisions, in the same manner as they investigate and adjudicate conflicts of interest violations pursuant to chapter sixty-eight and thirty-four of the City Charter. If COIB finds that a person or organization knowingly and willfully violated the provisions more than once they "shall be guilty of a class A misdemeanor."[49]

Local Law 17: Making Lobbyists' Campaign Contributions Non-Matchable

Local Law 17 of 2006 prohibits voluntary participants in the City's campaign finance program from receiving public matching funds for campaign contributions by lobbyists and their spouses, domestic partners and unemancipated children.[50] The Campaign Finance Board (CFB) is responsible for determining the matchability of lobbyist's contributions. To do this the CFB is

[46] NYC Ad. Code §3-225.
[47] "Valuable gift" is defined as "any gift to a public servant which has a value of $50.00 or more." 53 RCNY §1-01.
[48] Local Law 16 authorized the Conflicts of Interest Board (COIB) to consult with the Clerk to promulgate rules including exceptions for "*de minimis* gifts," such as pens, mugs and t-shirts, gifts from family members and close personal friends on family or social occasions, and those items such as invitations to events that are gifts to the City that a public servant may accept in his or her official capacity. NYC Ad. Code §§ 3-224-228.
[49] NYC Ad. Code §3-227. In addition to such criminal penalties, Local Law 16 provides for civil penalties of not less than $2,500 for a first violation, and not to exceed thirty thousand dollars for a multiple violator. *Id*.
[50] NYC Ad. Code §3-702(3)(g).

required to rely on "the database maintained by the city clerk pursuant to section 3-221 or such other information known to the board."[51]

Implementation of the Lobbying Laws since 2006

In December 2006 the Clerk promulgated rules to implement the Lobbying Laws.[52] These rules: coordinated requirements for filing periodic lobbyist reports with the State schedule so that the deadlines for the City and State periodic reports would coincide; established a mandatory $10 per day late filing penalty for each late filing for any lobbyist or client who has never previously filed a required filing, and a mandatory $25 per day late filing penalty for each late filing for those lobbyists and clients who are not first time filers; and established hearing procedures for violations of the Lobbying Laws at the City's Office of Administrative Trials and Hearings (OATH).[53]

Throughout the rulemaking process, the Clerk worked with the City's Department of Information and Telecommunication Technology ("DoITT") to develop the e-Lobbyist filing system. In January 2007 all filers began filing their 2007 registration statements online.[54] The Clerk and DoITT issued an e-Lobbyist user guide, the Clerk set up a kiosk in its Manhattan office to assist filers and the Clerk held three e-Lobbyist system training sessions in December 2006 and January 2007 for over 250 attendees.[55]

In 2007 the Clerk developed an audit protocol and its investigative/auditing staffers were trained by the DOI. In 2008, the Clerk retained a firm to ensure that audits were conducted

[51] Id.
[52] 51 RCNY §1-01 *et seq*.
[53] 51 RCNY §§1-03(b)(v)(a),(b),(c).
[54] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 18-19.
[55] Office of the City Clerk, Report pursuant to Section 3-212(d) of the Administrative Code, March 2007, at 3-5.

randomly.[56] In 2008, the Clerk completed its first set of 30 audits, and subsequently has conducted 30 random audits annually.[57] According to the Clerk, its audits are comprehensive, and generally audit all filings for a year for a lobbyist relating to a particular client. The audits entail a request for documents, a site visit and an audit report with recommendations for corrective action, as appropriate.[58]

Finally, according to the submissions by the Clerk to the Commission, there have been over 90 hearings at OATH against lobbyists and clients since 2006. The City Clerk has collected over $1.1 million in late fees for the late filings of required reports, and imposed civil penalties on over 40 organizations. The City Clerk also received and investigated approximately ten complaints from the public concerning unreported lobbying activity.[59]

State Regulation of Lobbyists

a. State Lobbying Act

From the turn of the 20th century, New York State required a filing by those making "legislative appearances."[60] In 1981 New York State adopted legislation requiring all lobbyists in New York State to register. In 1999 the State law was repealed and the New York State Lobbying Act was enacted.[61] The current State Lobbying Act requires registration of lobbyists

[56] Lobbying Commission Public Meeting, March 15, 2011, at 4; Report to the Lobbying Commission 2011, City Clerk at 13; Office of the City Clerk Reports pursuant to Section 3-212(c) of the Administrative Code, 2008 at 4.
[57] Lobbying Commission Public Meeting, March 15, 2011 Tr. at 26-27.
[58] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 27-29.
[59] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 27-29, and Lobbying Bureau Reports pursuant to § 3-212(c) of the Administrative Code for 2009, 2010 and 2011; Report to the Lobbying Commission 2011, City Clerk at 12. Additional information on enforcement, penalties and complaints can be found in the Lobbying Bureau Report of March 1, 2012 (see infra footnote 2).
[60] Section 66 of chapter 37 of the Laws of 1909, found in McKinney's Consolidated Laws of New York Annotated (1917).
[61] McKinney's Consolidated Laws of New York, Legislative Law, articles 1 & 1a, and historical notes.

who in any year expend, incur or receive an amount in excess of $5,000 in reportable compensation and expenses.[62] The expenditure threshold triggering the obligation to register as a lobbyist was $2,000 until 2005.[63] For 2006 and all years thereafter, the threshold triggering the obligation to register under the State Lobbying Act was increased to $5,000.[64]

The State Lobbying Act applies to those who lobby either at the state or local level in New York State, or both. "Lobbying activities" for purposes of activities at the State level include "any attempt to influence": (1) the passage or defeat of any legislation by the State Legislature or approval or disapproval by the Governor[65]; (2) the adoption, rescission, modification or terms of a gubernatorial executive order; (3) the adoption or rejection of any rule or regulation by a state agency; (4) the outcome of any ratemaking proceeding; (5) any determination by a public official relating to a governmental procurement; and (6) decisions relating to tribal agreements.[66]

For purposes of lobbying at the municipal level of government, the State Lobbying Act defines lobbying as "any attempt to influence": (1) the passage or defeat of any local law, ordinance, resolution or regulation; (2) the adoption, issuance, rescission or terms of an executive order; (3) the adoption or rejection of any rule or regulation; or (4) The outcome of any municipal ratemaking proceeding.[67]

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[62] NY Legis. Law § 1-e(a)(1).
[63] *Id*.
[64] *Id*.
[65] For purposes of state legislation, the State Public Integrity Reform Act of 2011has expanded this portion of the definition of "lobbying activity" to include attempts to influence "the introduction or intended introduction of such legislation or resolution" see infra at 26.
[66] NY Legis. Law § 1-c (c) ((i)-(vi)).
[67] NY Legis. Law § 1-c(c)(vii)-(x).

The State Lobbying Act contains a list similar to the list in the City's Lobbying Laws of activities that do not constitute lobbying. This list includes: (1) those drafting, advising clients on, or rendering opinions on legislation, regulations, rules, rates, municipal ordinances and resolutions, executive orders, procurement contracts and tribal-state agreements where such professional services are not otherwise connected to state or municipal executive or legislative action; (2) media publishing or broadcasting news or editorials; (3) witnesses and others publicly appearing before public proceedings; (4) those attempting to influence state or local agencies in adjudicatory proceedings; (5) those appearing before the legislature, governor, agency, the court system or local legislative or executive body or officer in response to a request for information or comments; and (6) certain types of contacts between contractors or prospective contractors and officials in the course of responding to a procurement solicitation, contract negotiations, and bringing complaints or protests concerning contract awards.[68] However, the state procurement exceptions specify that such contacts be: limited to those that provide information to assist officials in understanding and assessing the qualities, characteristics or anticipated performance of a procurement; not include any recommendations or advocate any contract provisions; and occur only in a manner authorized by procuring entities' guidelines.[69]

Under the State Lobbying Act, lobbyists are required to file a registration form once every two years containing similar information to the City registration forms, including the client and subject matter of the anticipated lobbying.[70] Clients are also required to file semi-annual

[68] NY Legis. Law § 1-c(c).
[69] Id. at (m).
[70] NY Legis. Law § 1-e(a)(3).

reports. Finally, the State Lobbying Act requires six periodic reports of lobbying activity to be filed during the year by all lobbyists.[71]

The penalty for late filing of reports under the State Lobbying Law is up to $10 per day for first time filers, and up to $25 per day for those who have previously filed.[72] According to testimony before the Commission by the State Commission on Public Integrity, the State Commission calculated the fines based upon an internal schedule which resulted in the imposition of lesser-than the maximum fines in the vast majority of cases.[73] In addition, the State Commission on Public Integrity had a procedure whereby late fines can be waived altogether upon filing of an affidavit and a determination that there was a justifiable reason for the delay.[74]

b. State Public Integrity Reform Act of 2011

In June 2011, the State Legislature adopted legislation introduced by the Governor to reform the State's public ethics laws. On August 15, 2011, the Governor signed the legislation, entitled the State Public Integrity Reform Act of 2011, which makes several changes to the State's regulation of lobbyists.[75] First, the State Commission on Public Integrity is replaced by the Joint Commission on Public Ethics ("JCOPE").[76] Second, the law requires online ethics training for all registered lobbyists including explanations and discussions of summaries of

[71] NYS Legis. Law § 1-h.
[72] NYS Legis. Law §§ 1-e(e), 1-h(c)(3), 1-i(c) (3) 1-j(c) (3), 1-d (d).
[73] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 27-28. See footnote 140 infra.
[74] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 27. The successor entity to the State Commission is the Joint Commission on Public Ethics ("JCOPE"). See section b below.
[75]New York State Public Integrity Reform Act, (L: 2011 ch. 399).
[76] New York State Public Integrity Reform Act, 2011 or… Executive Law Section 94, et seq.

advisory opinions and examples of practical applications of the requirements of the laws.[77] Third, the new law amends the State's definition of "lobbying activity" to include lobbying for the passage or defeat not only of legislation but also "the introduction or intended introduction of such legislation or resolution."[78] Fourth, the law requires creation of a new database through which State agencies will provide to the State Office of General Services lists of all entities appearing before them representing a client in relation to certain procurement actions, ratemaking and rulemaking proceedings, regulatory matters and judicial and quasi-judicial proceedings.[79] Fifth, the law requires lobbyists to report compensation of over $1,000 that is paid to state elected officials, officers or employees when a client of the lobbyist has a business relationship with the state official.[80] Finally, the new law requires certain lobbyists who lobby on their own behalf, and clients of lobbyists, who spend over $50,000 a year on lobbying activities to disclose certain sources of funding of their lobbying activities.[81]

COMMISSION RECOMMENDATIONS

Raising the Threshold

The dollar threshold for triggering lobbying registration should be increased from $2,000 to $5,000 and the filing process should be simplified for organizations spending between $5,000 and $10,000 to lobby exclusively on their own behalf.

Background

[77] New York State Public Integrity Reform Act, 2011, Part A, Section 7.
[78] New York State Public Integrity Reform Act of 2011, Part D, Section 1.
[79] This requirement appears similar to the current requirement contained in Section 166, part A (4) of the State Executive Law, known as Project Sunlight, that agencies supply certain contact information to the Commission on Public Integrity.
[80] State Public Integrity Reform Act of 2011, Part E, Section 4.
[81] State Public Integrity Reform Act of 2011, Part B, Section 1.

Local Law 15 requires the Lobbying Commission to evaluate whether or not to raise "the dollar threshold for the filing of a statement of registration."[82] Currently, any lobbyist who, in any calendar year, expends, incurs or receives more than $2,000 of combined reportable compensation and expenses must register as a lobbyist.[83] This $2,000 threshold dates back 25 years to 1986. Under the State Lobbying Act, the dollar threshold is $5,000. The State Commission on Public Integrity had proposed for several years to raise that threshold to $10,000; however no action on this proposal has been taken by the State Legislature.

Testimony before the Commission

At the Public meetings of the Lobbying Commission, witnesses expressed near universal agreement that the Lobbying Law reporting threshold should be increased from the current level of $2,000.

The Clerk testified that "at a minimum…we should match the state" threshold of $5,000.[84] According to the Clerk, this increase, from $2,000 to $5,000, would reduce the number of registered lobbyists by about 40.[85] The Clerk also provided information to the Commission that this increase would still capture more than 99 percent of all dollars spent on lobbying in the City.[86] Alternatively, an increase in the dollar threshold to $10,000 would, according to the Clerk, reduce the number of registered lobbyists by an additional 35 registrants (for a total of

[82] NYC Ad. Code § 3-212(e).
[83] NYC Ad. Code § 3-213 (a).
[84] Lobbying Commission Public Meeting, March 15, 2011 Tr. at 35.
[85] *Id*. at 36.
[86] *See* Memorandum from the Lobbying Bureau, Office of the City Clerk, to the Lobbying Commission, April 26, 2011, attached hereto as Exhibit B.

approximately 75 fewer registrants than under the current system) and would capture approximately 98 percent of all dollars spent on lobbying.[87]

On March 30, 2011, the State Commission on Public Integrity testified that the State threshold had been raised from $2,000 to $5,000 in 2005, and they recommended a further increase to $10,000. The State Commission on Public Integrity believed that a $10,000 threshold would capture approximately 98% of all the money spent on lobbying in the State while facilitating compliance and lowering the number of filers so that the Commission could "focus on that population that maybe poses a higher risk of violations while still providing information on almost all of the lobbying activity…."[88] The State Legislature, however, has not acted on this proposal, including in the recently enacted ethics reform legislation.

Additionally, the Human Services Council of New York City, Inc. ("Human Services Council"), the Nonprofit Coordinating Committee of New York, the Lawyers Alliance for New York ("Lawyers Alliance"), Citizens Union of the City of New York ("Citizens Union"), and the New York City Affairs Committee for the New York City Bar Association were all in favor of increasing the $2,000 threshold.[89]

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[87] *See Id*. and Lobbying Commission Public Meeting, March 30, 2011, Tr. at 37, 40.
[88] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 41.
[89]The Human Services Council, the Nonprofit Coordinating Committee of New York and the Lawyers Alliance for New York, which represent nonprofit organizations, recommended that the reporting threshold be raised "to at least $5,000, and suggest that the threshold for nonprofit organizations be raised to $25,000 to match the New York Attorney General's reporting threshold for charitable organizations." (Lobbying Commission Hearing, May 3, 2011, Tr. at 9). These representatives emphasized the burden on small, nonprofits that compliance with the City's Lobbying Laws entailed and believed that the higher threshold would alleviate this burden on the smaller organizations. Citizens Union testified that it would support an increase in the threshold to $5,000 to provide uniformity with the State threshold. (Citizens Union, Testimony to the NYC Lobbying Commission, March 30, 2011, p. 2). The New York City Affairs Committee of the New York City Bar Association has recommended a $10,000 threshold because it believes this will remove "many if not most small not-for-profit and community based organizations" from the universe of those required to register. (NYC Bar Association, Report of the New York City Affairs Committee, June 3, 2011, at 3). The City Bar committee also recommended that the State similarly increase

Recommendation

The Commission recommends that the current dollar threshold be raised from $2,000 to $5,000. While the Commission believes there is a strong basis to recommend raising the threshold to $10,000, it does not recommend that New York City adopt a $10,000 threshold unless and until the State does, in order to maintain uniformity between the two systems.

In addition to recommending an increase in the threshold for all lobbyists to $5,000, the Commission recommends that consideration be given to amending the current Lobbying Law to provide that individuals and organizations who lobby on their own behalf and expend between $5,000 and $10,000 on lobbying activity file a reduced number of reports throughout the year including a registration statement at the beginning of every calendar year and two periodic reports (one mid-year and one end- of- year), instead of the full number of reports required of registrants. This recommendation recognizes that such organizations are not hiring outside lobbyists, are not spending significant amounts on lobbying activities, and that the burden of complying with the current requirements of registration and six periodic filings may be significant when compared with their relatively minimal lobbying activity. Additionally, the requirement of a midyear and a year-end filing will allow for the public to obtain current information about lobbying activities during the calendar year.

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its threshold. (NYC Bar Association at 3). The New York Advocacy Association recommended increasing the threshold, but that the threshold apply to each client on an individual basis, and that the registration and filing requirements should be triggered only after the dollar threshold is exceeded by a client's expenditures rather than when a lobbyist "reasonably anticipates" expending, incurring or receiving an amount in excess of the threshold. (Lobbying Commission Hearing, April 27, 2011, Tr. at 7-10.) It further recommended that work done prior to contact with government officials should not be deemed "lobbying," (Lobbying Commission Hearing, April 27, 2011, Tr. at 39-40.) The Commission believes that these proposed changes to the application of the dollar threshold, including applying the threshold on an individual basis, and excluding work done prior to contact with government officials, would allow significant amounts of advocacy to go unreported.

The Commission is aware that because of design issues in the e-Lobbyist system, reconfiguring the system to allow for only two reports by this small category of lobbyists may incur scheduling delays and budget issues that should be considered before making a final determination on this issue.

Scope of Lobbying Activities

The law should be clarified to ensure that lobbying on legislation does not require the existence of a formally introduced piece of legislation.

In addition, this clarification should be made to other lobbying activities where it might be argued that the lack of a formal or official proposal means that lobbying did not occur. Similarly, the law should be clarified to ensure that lobbying can occur without proposed rules or rates being published as well as without a formal proposal or agenda item before a board or commission.

Finally, the definition of lobbying should be extended to include attempts to influence the Council to conduct or refrain from conducting oversight or investigations and attempts to influence Mayoral executive orders.

Background

The City's Lobbying Laws define the term "lobbying" as "any attempt to influence… the passage or defeat of any local law or resolution by the city council."[90] Under the State Lobbying Act — prior to changes made by the State Public Integrity Reform Act of 2011-- legislative "lobbying" was similarly defined as any attempt to influence "the passage or defeat of any legislation by either house of the state legislature or approval or disapproval of any legislation by the governor."[91] The State Act also covers the lobbying of local officials and defines such lobbying activities in part, as any attempt to influence the "passage or defeat of any

[90] NYC Ad. Code § 3-211(c).
[91] NY Leg. Law § 1-c(c)(i).

local law, ordinance, resolution or regulation by any municipality or subdivision thereof."[92] The State Commission on Public Integrity interpreted this definition of lobbying, at least as it relates to proposals involving State legislation, to cover only "actual" existing legislation, stating in an advisory opinion that, "[a]ction with respect to proposed but non-existent legislation usually is not lobbying."[93] Based upon this advisory opinion and the Commission's conversations with the State Commission on Public Integrity, it appears that in the case of both state legislation prior to the recent amendments in the Public Integrity Reform Act of 2011, and local legislation, the State Lobbying Act did not cover attempts to influence the passage of legislation unless an actual piece of legislation was introduced before a legislative body. The State Public Integrity Reform Act of 2011 amends the definition of lobbying to include attempts to influence "the introduction or intended introduction" of legislation or resolutions, but this change appears to apply only to State legislation and resolutions, not to legislation being considered by municipalities.[94]

In addition, a recent State Commission on Public Integrity decision indicates that the State Commission has adopted a similar approach to rulemaking, finding that contacts between someone representing a hospital, and a state agency regarding changes to agency rules did not constitute lobbying until the agency had decided to formally consider a rule change.[95]

This interpretation is not consistent with the Clerk's interpretation of the commencement of legislative lobbying under the City's Lobbying Laws.[96] While there are differences in the legislative process of the State and local legislative bodies, which could justify

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[92] N.Y. Legis. Law § 1-c (c).
[93] New York Temporary State Commission on Regulation of Lobbying, Opinion No. 16 (78-16).
[94] New York State Public Integrity Reform Act of 2011, Part D, Section 1(i).
[95] "Cuomo Health Advisor Absolved in Ethics Inquiry," Nicholas Confessore, *The New York Times*, June 6, 2011.
[96] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 57-58.

a broader scope in what is considered lobbying on local legislation, no formal opinion or judicial decision has ever been issued interpreting the language in the City's Lobbying Laws.

Testimony before the Commission

Because of the State Advisory Opinion concluding that lobbying does not occur until an actual piece of legislation exists, and the similarity of the language of the State Lobbying Act (prior to its amendment by the Public Integrity Reform Act of 2011) and the City's Lobbying Laws, the Clerk testified at the Commission's first public meeting that the City's Lobbying Laws should be clarified to ensure that the restrictive State interpretation is not applied to the City's Lobbying Laws.[97]

New York Public Interest Research Group ("NYPIRG") and Common Cause testified before the Commission in favor of amending the City's Lobbying Laws to make clear that attempts to influence legislation prior to the introduction of an actual piece of legislation should be considered "lobbying."[98] Citizens Union put forth a similar recommendation.[99]

Recommendation

Attempts to influence government actions, even before those proposed actions are formally embodied in legally cognizable forms (such as when a bill is introduced), do and should constitute lobbying, and indeed, may be viewed by clients as significantly more effective or desirable. Therefore, the Commission recommends amending the current definition of "lobbying" or "lobbying activities" to specifically include attempts to influence legislation prior to its introduction, as well as attempts to cause or prevent the introduction, of legislation.

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[97] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 42-43.
[98] Lobbying Commission Public Meeting, May 11, 2011, Tr. at 18 and 41.
[99] Lobbying Reform Recommendations to the 2011 Lobbying Commission, Citizen Union, at 2.

In discussing this proposal, the Commission also sees a necessity to clarify the definition of lobbying in the rulemaking and ratemaking contexts. As in the case of legislation, the definition of lobbying should explicitly encompass advocacy in administrative rulemaking and ratemaking, even prior to the publication or formal announcement of proposed rules or rates.[100]

Similarly, the Lobbying Laws do not mention the role of the City Council in oversight and investigations. A decision to hold or refrain from holding an oversight hearing on a subject may have as much impact on private interests as legislation. Thus, the Commission proposes to clarify and ensure that lobbying activities include all attempts to influence or prevent the introduction of legislation, attempts to influence the decision to conduct or refrain from conducting oversight hearings, all attempts to influence or prevent the commencement of rulemaking or ratemaking as well as attempts to influence boards or commissions on actions that have not been formally published or calendared.

Finally, although the Lobbying Laws do not expressly include attempts to influence mayoral executive orders as "lobbying," State law does define "lobbying" to include attempts to influence both State and municipal executive orders.[101] Given the importance of executive orders as binding policy and operational directives to executive agencies, which are often

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[100] Another logical extension of this proposal is that attempts to influence boards or commissions to take up, or refrain from taking up, certain matters, before those matters are actually proposed or calendared on an agenda, would also constitute lobbying activities. For example, attempts to keep the Landmarks Preservation Commission from considering a proposal to designate a certain area of the City should be considered lobbying activities, even if consideration of the proposed designation never appears on a Landmarks Preservation Commission agenda. Amending the Lobbying Laws to make this explicit would be consistent with our proposal that the scope of lobbying activities be broadened to cover attempts to influence decisions in cases where the lack of a formal or official proposal could allow one to argue under the current law that lobbying did not occur.

[101] NY State Lobbying Act § 1-c(c)(ii), (viii).

continued by subsequent mayors, the Commission recommends, for reasons of logic and consistency, that the City's definition of lobbying expressly include mayoral executive orders.

Professional Advocates with Technical Expertise

Professionals with certain technical expertise, such as engineers or architects often advocate before City officials on behalf of clients. Under current law these professionals must register if they expend or receive more than the dollar threshold.

The Commission recommends that the Clerk's Office undertake significant outreach, education and training on lobbying registration requirements for architects, planners, engineers and other professionals with the express purpose of educating them that attempts to influence decisions of City officials by them on behalf of clients are lobbying.

In addition to such outreach, the Commission further recommends that the Lobbying Laws be amended to clarify which activities of engineers, and architects should not constitute "lobbying activity." The amendments should exempt: (1) design work and drafting of plans, even when the design or drafting work is followed or preceded by contacts with City officials (which contacts would still be considered a lobbying activity if they involved attempts to influence decisions); (2) work (including attempts to influence Boards or Commissions) on capital projects under the direction of a City agency; and (3) presentations before Community Boards where attempts to influence the ultimate determination by a board or commission to which the Community Board makes its recommendation (such as the Board of Standards and Appeals) would not themselves be considered lobbying.

In addition, the legislation should authorize the City Clerk to exempt by rule certain attempts to influence decisions of boards or commissions in the land use context by licensed architects or engineers where the action which is the subject of the decision, for purposes of the Lobbying Laws' goals of transparency regarding lobbyists' attempts to influence governmental decisions, is relatively minor. Factors guiding the Clerk's determination as to what decisions are "minor" should be enumerated in the legislation and might include the size and cost of the project, whether the project is being undertaken on behalf of a small property owner such as a one, two or three family home, and the size of the architecture or engineering firm typically involved in such actions.

Background

Currently, the Lobbying Laws define a lobbyist as "every person or organization retained, employed or designated by any client to engage in lobbying."[102] Lobbying is defined as "any attempt to influence" a number of governmental decisions including, but not limited to (i) the passage or defeat of any local law or resolution by the Council; (ii) the approval or disapproval of any local law or resolution by the mayor; (iii) determinations made with respect to procurements; (iv) zoning or land use determinations; (v) acquisition or disposition of property; (vi) adoption, amendment or rejection of rules; (vii) outcomes of ratemaking proceedings; and (viii) any determination of a board or commission.[103]

Advisory opinions issued by the Clerk indicate that whether an attempt to influence a decision by a board or commission is considered lobbying will generally be determined by evaluating whether the decision of the board or commission is adjudicatory in nature, in which case the attempt to influence the determination is not a lobbying activity.[104] Factors to be considered in determining whether or not a determination is adjudicatory include the extent to which discretion in reaching a decision is limited by standards or criteria, the number of individuals whose rights, duties or privileges are being decided by the determination, the breadth of allowed participation in the proceedings and the characteristics of the proceedings.[105] However, based upon the Clerk's advisory opinions, because of the generally non-adjudicatory nature of community boards, appearances before community boards are generally considered a "lobbying activity" even if the attempt to influence the ultimate decision-making authority to

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[102]NYC Ad. Code§ 3-211(a).
[103]NYC Ad. Code §3-211(c) (1)(i)–(vii).
[104]Advisory Opinion 1987-4 and 1987-8.
[105] *Id.*

which the community board is making its recommendation is not considered a "lobbying activity" because it is itself adjudicatory in nature.[106]

Certain activities are not deemed to be lobbying including: "(i) persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action",[107] and (ii) in the case of contractors or prospective contractors, those who appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process or administration or audit of a contract if the communication is made by the contractor or prospective contractor personally or through "persons who provide technical or professional services."[108] Because the Lobbying Laws state that those rendering advice or drafting materials in relation to executive or administrative action are not engaged in lobbying "where such persons do not themselves engage in an attempt to influence such action," the law could be interpreted to cover activities of architects and engineers, such as drafting of plans and working with and advising clients on design or engineering matters, if the architects or engineers subsequently attempt to influence decisions on those plans before a board or commission or agency.

The exception from the definition of "lobbying" for those who communicate with government on behalf of a client by providing technical or professional services applies only in

[106]Advisory Opinion 1987-7.
[107]NYC Ad. Code § 3-211(c)(3)(i).
[108] NYC Ad. Code §3-211(c)(3)(vi)(A).

the procurement context.[109] Thus, in general, communications with the City Council on legislation, with agencies on rules or ratemaking (other than public appearances at rulemaking or ratemaking proceedings), with City Planning on land use applications and with officials in all the other activities enumerated in the definition of "lobbying activities," by professionals with technical expertise in an effort to influence a decision of these governmental actors, constitute lobbying.

According to the Clerk, however, very few professionals, other than lawyers and government relations professionals, register as lobbyists.[110] The Clerk estimates that no more than a handful of architects or engineers have registered as lobbyists.

Testimony before the Commission

The New York Advocacy Association testified that it believes the language of the City Lobbying Laws currently applies to professionals such as architects, engineers and economists who advocate before government agencies and officials, but that some subset of these professionals fails to register as lobbyists. They used the example of an architect who accompanies a client on a land use matter to appearances before City agencies and advocates for the approval of an application.[111] The Advocacy Association recommended that the reporting requirements be clarified and that public education be undertaken, so that these types of

[109] NYC Ad. Code §3-211(c)(3)(vi)(B).
[110] The Lobbying Bureau Annual Report dated March 1, 2012 indicates an increase in registration by financial professionals, subsequent to the New York City Law Department's Opinion issued in 2010 (available at www.cityclerk.nyc.gov/downloads/pdf/placementagents.pdf) regarding financial professionals who seek to influence certain pension investment decisions on behalf of their employers or clients.
[111] Lobbying Commission Public Meeting, Apr. 27, 2011, Tr. at 20-22.

professionals who are advocating on behalf of clients before government officials uniformly understand the duty to register as lobbyists.[112]

At the Commission's September 15, 2011 hearing on the Preliminary Report, representatives of the American Institute of Architects New York Chapter testified about their concerns with the Commission's recommendation that the Clerk's Office conduct education and enforce the Lobbying Laws as they apply to the obligation of other professionals such as architects and engineers who advocate before City agencies and commissions, especially in the land use context.

The architects' representatives initially testified that many of their contacts with government are technical and educational in nature "intended to inform the community about the project that will be built in their neighborhood. The information speaks to the building's size, area, height, materials and so on. Such presentations are informational based on the technical special knowledge and skills possessed by the architect and other design professionals on the development team…."[113] Representatives of planners and engineers testified as to the technical nature of information and reports that they often prepare and submit that may become part of a project's environmental impact statement.[114] Subsequent discussions between representatives of the architects and Commissioners revealed that the line between technical and educational description and advocacy may not always be clear.[115]

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[112] *Id*.
[113] September 15, 2011 Commission Hearing, Tr. at 30-31.
[114] *Id*. at 47.
[115] *Id*. at 35-43.

A second area of concern that was raised by Commissioners was whether there was a need to exempt from the Lobbying Laws' requirements, advocacy by land use and design professionals such as architects and engineers who were working on capital projects where the City or a City agency is the client.[116]

Finally, the architects' representatives raised concerns over situations in which architects may make presentations to boards and commissions that could be found to constitute lobbying for purposes of the Lobbying Laws. This concern appeared to be greatest in the case of presentations made before community boards by architects on what they described as relatively routine matters.[117] The examples given were when architects appear before community boards prior to seeking Landmarks Preservation Commission approval for window replacement in a landmarked building or approval for construction of a porch or deck in a single family house.[118] One of the representatives noted that there are some cases in which attempts to influence the ultimate decision-maker – e.g., the Landmarks Preservation Commission or the Board of Standards and Appeals – may not be considered lobbying because of the nature of the determination sought, but that appearances before the Community Board in furtherance of the same determination would be considered lobbying.[119]

Recommendation

The Commission has concluded that under the current law, all professionals who attempt to influence, on behalf of a client, a determination made by the officers or employees

[116] *Id*. at 41-44.
[117] September 15, 2011 Commission Hearing, Tr. at 55.
[118] *Id*. at 55-56.
[119] *Id*. at 52-53.

listed in subparagraph (iv) of paragraph (1) of subdivision (c) of section 3-211 of the Administrative Code relating to the zoning, use or development of real property subject to City regulation are engaged in lobbying. Thus, if an architect or an engineer appeared before City Planning in an attempt to influence the agency's decision on an application relating to a zoning variance, this professional would be engaged in lobbying. After extensive discussions with the Law Department and other City agencies, the Commission's view is that, while a conversation between an architect and City Planning staff on a technical rule could be found not to be an attempt to influence, the presentation of designs for approval by the City Planning Commission would likely be found to be an attempt to influence the ultimate determination, even when that professional was simply one member of a larger team working for a client.

The Commission recommends that the applicability of the law to these types of professionals be made clear through an education and outreach effort by the Clerk. This outreach can be directed to City Planning, Community Boards and professional associations where architects, engineers, city planners, accountants and other similar professionals are likely to be reached.

In response to the specific issues and examples raised by representatives of architects and engineers in reaction to the Preliminary Report, the Commission further recommends that the Lobbying Laws be amended to provide greater guidance on certain activities of engineers, and architects that should not constitute "lobbying activity."

First, the Commission recommends that the Lobbying Laws should be clarified to ensure that design work and drafting of plans done by architects and engineers pursuant to their State-

issued professional licenses, or under the direct supervision of one holding such a license, should not be considered a part of any "lobbying activity," even if that work is followed or preceded by attempts to influence the decisions listed in paragraph (1) of subdivision (c) of Section 3-211 of the Administrative Code.

Second, the Commission recommends that the Lobbying Laws be amended to authorize the Clerk to formulate rules as necessary, regarding whether some architects' and engineers' activities that are designed to influence certain governmental decisions, should nonetheless not be considered lobbying activities for the purpose of complying with the Lobbying Laws.

Authorizations granted by the City Planning Commission under the Zoning Resolution often involve the exercise of land use discretion, although not to the same extent as special permits. However, the Commission finds that the burden of compliance with the disclosure requirements of the Lobbying Laws for some of these authorizations may far outweigh the benefit to the public of the reporting of specific contacts, meetings and appearances. For example, to require lobbyist registration for an authorization involving a single-family home, as well as client registration for the homeowner and six periodic reports, may be excessively burdensome given the public's interest in transparency, and finite resources for administration, education and enforcement, and may yield little to no useful data to the public about the potential influence of money on the City's system of government.

Accordingly, the Commission recommends that such a change to the Lobbying Laws set forth factors to guide the Clerk's exemption by rule of those activities of architects and engineers

that seek to influence such actions that, for purposes of the goals of the Lobbying Laws, would be considered relatively minor. These factors might include the size and cost of the project, whether the project is being undertaken on behalf of a small property owner, such as the owner of a one, two or three family home, and the size of the architecture or engineering firms typically involved in such actions.

Third, the Commission recommends that the Lobbying Laws be amended to ensure that work (including advocacy before boards or commissions) on capital projects under the direction of a City agency be exempted from the definition of "lobbying activity" when that work is pursuant to contracts between the City agency and architects and engineers and within the scope of the capital project. In these instances the professional has been retained by the City or its agents, the project itself is subject to numerous integrity and transparency controls, and the ultimate "client" is, of course, the City itself, spending City money to effectuate City policy.

Finally, the Commission recommends that presentations before Community Boards by licensed architects and engineers in certain instances not be considered a lobbying activity. These instances would be those in which the attempt to influence the ultimate determination by a board or commission to which the Community Board makes its recommendation (such as the BSA) is not a lobbying activity. The Lobbying Laws could be amended to specifically require the Clerk to make rules exempting those community board appearances (or types of appearances). Thus, if an architect or an engineer appeared before a Community Board to describe a proposal that he or she is presenting to the BSA, and the attempt to influence the BSA

is not itself a lobbying activity, then the Community Board appearance would not be considered a lobbying activity.

Education and Training

Training should be mandated for all registered lobbyists to be administered by the Clerk. In addition, as soon as an anti-corruption component for on-line training can be developed by the Clerk, DOI and DoITT, this should be a part of the required training.

The Lobbying Bureau should have a designated full-time staff person responsible for conducting education and outreach not just to registered lobbyists, but to persons likely engaged in unregistered lobbying in New York City.

Background

The 2006 overhaul of the Lobbying Laws included a requirement that the Clerk develop "compliance programs for lobbyists and clients."[120] However, the Lobbying Laws contain no other express requirement for education or training on the Lobbying Laws.

Prior to the recently enacted Public Integrity Reform Act of 2011, the State Lobbying Act did not require any type of compliance education or training of lobbyists. The Public Integrity Reform Act of 2011, however, amends the State Lobbying Act to require an "online ethics training course" for registered lobbyists that must include "explanations and discussions of the statutes and regulations of New York concerning ethics in the Public Officers Law, the election law, the legislative law, summaries of advisory opinions, underlying purposes and principles of the relevant laws, and examples of the practical applications of these laws and principles."[121]

[120]NYC Ad. Code §3-223 (h).
[121] NY State Public Integrity Reform Act of 2011, Part A, Section 7.

The Clerk has taken significant steps in education and training on the Lobbying Laws. In December 2006, the Clerk held two training courses on the overhaul of the Lobbying Laws and the e-Lobbyist filing system for approximately 200 lobbyists. Three additional training sessions were held in 2007 as well as training sessions in each subsequent year.[122] In addition, the Clerk has conducted significant outreach to constituencies who are, or may be, subject to the filing requirements of the Lobbying Laws, but who are currently unregistered. In 2010 the Clerk sent letters to certain recipients of Council discretionary funding with a summary of the requirements of the Lobbying Laws, advising them of their duty to understand whether, and to what extent, the Lobbying Laws may apply to them.[123] Similarly, as noted above, the Clerk sent letters to investment firms, placement agents and others who may have business before the City's five pension boards, as well as to the Comptroller's Office and the pension board trustees informing them of the Lobbying Laws' applicability to those seeking to influence the investment decisions of the pension funds.

Testimony before the Commission

At the first public meeting of the Lobbying Commission, the Clerk testified that a substantial portion of its Lobbying Bureau staff's time is spent on assisting filers in complying with the requirements of the Lobbying Laws.[124] The Clerk testified that during late 2006 and 2007, when the Clerk's Office transitioned from accepting paper filings to the newly-mandated e-Lobbyist system, a majority of the investigators' time was spent answering questions from filers and walking them through the new electronic filing requirements. Even subsequent to this

[122]City Clerk, Report to the Lobbying Commission, 2011, at p. 17.
[123]City Clerk, Lobbying Bureau Annual Report, 2011, at p. 5.
[124] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 22.

initial period the Clerk testified that a large portion, if not the majority, of the investigators' time is spent on compliance assistance.[125]

The Clerk also outlined recent efforts to work with DoITT to develop online training sessions.[126] Additionally, the Clerk testified that he would like to send staff members to visit Community Boards to ensure that those who appear before them are aware of the Lobbying Laws' registration requirements; however such an effort would likely divert a large portion of staff time for several months.[127]

At the Commission's second public meeting, representatives from the State Commission on Public Integrity testified concerning the importance of training and education efforts to increase compliance with the State Lobbying Act's registration requirements.[128] The State Commission testified that it provided online resources for training in addition to legal staff who could answer questions.[129] The State Commission had a staff person, whose principal function appeared to be training and ensuring compliance with the filing requirements. The State Commission also provided five courses, in a variety of settings, including one-on-one trainings with organizations that lobby.[130]

Citizens Union has recommended in its report to the Commission that training be required for all new lobbying registrants.[131] NYPIRG and Common Cause recommended that

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[125] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 22.
[126] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 26.
[127] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 45.
[128] Lobbying Commission Public Meeting, March 30, 2011 Tr. at 36-37.
[129] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 36-39.
[130] Id. at 6, 38-39, 56-59.
[131] Citizens Union, Lobbying Reform Recommendations to the 2011 City Lobbying Commission, May 11, 2011, p. 3.

lobbying registration fees be increased and that the additional funds be used to fund enhanced training and education programs by the Clerk's Lobbying Bureau.[132]

In its comments on the Preliminary Report, DOI supported the Commission's recommendation for mandatory training for all registered lobbyists and further recommended "that at least two people, including a lobbyist, should be required to be trained in the use of the e-Lobbyist system."[133] According to DOI, this would avoid situations in which lobbying firms with only one employee trained on e-Lobbyist failed to file reports in a timely manner. DOI has also suggested that exemptions from the requirement that a second person be trained could be based upon the size of the lobbyist organization. In addition, DOI recommends that this training be required of registered lobbyists every two years, and that online training for registered lobbyists should include an anti-corruption component based on DOI's Corruption Prevention Lectures, given by DOI to City employees and vendors.

Recommendation

The Commission strongly recommends mandating training for all registered lobbyists on the City's Lobbying Laws and registration requirements, either online or in person. The requirement for training should take effect after online training is made operational by the Clerk and DoITT. The Commission agrees with DOI's recommendation that the training be required every two years and that lobbying firms – as opposed to client lobbyists – who have five or more employees listed on their lobbyist registration statements and who have 30 or more clients, be

[132] Lobbying Commission Public Meeting, May 11, 2011, Tr. at 43-44. Allocating registration fees for a specific purpose outside of the normal budget allocation process would contravene the City Charter's budget process. New York City Charter §227.
[133] DOI Comments on Preliminary Report, August 11, 2011, pp. 2-3.

required to have two employees receive training every two years at least one of which is actually engaged in lobbying. The Commission also recommends that the Clerk's Office work with DOI and DoITT toincorporate an anti-corruption component into online training for registered lobbyists.

The Commission believes that training those who have entered or are entering the system is necessary for a successful compliance effort. However, the more difficult and labor-intensive effort is education and outreach to those who may potentially be subject to the City's Lobbying Laws but are not yet registered.

The Commission urges the creation of a dedicated, full-time education and outreach officer in the Clerk's Lobbying Bureau to implement these training and outreach programs. While understanding that resources are scarce, the Commission believes that such a position could greatly enhance the ability of the Clerk's Lobbying Bureau to achieve compliance with the registration requirements – especially among those who may be subject to the laws but are not yet registered. This is especially important given the outreach that this Commission is recommending to certain groups of professionals such as architects, planners and engineers who may advocate before governmental entities without registering. This position would allow the Clerk's Office to regularly reach out to venues where organizations interact with City government, such as Community Boards and assist registrants with compliance issues, while at the same time freeing up the Clerk's Office to investigate those who fail to register (rather than spending so much of their time on compliance issues). This approach of outreach and education,

combined with more resources devoted to investigating those who are unregistered, should create a fairer system with greater incentives to comply and better enforcement capabilities.

Assessment of Late Penalties

The Commission recommends amending the Lobbying Laws to give the Clerk limited discretion to reduce or waive late filing penalties but only when certain specifically enumerated factors are found, based upon documentation supplied to the Clerk, to mitigate the imposition of the penalties.

Background

Before the adoption of the 2006 amendments to the Lobbying Laws, the Clerk never assessed penalties for late filings or failure to file required lobbying reports.[134] Local Law 15 of 2006, which strengthened enforcement and reporting requirements, amended section 3-223 of the Administrative Code to provide that the Clerk shall "designate by rule penalties for late filing of any statement or report required by this subchapter, which shall conform with the schedule established by the New York State Commission on Lobbying, or any successor thereto…."[135] During the hearings on Local Law 15 of 2006, the Chair of the Council's Committee on Governmental Operations expressed the view that the provisions of the law should not give too much discretion to the Clerk, and that limiting or eliminating discretion would decrease external political pressures on the Clerk's Office.[136]

[134] See Committee on Governmental Operations, April 14, 2006, Tr. at 83-84 and Lobbying Commission Public Meeting, March 15, 2011, Tr. at 15-16.
[135] NYC Ad. Code§3-223(c).
[136] Committee on Governmental Operations Hearing, April 4, 2006, Tr. at 86-87.

The rules promulgated by the Clerk on late fees provide that for first time filers, a late penalty of $10 per day for each late filing shall be assessed, and for other filers the late penalty shall be $25 per day for each late filing.[137]

By contrast, the State Lobbying Act gives significant discretion to the State Commission on Public Integrity (now JCOPE) in the assessment of penalties. The State Lobbying Act states that the penalties for late filings are "not to exceed" $10 for first time filers and $25 for all others, and leaves the determination of the late filing penalty to the discretion of the State Commission on Public Integrity.[138] According to the State Commission, decisions have been based on an internal set of criteria, and rarely have the maximum fines been imposed.[139] The State Commission, however, had no formally adopted or officially established schedule of penalties.[140] In addition, the State Commission, and now JCOPE, has a procedure whereby late fines can be waived altogether upon the filing of an affidavit and a determination that there was a justifiable reason for the delay.[141]

Testimony before the Commission

At the Commission's hearing on March 15, 2011, the Clerk testified that while he understood the desire for a system of defined late penalties that did not allow for the exercise of a

[137] 51 RCNY § 1-03.
[138] New York State Lobbying Act § 1-e.
[139] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 28.
[140] For the first time, JCOPE, the successor to the State Commission, has published its schedule of late penalties. See "Guidelines to the New York State Lobbying Act" April 24, 2012, p.30 at ww.jcope.ny.gov/about/lob/Lobbying Guidelines 4_24_12revised2.pdf. Subsequent to this publication, an Administrative Judge at OATH determined that because the City's Lobbying Laws require "conformity" with the State schedule, the State schedule should be used in determining late penalties assessed by the Clerk. These State penalties are only a small fraction of the maximum penalties that the Clerk has been assessing. The Commission's recommendations for reduction and waiver of late penalties under limited circumstances and a one-time amnesty program are predicated on the continuation of the penalty fee structure that has been in place since 2006.
[141] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 26.

substantial amount of discretion, the current system might be overly restrictive and work hardship in certain cases.[142] He went on to caution, however, that any added discretion "would have to come with very clear objective criteria that would describe how the discretion would be applied."[143]

At the public meetings of the Commission on May 3, 2011 and May 11, 2011, both representatives of lobbying firms and representatives of not-for-profit, social services organizations expressed the view that some discretion should be afforded the Clerk in the assessment of late filing penalties. The Human Services Council and Lawyers for the Public Interest testified that the mandatory late penalties could work a severe hardship on small, not-for-profit organizations and could deter compliance with the registration requirements if, for example, several months into a year an organization realizes that it had exceeded the $2,000 threshold for lobbying registration earlier that year but had failed to register.[144] Both organizations testified that providing the Clerk with mitigating factors that it must consider in order to reduce or eliminate late penalties would allow for flexibility without overwhelming the Clerk with requests for reductions of late charges.[145] DOI recommends, in its comments on the preliminary report, that waivers or reductions of late filing penalties be based upon written documentation showing that the recipient of the waiver satisfies the factors necessary for mitigation.[146]

Recommendation

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[142] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 47.
[143] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 47.
[144] Lobbying Commission Public Meeting May 3, 2011, Tr. at 17-23.
[145] Lobbying Commission Public Meeting, May 3, 2011, Tr. at 17-20.
[146] DOI Comments on Preliminary Report, August 11, 2011, pp. 2-3.

The Commission recommends the enactment of legislation providing the Clerk limited discretion in the waiver and reduction of the daily penalties for late filings. The Commission further recommends that the law enumerate specific guidelines for the exercise of this discretion. In particular, the Clerk should consider a specified list of factors before reducing or waiving a late filing penalty. The Commission believes that appropriate factors are: (1) whether and how many times the organization has filed late in the past; (2) the annual budget of the organization; (3) whether the entity is in the business of lobbying (i.e., a lobbying firm) or is a client who lobbies on its own behalf; (4) how much lobbying activity was unreported during the period; and (5) the reason(s) for the late filing.

These criteria should make it very difficult for a large, for-profit, outside lobbying firm to have a late penalty waived or reduced. However, a small, not-for-profit organization, lobbying on its own behalf, whose only lobbying activity consists of lobbying for a single grant or contract would, in limited and appropriate circumstances, be able to establish that its late penalty should be reduced or waived.

The Commission agrees with DOI's recommendation that any waiver or reduction of late penalties be in writing by the Clerk and be based upon documentation supplied by the recipient of the waiver or reduction in penalties that they satisfy the factors necessary for mitigation of penalties. The Clerk should promulgate a rule specifying the type of documentation necessary which could include an affidavit or, for example, public records showing that the organization is a not-for-profit and the size of its budget, etc.

Amnesty

The Commission recommends legislation providing for a one-time amnesty from late filing penalties for registrants under the City Lobbying Laws who have never previously registered.

Background

Currently, the late filing penalties for non-registration under the City's Lobbying Laws are mandatory and set at the level of $10 per day for first time filers and $25 per day for all others. In addition, the Lobbying Laws authorize the Clerk to impose civil penalties. The State Act also provides for penalties of up to $10 per day for first time filers and up to $25 per day for all others.[147] However, the State Commission on Public Integrity testified that it has a program under which late filers can apply for a waiver of all penalties for good cause.[148] The Commission heard substantial testimony that mandatory daily late fees constitute a growing and self-perpetuating obstacle to registration, particularly for smaller entities. The Commission believes that accrued late fees present a long-term obstacle to increasing the number of persons and entities that comply with the Lobbying Law.

Testimony before the Commission

At the Commission's May 3, 2011 hearing on issues facing not-for-profits, representatives of the Human Services Council and the Lawyers Alliance recommended an amnesty for non-registrants, testifying that providing a means of entering the system without being subject to substantial penalties would enable registration by smaller and/or less sophisticated organizations that may not have been aware of their registration and filing

[147] Infra at 25.
[148] Infra at 25-26.

obligations.[149] It appears that the amnesty they envisioned was not a one-time event, but that any self-identified first time filer would be allowed to come into the system without facing late filing penalties.[150]

Citizens Union, in its report to the Commission dated May 11, 2011, recommended a one- time blanket amnesty to address the concern that organizations are choosing to operate outside of the registration system because of fear of the accumulation of costly late fees.[151] Citizens Union stated that this amnesty should be a one-time or infrequent occurrence and should be coupled with extensive public outreach and education.[152]

Recommendation:

Legislation should be enacted creating a one-time amnesty, limited in duration, during which non-registrants who come forward would have daily late penalties, and any other civil penalties, waived with respect to the failure to register and file, and those registrants would be required to provide an annual report of any previously unreported lobbying activity for the prior calendar year -- within 90 days of registering with the Clerk. This would ensure that two important goals of the Lobbying Laws, broad compliance and full disclosure to the public of covered activities are met. This amnesty should not be available to anyone who has registered as a lobbyist since the 2006 amendments to the City's Lobbying Laws because such persons and organizations would have been aware of their obligations under the laws.

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[149] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 33.
[150] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 16-17.
[151] Citizens Union Report, May 11, 2011 at 8.
[152] Citizens Union Report, May 11, 2011 at 8.

To ensure the success of this one-time amnesty program, the Clerk should inform every individual and entity that has business dealings with City government through public outreach and education. This amnesty should not begin until the Clerk has conducted significant outreach to the public, including targeted outreach to professionals such as architects, planners and engineers who represent clients before government entities.

Locating Unregistered Lobbyists

The one-time amnesty should be coupled with a new protocol for the Clerk to regularly review, monitor and correspond with organizations and individuals that have multiple dealings with agencies that are not registered as lobbyists.

Background

Prior to the 2006 overhaul of the City's Lobbying Laws, lobbyists operated, in essence, on an honor system. Although the Clerk had certain investigative powers, including subpoena power,[153] the Lobbying Bureau functioned primarily as a repository for the filings of those lobbyists who complied with the law.[154] As the Clerk testified before the Council in 2006 , prior to 2006, no late penalties were assessed against late filers. Rather the Clerk's Office notified those it knew of who had failed to file and gave them a 14 day period to cure. Even after the 14 days elapsed, the Clerk warned of a possible future fine in order to induce compliance.[155]

With the 2006 overhaul of the Lobbying Laws, the Council and Mayor sought to strengthen enforcement. The 2006 amendments to the Lobbying Laws set forth significantly

[153]NYC Ad. Code §3-212(a).
[154] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 15-16.
[155] Committee on Governmental Operations, April 4, 2006, Tr. at 83-84 and Lobbying Commission Public Meeting, March 15, 2011, Tr. at 16.

increased penalties that are required to be levied for late filings.[156] Local Law 15 of 2006 required the Clerk to randomly audit lobbyists.[157] In addition, the law directed the Clerk to develop compliance programs, and directed the DOI to assist in training the Clerk's staff to enforce the Lobbying Laws.[158] However, the amendments did not set up any specific mechanisms to identify or enforce the Lobbying Laws against unregistered lobbyists. Local Law 15 requires the Clerk to report on and make public, complaints received by the public, and orders requiring violators to "cease all lobbying activities."[159] This provision, while aimed at restricting unregistered lobbying, is limited.

Notwithstanding the significance of the changes to the Lobbying Laws in 2006, the enforcement tools provided to the Clerk in the Lobbying Laws -- compliance programs, the random audit and even the late fees, remain oriented towards lobbyists and clients already in the system. The compliance programs, audits and even the mandatory late fees are premised on the assumption that the registrant has filed, albeit in some cases after the filing deadline.

The State Lobbying Act is similar in this regard to the City's, in that much of the focus of enforcement, including late penalties, audits, and requirements to review all statements, are directed at those who are already registered with the State registration system. However, the State Executive Law does provide that State executive agencies maintain and provide to the State

[156] NYC Ad. Code §3-223; § 3-223(h).
[157] NYC Ad. Code §3-312.
[158] NYC Ad. Code § 3-212(c)(v).
[159] NYC Ad. Code §3-312.

Commission on Public Integrity, a record of those who appear, for a fee, on behalf of someone with dealings before the agency.[160]

Testimony before the Commission

At the March 15, 2011 public meeting of the Lobbying Commission, the Clerk testified on its efforts to use the tools given it to enforce the Lobbying Laws against potentially unregistered lobbyists and clients. First, in the Clerk's Report submitted to the Commission, the Clerk's Office reported that it had received and pursued a number of complaints concerning unreported lobbying since 2006, and that out of a total of ten complaints of unregistered lobbying since 2006, the Clerk substantiated the allegations in two cases.[161] The Clerk assessed $104,290 in late penalties against one subject and $59,090 in late penalties against the other.[162]

The Clerk also testified concerning a significant initiative it has undertaken in the wake of press reports about abuses by State officials of their relationships with those seeking State pension fund business. In 2009, the Clerk requested an opinion from the Law Department on whether those who are retained or employed by investment firms are lobbying when they attempt to influence the decisions made by the City Comptroller, members of his staff, the boards of trustees, or members of their staff about the investments of the City's pension funds. The Law Department's 2010 opinion stated that such persons would be engaged in "lobbying activities."[163] Since then the Clerk has conducted extensive outreach to publicize this opinion.

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[160] NY Exec. Law §166.
[161] Reports Pursuant to Section 3-212(c) of the New York City Administrative Code, 2007-2012, *appended to* the Clerk's Report to the Lobbying Commission.
[162] Report Pursuant to Section 3-212(c) of the New York City Administrative Code, March 1, 2010 at 2.
[163] New York City Corporation Counsel Advisory Opinion, available at www.cityclerk.nyc.gov/downloads/pdf/placementagents.pdf

According to the Clerk's report to the Commission, it has sent letters to investment firms, placement agents and other third parties who may have dealings with the City's pension funds or the Comptroller's office.[164] The letter notified parties of the Lobbying Bureau's intention to prospectively enforce the Law Department's opinion, commencing in January 2011.[165] Another letter was sent to the Comptroller with a copy to each member of the boards of trustees of the City's five pension funds, and the executive director of each entity, requesting assistance in announcing the opinion by posting it on the Comptroller's and the pension funds' websites. The Law Department's opinion has also been posted on the Clerk's website.[166]

Similarly, in 2010 the Clerk sent letters with a summary of the requirements of the Lobbying Laws to organizations receiving Council discretionary funding in the Doing Business Database.[167] Those letters advised all those organizations that they were responsible for reviewing the Lobbying Laws and determining whether or not their activities constituted lobbying activities pursuant to the City's Lobbying Laws.[168]

At the Commission's second public meeting, representatives from the State Commission on Public Integrity testified about their own efforts to identify unregistered lobbyists. The State Commission explained that its principal enforcement efforts are accomplished through the auditing process, an indication that like the Clerk, the State's efforts are focused primarily on those who are already in the lobbying registration system.[169] Similarly,

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[164] See Lobbying Commission Public Meeting, March 15, 2011, Tr. at 32.
[165] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 32.
[166] Report to the Lobbying Commission 2011, Office of the City Clerk, pp. 18-19.
[167] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 53, citing Ad. Code section 3-211.
[168] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 54.
[169] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 19.

the representatives of the State Commission testified that the number of investigations into unregistered lobbying activity generated through public complaints is small. The representatives of the State Commission testified to a number of other ways they attempted to identify potentially unregistered lobbyists by: (1) by monitoring advertising done by groups and then checking to see if a group advertising for or against a particular policy is registered; (2) by sending staff to "lobby days" at the State Legislature (although they acknowledged that resources for this are limited); and (3) by examining the filings of State Agencies pursuant to the State Executive Law Section 166.[170]

Finally, the good government groups asked that the Commission consider two proposals (other than an amnesty) for bringing unregistered lobbyists into the City's lobbyist registration system: (1) the use of advertising to inform people potentially engaged in lobbying activities of their obligations; and (2) the requirement of executive agencies to provide a listing of contacts, similar to the State Executive Law filings pursuant to Section 166 and the new database of those contacting State agencies on behalf of clients required by the new State Public Integrity Reform Act of 2011.[171]

Recommendation

The Commission recommends that the Lobbying Laws direct the Clerk to focus some of its limited resources on those organizations who are not registered, but whose dealings with City government may subject them to the Lobbying Laws' requirements. This can be accomplished by authorizing the Clerk to develop a protocol it can use to periodically check

[170] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 19-21.
[171] Lobbying Commission Public Meeting, May 3, 2011, Tr. at 67; May 11, 2011 Tr. at 39.

sources of information that should assist it in identifying potential unregistered lobbyists. Lists of contacts with State agencies currently required by the State Executive Law, while used from time to time according to the State Commission on Public Integrity, cover many activities that do not constitute lobbying, do not appear to be kept uniformly by all agencies and do not appear to have been designed as a lobbying law enforcement aid.

This protocol should include periodic review by the Clerk of: (1) all lobbying registrations of the State Public Integrity Commission by organizations who are disclosing to the State Commission that they engage in lobbying at the City level to ascertain any State registrants who are not registered with the Clerk:[172] (2) notices of appearance before the City Planning Commission identifying the lead contact or representative on behalf of an applicant; and (3) the City's Doing Business Database.

In addition, the Commission recommends that the law require the Clerk to work with agencies, the Law Department and the Council to develop notices and advertisements to be placed in documents, on websites and in media likely to reach those with business dealings with the City. For example, land use applications and City contracts could contain a notice that the applicant/contractor must review the Lobbying Laws and determine, if they expend more than the allowable dollar threshold to influence certain government decisions, whether they may be required to register as a client of a lobbyist and whether their representative may be required to register as a lobbyist.

Increasing Public Information and Improving the e-Lobbyist System

[172] In response to the Commission's hearings and Preliminary Report, the Clerk's Lobbying Bureau has been comparing registration statements filed with the State against registration statements filed with the Clerk. *See* City Clerk, 2011 Lobbying Bureau Annual Report, March 1, 2012 at 7.

Background

The registration required for lobbyists and clients, and its inclusion in the Clerk's database, are intended to increase public awareness of lobbyists' interactions with public officials. Local Law 15 of 2006 required the Clerk to "prepare and post on the internet an annual report relating to the administration and enforcement of" the Lobbying Laws.[173] The report is required to include (i) the number of complaints received by the public and their disposition; (ii) the number and amount of civil penalties imposed under the penalty provisions of the law; (iii) the number and duration of orders to cease all lobbying activities issued by the Clerk; (iv) the number of random audits conducted and their outcomes; (v) compliance programs developed and implemented; and (vi) any other information the Clerk deems appropriate.[174]

In addition, the overhaul of the registration requirements mandates that all required reports "be filed by electronic transmission in a standard format as required by the City Clerk," and that the reports, as well as any other information required to be maintained by the Clerk, "be kept in a computerized database and . . .be posted on the internet as soon as practicable."[175]

However, not all of the information collected by the Clerk is available to the public in a searchable format; the City's database only allows the public to search for a lobbyist, or client. In contrast, the State database allows searches by "bill number, compensation, expenses, lobbyist or client name, and level of government, among other criteria."[176]

Testimony before the Commission

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[173] NYC Ad. Code §3-212 (c).
[174] Id..
[175] NYC Ad. Code §3-221.
[176] Lobbying Commission Public Meeting, March 30, 2011 Tr. at 80-81.

There was some tension in the recommendations between registrants seeking to reduce the burden of providing substantial amounts of detailed information in their reports to the Clerk, and those government watchdog groups who felt that the information currently required was necessary to obtain a complete and accurate picture of lobbying activity in the City.

At the March 30, 2011 Commission hearing, Citizens Union testified that the City's system was superior to the State's, in its ability to demonstrate links between information such as subject matter and targets of lobbying activity.[177] At the May 3, 2011 hearing on issues facing not-for-profits, Common Cause favorably contrasted certain aspects of the City's system with the the State's for providing more uniform information that could be tracked, while suggesting that greater pre-population of reports with information from prior filings could make the system easier to use.[178] Commission staff has reviewed print-outs of reported activities from the State Public Integrity Commission database, and noted that while information may be input into the State system in a manner that connects the subject matter with any identifying information such as a bill or resolution number and the target of the lobbying activity, these connections are not clear to others searching the State database.[179] Citizens Union noted that the City had made these connections clearer.[180] At the May 3, 2011 hearing, however, representatives of the social services not-for-profit community testified that it was burdensome for smaller organizations to provide some information, such as specific contact information.[181] Similarly, the New York Advocacy Association testified in support of limiting the requirement for information on the

[177] Lobbying Commission Public Meeting, March 30, 2011, Tr. at 81.
[178] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 56.
[179] Lobbying Commission Public Hearing, May 3, 2011 Tr. at 61-62.
[180] *See id.*.
[181] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 11-12.

target of the lobbying activity to the agency or decision-making body lobbied.[182] However, DOI, in its comments on the Preliminary Report, recommended that the Clerk's current practice of requiring the reporting of the agency lobbied, as well as the persons in the agency be maintained, and that the Lobbying Laws be amended to clarify this requirement.[183]

Although printed reports on registrants in the City system appear clearer and more comprehensive than State reports, both NYPIRG and Citizens Union testified that the City's database should be more easily searchable by the public. They recommended that the system allow searches to be conducted by subject matter and the official lobbied.[184] Both organizations also recommended requiring the Clerk to report on its activities and operations in the Mayor's Management Report.[185] Citizens Union also recommended that the Clerk's annual report contain additional information including information on the Clerk's budget, communications received, and more macro-level information including subjects and issues most lobbied, firms with the most clients and top violators of the Lobbying Laws.[186]

Those who addressed the issue of pre-populating screens with previously-provided registration information favored increased use of this technique to ease the burden on filers.[187]

Finally, the Executive Director of the CFB and Citizens Union raised a technological concern regarding the interplay between the lobbyist registration database and the City's Doing Business Database, the database that contains the names of those who, by virtue of their City

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[182] Lobbying Commission Public Hearing, April 27, 2011, Tr. at 15-16.
[183] DOI Submission on the Commission's Preliminary Report, August 31, 2011, at 3.
[184] Lobbying Commission Public Hearing, May 11, 2011, Tr. at 41 and Citizens Union Report, May 11, 2011 at 7.
[185] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 42.
[186] Citizens Union Report at 6.
[187] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 10-12, 37, and Lobbying Commission Hearing, May 11, 2011, Tr. at 36.

business dealings, are limited in the amount they may contribute to candidates for election to City offices.[188] They testified that entities that are engaged in lobbying but have received extensions to file their registration statements are not included in the Doing Business Database. For purposes of the Campaign Finance Law, these entities do not appear as lobbyists for a limited time, despite their activities, and are thus able, also for a limited time, to make contributions in excess of the amount allowed by the City's Campaign Finance Law.[189]

Recommendations

1. **More information from the e-Lobbyist Database must be publicly available, and it must be available in a searchable format.**

The Commission has heard from good government groups as well as from its own staff and some of its Commissioners that it is difficult for them to search for information on the e-Lobbyist database and that information is not publicly available in a useful format.

The Commission believes that the City's system should be modeled after the State's. In this respect, search options in the City's database should be expanded so that they match, or more closely resemble, the State's. Doing so would allow the public to retrieve data from the City's database and obtain a clearer picture of lobbying, including which public officials were lobbied on any specific bill, and which lobbyists or clients were active on a particular issue.

The Commission supports DOI's recommendation that when applicable, lobbyists should be required to provide a bill number, resolution number, rulemaking number and such other identifying information when supplying "information sufficient to identify" the subject matter of the lobbying activity. Although the 2006 amendments sought to increase the requirements for

[188] These contribution limits are found at NYC Ad. Code §3-703(1)(f).
[189] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 86 and Citizens Union Report at 3.

subject matter reporting, there is still room for improvement, and this would ensure that specific identifying information, consistent with that required by the State, is supplied, and should enhance the ability of the public to comprehensively search for information on the subjects of lobbying activity.

Increasing the searchability of the e-Lobbyist database and the scope of publicly available information will allow greater transparency and will reduce the amount of time individuals, various groups, and City employees spend on compliance and research/data-mining.

While DoITT is still working on the best ways to accomplish this goal, the Commission believes that, ultimately, DoITT will be able to increase the transparency and searchability of the lobbyist data so that people can search by topic, or government entity as well as other criteria.

2. **Changes should be made to e-Lobbyist that will make the system even more accessible to lobbyists and clients such as more pre-population of fields so that certain information from prior reports is imported into new reports and more use of drop down screens so that information is more uniform. Also, where possible, the City and State labeling and naming schemes should be more consistent.**

Pre-population of fields is also a recurring theme raised by all lobbyists that have used the system. E-Lobbyist should pre-populate more fields to facilitate inputting data. Staff has learned from the Clerk's Office that the Clerk and DoITT have scheduled revisions to the e-Lobbyist system to enhance its ability to pre-populate fields for client registrations, client and lobbyist periodic reports, and fundraising/political consulting reports.

Lack of standardized reporting categories for certain subject areas is also problematic. Drop-downs for specific information should be created as opposed to the current practice of providing a typed description alone. For example, expense reporting on e-Lobbyist appears

overly complicated, and standardizing itemized expense reporting would allow the public to conduct more targeted searches of the databases by category or type of expense. To the extent possible, the labeling/naming schemes of both the State and City systems should be reconciled to create consistency in describing the same information sought to be captured. While it may not be possible to have one form of report meet both City and State compliance requirements, creating consistency through shared terminology may decrease the frustration of lobbyists and clients seeking to comply with both the State and City lobbying laws.

3. **Clarify the law to ensure that lobbyists are required to report the person before whom the lobbyist is lobbying as well as the agency.**

The Commission agrees with the longstanding practice of the Clerk as set forth in Advisory Opinion 1987-17 that lobbyists must list both the agency lobbied as well as persons lobbied when reporting on the targets of lobbying activity. The Commission further agrees with DOI that the language of Administrative Code section 3-213(c)(6) should be clarified to reflect this practice.

4. **Address the lack of systems communication that delays the Doing Business Database from having information about a lobbyist if that lobbyist has been granted a filing extension by the Clerk.**

The Commission shares the concern of the CFB and good government groups that a small number of lobbyists may not appear in the City's Doing Business Database and thus may not have their campaign contributions subject to the smaller maximum applied to all persons and entities who "do business" with the City. Local Law 34 of 2007, known as the "Doing Business" Law, adds to the existing prohibition against lobbyists' contributions being matched by public

funds by also restricting the maximum allowable contribution by a lobbyist to political candidates.

Information about those doing business with the City is collected in a uniform manner by MOCS and compiled into a central Doing Business Database ("DBDB"). Lobbying Laws registration data are collected through the e-Lobbyist system, maintained by the Clerk's Office. These two databases collect information in a different format, through different systems, complicating CFB's determination of eligibility for matching funds.

The Commission has learned that if a lobbyist makes a contribution and files a late lobbying registration, the lobbyist will not be automatically entered into the DBDB. That lobbyist will not appear in the DBDB until the registration statement is filed via the e-Lobbyist system or the Clerk notifies the DBDB of the extension. This is because the Clerk routinely grants extensions to file lobbying registrations, but notice of them is only forwarded to the DBDB periodically. As a result, a loophole is created whereby lobbyists might circumvent the lower contribution limit imposed by the Doing Business Law because an extension of time has resulted in a delay in their name appearing in the DBDB.[190]

The Commission recommends that DoITT develop and implement an automatic reporting feature to forward along all notices of filing extensions granted by the Clerk from the e-Lobbyist Database to the DBDB. By connecting these two agencies and databases, an automated feature will avoid the possibility of human error that may result if each extension had to be reported and forwarded manually. Furthermore, this upgrade to e-Lobbyist should preclude lobbyists from

[190] Lobbying Commission Public Meeting, March 15, 2011, Tr. at 81-86; see also Lobbying Reform Recommendations for the 2011 Lobbying Commission, Citizens Union at 3, 5.

evading the lower contribution limit imposed by the Doing Business law. This will result in greater transparency regarding lobbying activity reporting and adherence to the restrictions on contributions by lobbyists contained in the Campaign Finance Law.

5. **Allow a lobbyist who retains a co-lobbyist or third-party lobbyist to report this without having to file as a client.**

E-Lobbyist lacks an input category for "co-lobbyists" or "third party lobbyists."[191] Thus, a lobbyist who retains the assistance of a co-lobbyist currently would have to report that arrangement as if the lobbyist were a client retaining a lobbyist. Since the publication of the Preliminary Report, DoITT has implemented the ability to include co-lobbyists on registrations.

6. **Require Reporting of More Information by the Clerk**

Local Law 15 requires that the Clerk report more information to the public, including audits, and the assessments of penalties. Until recently, the Clerk's Office correctly focused on complying with these new reporting requirements, and since the Commission began its work, the Clerk has made a good effort to begin to include more data in its 2010 and 2011 Annual Reports, including top lobbyists by compensation, information of much interest to the public.[192] The Commission recommends the Clerk's annual report should, by law, include various benchmarks of interest to the public on the Lobbying Bureau's operations, such as the types of calls and email requests for assistance, response times to these requests and number of new first time filers. In

[191] Lobbying Commission Public Meeting, March 15, 2011 Tr. at 46.
[192] See Lobbying Bureau Annual Report, March 1, 2011 at 9-15. In another example of the Clerk's Office attempting to implement recommendations contained in the Commission's Preliminary Report, the Clerk's Lobbying Bureau Annual Report dated March 1, 2012 contained even more data of the type called for in the Commission's hearings including types of issues lobbied and top governmental targets of lobbyists. See Lobbying Bureau Annual Report, March 1, 2012 at 33-34.

addition, the annual report should be required to include other "macro-trends" in City lobbying activities, such as the top issues lobbied on and the entities or officials most lobbied.

Coordination of State/City Filings

The Commission recommends calling on the State to accept the City filings for lobbyists who register under the State Lobbying Act solely by virtue of their lobbying activity in New York City.

Background

A lobbyist who lobbies in New York City is required to register under the Lobbying Laws with the Clerk and under the State Lobbying Act (as amended by the Public Integrity Reform Act) with JCOPE, the successor to the State Commission on Public Integrity. Under the City's Lobbying Laws, the lobbyist is generally required to file one statement of registration, six periodic reports and an annual report.[193] Clients are required to file a Client Annual Report.[194] Under the State Lobbying Act, lobbyists are required to file biennial registration statements and six bimonthly reports.[195] Under State law, clients are required to file two semi-annual reports.[196] The 2006 amendments to the City's Lobbying Laws specifically authorized the Clerk to conform the reporting periods of the City's periodic reports to the periods covered by the State's bi-monthly reports.[197] Local Law 15 of 2006 also required the Clerk to conform the requirements of reports to the State reports, to the extent practicable.[198]

Testimony before the Commission

[193] NYC Ad. Code §§3-213, 3-216 and 3-217, and 51 RCNY §1-05.
[194] NYC Ad. Code §3-217.
[195] NY Leg. Law §§ 1-e(c), 1-h.
[196] NY Leg. Law §1-j.
[197] NYC Ad. Code §3-216(a).
[198] NYC Ad. Code § 3-216(a)(1).

Virtually everyone who testified before the Commission on the dual City and State filing systems agreed that a single system for lobbyist registration at both the City and State levels would simplify the registration process.[199] Yet in describing the aspects of each system that they preferred, those who appeared before the Commission had differing views, in part depending on whether their priority was ease of filing or comprehensiveness of information. The Lawyer's Alliance stated that Citizens Union's preference for some aspects of the City's registration system could be attributed to the different perspective from which a good government group would view reporting.[200]

Citizens Union, Common Cause and NYPIRG believe the City system provides more useful information in many ways than the State system especially in terms of contacts and tracing activity on a particular issue.[201] And in those cases where they think the City system provides too little publicly accessible information, the Commission will be proposing changes to address their concerns.

Recommendation

The Commission urges the State to seriously consider accepting City lobbyist filings from those lobbyists whose activities are covered by the State Lobbying Act only because of their lobbying of New York City officials.

<u>Requirement for another Lobbying Commission</u>

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[199] Lobbying Commission Hearing, May 3, 2011, Tr. at 10-11; Citizens Union Report at 5 and Memorandum from the New York Advocacy Association to the Lobbying Commission, March 29, 2011, "Comments on the City and State Lobbying Schemes."
[200] Lobbying Commission Public Hearing, May 3, 2011, Tr. at 12.
[201] Lobbying Commission Public Hearing, March 30, 2011, Tr. at 81, and Lobbying Commission Public Hearing, May 3, 2011, Tr. at 62.

The Commission recommends that the Lobbying Laws be amended to require another Lobbying Commission to review the City's Lobbying Laws three to four years after the effective date of any legislation amending current laws.

Background

Local Law 15 required the Mayor and the City Council to jointly appoint a five-member commission to review the implementation of the overhauled Lobbying Laws, and to report its administrative and legislative recommendations for strengthening the administration and enforcement of the law.

At the State level, the Public Integrity Reform Act of 2011 requires the Joint Commission on Public Ethics to review the laws, regulations, guidance and enforcement structure and submit a report with any recommendations for regulatory or statutory changes by February 1, 2015.[202]

Recommendation

Any significant changes to the City's Lobbying Laws in the wake of this Commission should include a requirement for another Commission to continue evaluating the Lobbying Laws in three to four years. The Lobbying Laws are complex and the interplay with the State system adds to that complexity. Recent changes to the State system that occurred while this Commission was meeting, as well as the changes recommended by this Commission, will need to be monitored for any unintended consequences or other issues that the changes may bring to light. Finally, the Commission has not had a chance to review the application of the Lobbying Laws to those who seek business with the City's pension funds, as this is the first year the laws are being applied to these parties. For all of these reasons, any amendment to the Lobbying

[202] Public Integrity Reform Act §94.

Laws should require a new joint Mayoral-Council Commission to be empanelled within three to four years.

Other Issues

There are several other issues which -- often as a result of the Commission's hearings -- are being evaluated by the Clerk and the other responsible agencies. These issues should be addressed by the Clerk and if necessary should be addressed through amendments to either the law or rules. The Commission's recommendations concerning these issues are as follows:

1. **The accrual basis for receipts should be maintained in reporting lobbying income.**

The Commission believes that reporting income on a cash basis, rather than an accrual basis, which would require lobbyists to re-file or amend filings as payments were made to them, would be excessively burdensome to registrants without any real public benefit.

2. **Rulemaking or other means of providing guidance should be used more regularly when the Clerk is providing guidance on issues that may apply to large numbers of filers.**

Organizations have observed that because the Clerk's advisory opinions can often affect parties other than the subject seeking advice, the Clerk's Office should rely more on the City's rulemaking process, which requires notice and comment, in an effort to allow the regulated community greater input concerning possible consequences of the Clerk's interpretations of the Lobbying Laws. The Commission believes that advisory opinions serve a useful purpose. The Commission nonetheless recognizes the value of public comment provided by the City's Administrative Procedure Act, and it encourages the Clerk to evaluate when rulemaking may be

more desirable than advisory opinions, particularly in matters of more general application and interest. Further, because the Clerk has received few requests for advisory opinions, and as such requests are one of the key means of alerting the Clerk to the existence of questions relating to interpretation or policies, the Commission encourages the lobbying community to be more active in requesting advisory opinions on specific issues of concern. The Clerk should then decide, in consultation with the Law Department, whether resolution of these issues is best addressed by advisory opinions or rulemaking.

ISSUES RAISED THAT FALL OUTSIDE OF THE COMMISSION'S MANDATE OR FOR WHICH THE LOBBYING COMMISSION IS NOT THE BEST VENUE TO CONSIDER THE ISSUE

Restricting Bundling and Working as Political Consultants to Campaigns

Background

The 2006 overhaul of the City's Lobbying Laws included a restriction on the matchability of campaign contributions by lobbyists under the City's voluntary campaign finance law. Local Law 17 prohibits contributions by lobbyists and their spouses, domestic partners and unemancipated children from being matched by public funds. In 2007, on the heels of the overhaul of the City's Lobbying Laws, the Council and Mayor undertook a historic overhaul of the City's Campaign Finance Law and restricted campaign contributions to those running for City offices from those deemed to be "doing business with the City." While those doing business include lobbyists, lobbyists are only one segment of this group. Others include contractors or those seeking contracts with the City, recipients of economic development benefits or grants from the City, applicants for land use and zoning changes, and those with or seeking

franchises and concessions from the City.[203] Not only are the amounts of their campaign contributions restricted, but they are not matchable.[204] The Mayor, the City Council, and their respective staffs spent over a year conducting meetings and hearings to determine how far the prohibitions should reach, and which persons in each category of business or organization deemed to be "doing business with the City" should be covered. While the Lobbing Laws and Campaign Finance Law prohibit matching of donations from lobbyists and related parties and restrict the amount of the contribution, neither law prohibits matching of, or restrict so-called "bundled" contributions, that is, contributions from other, non-covered persons that may nonetheless be solicited and delivered by the lobbyist to a candidate or elected official.

Testimony before the Commission

Citizens Union, NYPIRG and Common Cause testified before the Lobbying Commission that contributions bundled by lobbyists should not be eligible for matching funds under the City's voluntary campaign finance system. NYPIRG and Common Cause supplied data showing that 14 lobbyists bundled a total of $320,000 during the 2009 City-wide election and 24 clients of lobbyists bundled a total of $490,000 in contributions.[205]

In addition, Citizens Union recommended to the Commission that candidates in the City's voluntary campaign finance system be prohibited from spending public funds on campaign consultants who are affiliated with lobbyists.[206]

Commission's Conclusion

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[203] NYC Ad. Code §3-702.
[204] *Id*.
[205] Testimony of Gene Russianoff before the New York City Lobbying Commission, May 11, 2011.
[206] Lobbying Commission Meeting, May 11, 2011, Tr. at 15-18.

While fully appreciating the seriousness of these issues and their potential impact on the City's political process, the Commission makes no recommendation to restrict campaign contributions bundled by lobbyists, or to restrict campaign expenditures by candidates in the voluntary campaign finance system to political consultants who are affiliated with lobbyists. The Lobbying Commission is not the appropriate venue to consider significant new restrictions on campaign contributions and expenditures under the City's voluntary campaign finance system.

First, any such additional restrictions should only be made in the context of a review of the entire campaign finance system. After the original restrictions on the matching of lobbyist contributions were made in 2006, the entire program was overhauled in 2007. Restrictions on lobbyist contributions became but one of a long list of restricted contributions by those having business dealings with the City. As NYPIRG's own numbers indicate, clients of lobbyists are bundling contributions in amounts similar to the lobbyists themselves, yet they would not be covered by this proposal.[207] Any review of the bundling of contributions should not be limited to a single category of those with business dealings before the City. To do this would be to return to a piecemeal approach to the doing business restrictions. In addition, any such changes should be made in the context of extensive hearings on the campaign finance system and the effects of such contributions on elections to ensure that an adequate record is developed in support of any amendments to the Campaign Finance Law. Given its limited subject matter and timeframe for evaluation and action, as mandated by the Lobbying Laws, this Commission does not have the mandate, the time or the expertise to develop such a record.

[207] Testimony of Gene Russianoff before the New York City Lobbying Commission, May 11, 2011.

Moreover, there are currently-pending and recently-decided federal lawsuits challenging various state and local campaign finance laws. One of these cases is a challenge to the City's Campaign Finance Law which has recently been decided in the City's favor by the United States Court of Appeals for the Second Circuit but which plaintiffs, according to the Law Department, are pursuing in the United States Supreme Court.[208] These cases raise First Amendment questions about restrictions on political activity and the types of findings that must be made to support various restrictions.[209] It is not the time to be considering adding restrictions to the City's Campaign Finance Law while a legal challenge is likely to be continuing.

Extending the Post Employment Ban on Appearing before an Official's Former Agency from One Year to Two

Background

Chapter 68 of the New York City Charter contains the City's Conflicts of Interest Laws, including certain post-employment restrictions placed on City employees and elected officials. Section 2604(d) of the Charter provides that "[n]o former public servant shall, within a period of one year after termination of such person's service with the City, appear before the city agency served by such public servant."[210]

In addition, section 38 of the Charter, dealing with the submission of local laws for approval of the electors provides that "a local law shall be submitted for the approval of the

[208] *Ognibene v. Parkes*, 599 F. Supp.2d 434 (S.D.N.Y. 2009), 09-09940-cv, 09 1432-cv (2d Cir. 2011) .
[209] *See Id.*; *Green Party v. Garfield*, 616 F.3d 189 (2d Cir. 2010).
[210] New York City Charter, Chapter 68, Section 2604(d).

electors … if it: … Repeals or amends sections twenty-six hundred one, twenty-six hundred four, twenty-six hundred five, and twenty-six hundred six insofar as they relate to elected officials."[211]

Section 73(8) of the State Public Officers Law provides for a two-year prohibition against appearances before the State Officer or employee's agency, stating that "no person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency."[212]

Testimony before the Commission

Citizens Union, NYPIRG and Common Cause all presented testimony to the Commission recommending that the City's one year post-employment ban on appearing in any matter before the agency formerly employing a City officer or employee be extended to two years. They argued that a two year period was more likely to reduce the influence of relationships that a staffer might maintain within an agency and would be consistent with the State law.[213]

Commission's Conclusion

The Commission believes that amending the City's Conflicts of Interest Law in this manner is not appropriately a matter best determined by this Commission. Neither City nor State lobbying laws contain post-employment restrictions. In City law they are found in the Conflicts of Interest provisions of the Charter, and in State Law they are found in the Public Officers Law. This is because they are not uniquely applicable to lobbying, but to any compensated activity in which a former government employee engages after terminating government service. Any

[211] *Id*. at Chapter 2, Section 38, Subsection 18.
[212] New York Public Officers Law § 73(8)(a)(i).
[213] Lobbying Commission Public Meeting, May 11, 2011, tr. at 27-31 and Testimony of Gene Russianoff before the New York City Lobbying Commission, May 11, 201l.

amendments to these laws should be considered in the context of amendments to the ethics/conflicts of interest laws governing City officials.

Moreover, because of the Charter's prohibition against amending the Conflicts of Interest provisions as they relate to elected officials without a referendum, any legislation that this Commission might propose would have to exclude elected officials, *i.e.*, those who are the most sought-after former City employees by traditional lobbying firms. This would lead to the unfair result that an elected official's employees would be prohibited for two years from appearing before former colleagues, but the elected official him or herself – who wielded substantially greater influence while in office – would only be subject to a one year prohibition.

Move the Lobbying Bureau from the Clerk's Office to the CFB or COIB

Background

Section 38 of the Charter provides that a referendum is required before a local law becomes operative that "abolishes, transfers or curtails any power of an elective officer" or that "transfers powers vested by this charter in an agency the head of which is appointed by the mayor to an agency the head of which is not so appointed or vice versa."[214] Section 48 of the Charter provides that the Clerk is appointed by the Council, and the Administrative Code gives the Clerk the power and duty to administer and enforce all of the provisions of the Lobbying Laws.[215]

Testimony before the Commission

[214] New York City Charter §38.
[215] New York City Charter §48 and Administrative Code §3-212.

Citizens Union recommended moving the enforcement and oversight of the Lobbying Laws from the Clerk's Office to the CFB. Citizens Union stated in its report that because the Clerk is appointed by the Council and serves also as the Clerk of the Council, that enforcement of the Lobbying Law would be better if done by a more independent entity such as the CFB. Citizens Union acknowledges that such a change would require a voter referendum and that it recommended this to the Mayor's 2010 Charter Revision Commission.[216] The Charter Revision Commission did not choose to put this recommendation on the ballot.

Commission's Conclusion

The Commission believes that enforcement of the Lobbying Laws should remain with the Clerk's Office. The work of this Commission indicates that the enforcement and implementation of the Lobbying Laws has greatly improved since 2006. The number of registered lobbyists in the City has increased approximately 50 percent from almost 250 lobbying entities in 2006 to 365 as of April 2011.[217] Fines are regularly levied for late filings. Thirty audits per year are conducted by the Clerk's Office. Complaints from the public, while infrequent, are pursued by the Clerk. A fully computerized e-Lobbyist system has been developed and the Clerk regularly reports on its activities. In addition, the Clerk has done significant outreach to those seeking pension business with the City, and those receiving Council discretionary funding, to bring more lobbyists into the registration system.[218]

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[216] Lobbying Commission Meeting, May 11, 2011, Tr. at 19-21, and Lobbying Reform Recommendations, Citizens Union, May 11, 2011, p. 5.
[217] Lobbying Commission Public Hearing, March 15, 2011 Tr. at 24-25; Memorandum from the Lobbying Bureau, Office of the City Clerk, to the Lobbying Commission, April 26, 2011 (attached to this Report as Exhibit B).
[218] *Supra* at -21 and 47-*See generally supra* 48.

The Commission believes that the recommendations it is making in this report will allow the Clerk to more effectively enforce the Lobbying Laws. There has been no evidence or testimony before the Commission that the Clerk has acted in a manner that is less than independent or that evidences any intent to be less than robust in its enforcement of the Lobbying Laws. Finally, as has been noted in this Report, the Clerk's Office has carefully followed the proceedings of this Commission and has already begun implementing certain technological and transparency recommendations called for in this Report. Thus, this Commission does not believe that the Council or the Mayor should consider a transfer of the authority to regulate lobbying from the Office of the Clerk.