

New York State: Ethics and Lobbying Reform

Legislation Signed into Law

New York State Governor Eliot Spitzer has signed the Public Employee Ethics Reform Act of 2007 into law, which enacts several changes to State ethics and lobbying law, including new rules regarding gifts to public officials; new requirements regarding disclosure of lobbying activity on grants, loans and other disbursements of public money; new revolving door restrictions, and increased penalties for unlawful gifts and violations of the lobbying law, among other changes. Certain provisions of the Ethics Reform Act are highlighted below. These provisions will take effect on April 26, 2007, unless otherwise indicated.

Gifts

The new law eliminates the \$75 threshold that had long been in place, and defines gift as **anything of more than nominal value** given to a public official in any form, including service, travel, lodging, meals, or refreshments. It prohibits any person from offering or making a gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee, under circumstances in which it could reasonably be inferred that the gift was intended to influence the official, or was intended as a reward for official action.

In addition, a separate provision of the new law prohibits an individual or entity, which is required to be listed on a lobbyist statement of registration in New York as either a Lobbyist or a Client, from offering or giving a gift to any public official, or to the spouse or child of a public official, unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official.

In summary, under the new law, if it is reasonable to infer that a gift of more than nominal value was intended to influence a public official, it should not be given.

Lobbying on Grants, Loans and Public Funding

Under the new law, individuals or entities who are otherwise required to register as a Lobbyist in New York will be required to report any attempts to influence a determination by a public official, or by a person or entity working in cooperation with a public official, with respect to the solicitation, award or administration of a **grant, loan, or agreement involving the disbursement of public monies** in excess of \$15,000 (other than a Governmental Procurement, which is already covered under the lobbying law). This provision takes effect on January 1, 2008.

In addition, under the new law, Lobbyists and their Clients will be required to report the lobbying of unpaid or per diem members of state boards, commissions and councils. This provision takes effect on December 31, 2007.

Revolving Door Restrictions

CONTACTS

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Under the new law, members of the legislature and legislative employees will be prohibited for a period of two years following the termination of such service from lobbying either house of the legislature. This provision is effective on December 31, 2008.

Also under the new law, no person who has served as an officer or employee in the Executive Chamber of the Governor shall, within a two year period after the termination of such service, appear before **any state agency**. This provision takes effect immediately.

Penalties for Lobbying Violations

Under the new law, a Lobbyist or Client who fails to file a statement or report within the time required, or who makes an unlawful gift, shall be subject to a civil penalty for each violation in an amount not to exceed the greater of \$25,000 **or three times the amount** the person failed to report properly or unlawfully gave. Two violations of this provision within a five year period will now be a Class E felony. Lobbyists may be barred from lobbying for one year if they are convicted of, or plead guilty to a Class E felony.

The civil penalty for knowingly and willfully filing a false statement or report is now an amount not to exceed the greater of \$50,000 **or five times the amount** the person failed to report properly.

A Lobbyist or Client that knowingly and willfully fails to retain their records shall now be subject to a civil penalty in the amount of **\$2,000** per violation.

Commission on Public Integrity / Legislative Ethics Commission

The Ethics Reform Act will merge the State Ethics Commission and the New York Temporary State Commission on Lobbying into a new, 13-member **Commission on Public Integrity**, which will have authority to investigate alleged violations and enforce the State ethics and lobbying laws. The Commission on Public Integrity shall commence its operations 180 days following the signing of the Act, which will be late September of 2007.

The Act also creates a new Legislative Ethics Commission of nine members, including four legislators and five individuals who may not be current or former members of the legislature, legislative employees, candidates for the legislature or lobbyists. The Legislative Ethics Commission will replace the existing Legislative Ethics Committee, which is comprised of eight members of the legislature.

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