

Legislation Text

File #: 100127, **Version:** 1

Amending Title 20 of The Philadelphia Code, entitled “Officers and Employees,” by adding a new Chapter requiring the registration of lobbyists and their principals, and requiring disclosure of lobbying expenditures, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 20 of The Philadelphia Code relating to Officers and Employees is hereby amended to add the following new Chapter:

CHAPTER 20-1200. LOBBYING.

§20-1201. Definitions.

(1) “Administrative action.” Any of the following:

(a) An agency’s:

(i) proposal, consideration, promulgation or rescission of a regulation;

(ii) development or modification of a statement of policy;

(iii) approval or rejection of a regulation;

(iv) preparation of a Request for Qualifications, Request for Proposals, or contract specifications;

(v) solicitation, award, or administration of a contract, including for the procurement of goods or services;

(vi) solicitation, award, or administration of a grant, loan, or agreement involving the disbursement of public monies;

(vii) determination with respect to zoning or the use, development, or improvement of real property subject to City regulation;

(viii) determination with respect to the terms of the acquisition or disposition by the City of any interest in real property, with respect to a license or permit for the use of real property of or by the City, or with respect to a franchise or concession; or

(ix) *adjudication of claims, determination of complaints, or imposition of fines or fees.*

(b) *The review, revision, approval or disapproval of a regulation.*

(c) *The Mayor's approval or veto of legislation.*

(d) *The nomination or appointment of an individual as a City officer or employee.*

(e) *The proposal, consideration, promulgation or rescission of an executive order.*

(2) *"Affiliated political action committee."*

(a) *Except as set forth in subsection (2)(b), a "political action committee" as defined in Section 1621(l) of the Pennsylvania Election Code, which has an officer who:*

(i) *must be included in a registration statement under Section 1624(b)(2) and (3) of The Pennsylvania Election Code; and*

(ii) *is:*

(A) *a principal;*

(B) *an officer or an employee of a principal;*

(C) *a lobbyist; or*

(D) *an employee of a lobbyist.*

(b) *If an employee of a registrant serves as the officer of a political action committee in what is clearly a personal capacity and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, that political action committee is not an "affiliated political action committee."*

(3) *"Agency." Any office, department, board, commission, or other entity that is part of the government of the City of Philadelphia, including Council.*

(4) *"Attorney at law." An individual admitted to practice law by a court of record of this Commonwealth.*

(5) *"Board." The Board of Ethics.*

(6) *"Budget process." The consideration and passage of the annual operating budget and the capital budget and capital program, and any amendments thereto.*

(7) *“City official or employee.” Any person who is elected or appointed to a position in any branch of the government of the City of Philadelphia, including, but not limited to, members of agencies, authorities, boards and commissions, however elected or appointed, persons serving full-time or intermittently, and persons serving with or without compensation.*

(8) *“Compensation.” Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.*

(9) *“Direct communication.” An effort, whether written, oral or by any other medium, made by a lobbyist or principal, directed to a City official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses.*

(10) *“Disciplinary Board.” The Disciplinary Board of the Supreme Court of Pennsylvania.*

(11) *“Economic consideration.” Anything of value offered or received. The term includes compensation and reimbursement for expenses.*

(12) *“Gift.” Anything that is received without consideration of equal or greater value. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.*

(13) *“Hospitality.” Meals, beverages and recreation and entertainment, but not gifts, transportation or lodging.*

(14) *“Immediate family.” An individual’s spouse, child, parent, brother, sister and like relative-in-law.*

(15) *“Indirect communication.” An effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action, including, but not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues, but not including regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.*

(16) *“Legislation.” Bills, resolutions, amendments, and nominations pending or proposed in Council, and any other matter that may become the subject of action by Council.*

(17) *“Legislative action.” An action taken by a City official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of:*

(a) *legislation;*

(b) *legislative motions;*

(c) *a veto by the Mayor; or*

(d) *confirmation of appointments by the Mayor or Council, or appointments to public boards or commissions by the Mayor or Council.*

(18) *“Lobbying.” An effort to influence legislative action or administrative action including:*

(a) *direct or indirect communication;*

(b) *incurring office expenses; and*

(c) *providing any gift, hospitality, transportation or lodging to a City official or employee for the purpose of advancing the interest of the lobbyist or principal.*

(19) *“Lobbying firm.” An entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself.*

(20) *“Lobbyist.” Any individual, association, corporation, partnership, business trust or other entity that engages in lobbying on behalf of a principal for economic consideration, including an attorney at law while engaged in lobbying provided, however, that attorneys engaged in lobbying are subject to the requirements and restrictions of this Chapter only to the extent permissible under the Pennsylvania Rules of Professional Conduct.*

(21) *“Office expense.” An expenditure for an office, equipment or supplies, utilized for lobbying.*

(22) *“Personnel expense.” An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, publications and public relations staff, technical staff, clerical and administrative support staff and includes individuals who engage in lobbying but are exempt from reporting under §20-1204, relating to exemption from registration and reporting. For an individual for whom lobbying is incidental to regular employment, the term means a good faith prorated estimate based on the value of the time devoted to lobbying.*

(23) *“Principal.” An individual, association, corporation, partnership, business trust or other entity:*

(a) *on whose behalf a lobbying firm or lobbyist engages in lobbying; or*

(b) *that engages in lobbying on the principal’s own behalf.*

(24) *“Registrant.” A registered lobbyist, registered lobbying firm or registered principal.*

(25) *“Regulation.” Any rule or regulation promulgated under the procedure set forth in Section 8-406 or Section 8-407 of The Philadelphia Home Rule Charter, and any formal or informal opinion issued by the City Solicitor.*

(26) *“Reporting period.” Any of the following periods:*

- (a) January 1 through March 31.*
- (b) April 1 through June 30.*
- (c) July 1 through September 30.*
- (d) October 1 through December 31.*

§20-1202. Registration.

(1) General Rule. Unless excluded under §20-1204, relating to exemption from registration and reporting, a lobbyist, lobbying firm or principal must register with the Board within ten days of acting in any capacity as a lobbyist, lobbying firm or principal. Registration shall be annual, shall be in such electronic format as is mandated by the Board, and shall begin July 1, 2011.

(2) Principals and Lobbying Firms.

(a) A principal or lobbying firm required to register shall file a single registration statement setting forth the following information:

- (i) Name.*
- (ii) Permanent address.*
- (iii) Daytime telephone number.*
- (iv) E-mail address, if available.*
- (v) Name and nature of business.*
- (vi) Name, registration number and acronym of any affiliated political action committees.*

(vii) Name and permanent business address of each individual who will for economic consideration engage in lobbying on behalf of the principal or lobbying firm.

(viii) Registration number when available.

(b) A lobbying firm shall include in its registration statement the following information for each principal it represents:

- (i) Name.*

- (ii) *Permanent business address.*
- (iii) *Telephone number.*
- (iv) *Registration number when available.*

(c) *A principal that is an association or organization shall include in its registration statement the number of dues-paying members of the association or organization in the most recently completed calendar year.*

(3) *Lobbyists. A lobbyist who is required to register shall file a single registration statement with the Board, setting forth the following information:*

- (a) *Name.*
- (b) *Permanent business address.*
- (c) *Daytime telephone number.*
- (d) *E-mail address, if available.*
- (e) *A recent photograph of the lobbyist.*

(f) *Name, permanent business address, daytime telephone number and registration number when available of each principal for whom the lobbyist will engage in lobbying.*

(g) *Name and registration number when available of any lobbying firm with which the lobbyist has a relationship involving economic consideration.*

(h) *Name, registration number and acronym of any affiliated political action committees.*

(i) *Name, registration number and acronym of any candidate political committee of which the lobbyist is an officer who must be included in a registration statement under section 1624(b)(2) and (3) of The Pennsylvania Election Code.*

(4) *Amended Registration Statements.*

(a) *If there is a change in the information required to be included in any registration statement, an amended registration statement must be filed with the Board within 14 days after the change occurs, except that if there is a change in the information required under subsection (2)(c), an amended registration statement must be filed with the Board within 14 days of the end of the year in which the change occurs.*

(5) *Termination of Registration.*

(a) *A lobbyist, lobbying firm or principal may terminate registration by filing notice of termination with the Board.*

(b) *After a review of the notice of termination, but no later than 30 days after receipt of the notice, the Board shall issue to the lobbyist, lobbying firm or principal a letter stating that the registrant has terminated registration. The filing of notice shall not affect the Board's authority to conduct investigations and hearings.*

(c) *No lobbying may occur after the filing of notice of termination unless the lobbying is pursuant to a separate registration statement that is filed with the Board and that, at the time of the lobbying, has not been terminated.*

(d) *Nothing in this subsection shall be construed to exempt a lobbyist, lobbying firm or principal from any of the requirements in §20-1203, relating to reporting.*

§20-1203. Reporting.

(1) *General rule. A registered principal shall, under oath or affirmation, file expense reports with the Board no later than 30 days after the last day of each reporting period in the electronic format mandated by the Board.*

(2) Expense Report Contents.

(a) *Each expense report must list the names and registration numbers, when available, of all lobbyists by whom lobbying is conducted on behalf of the principal and must identify the subject matter, issue, administrative action, or legislative action (including bill number) being lobbied, and such additional information as is required by the Board by regulation.*

(b) *Each expense report shall include the total costs of all lobbying for the period. The total shall include all office expenses, personnel expenses, expenditures related to gifts to or hospitality, transportation and lodging for City officials or employees, and any other lobbying costs. The total amount reported under this paragraph shall be allocated in its entirety among the following categories:*

(i) *The costs for gifts, hospitality, transportation and lodging given to or provided to City officials or employees or their immediate families.*

(ii) *The costs for direct communication.*

(iii) *The costs for indirect communication.*

(iv) *Expenses required to be reported under this subsection shall be allocated to one of the three categories listed under this Section and shall not be included in more than one category.*

(c) *If the recipient has reimbursed, in whole or in part, any costs for gifts, hospitality, transportation*

or lodging given to or provided to City officials or employees or their immediate families, the expense report shall report both the expenditure and the reimbursement.

(d) For purposes of filing an expense report under this subsection, a registrant may use any reasonable methods of estimation and allocation.

(e) In addition to reporting the totals required under this subsection, the expense report must identify, by name, position and each occurrence (including description of thing of value provided and date and place presented), a City official or employee who receives from a principal or lobbyist anything of value that must be included in the statement of financial interests required by the Public Official and Employee Ethics Act, and in particular, as required by 65 Pa.C.S. §1105(b)(6) or (7), or in the statement of financial interests required under Code §20-610(1). This requirement shall not apply to anything of value received from immediate family when the circumstances make it clear that motivation for the action was the personal or family relationship. For purposes of this Chapter, the amount referred to in 65 Pa.C.S. §1105(b)(7) shall be considered an aggregate amount per year, but shall not include the cost of a reception which the City official or employee attends in connection with public office or employment.

(f) Written notice must be given to each City official or employee who is listed as required by subsection (d) at least seven days prior to the report's submission to the Board. Notice under this subsection shall include the information that will enable the City official or employee to comply with 65 Pa.C.S. §1105(b)(6) and (7) and Code §20-610(1). For purposes of this Chapter, 65 Pa.C.S. §1105(b)(6) and (7) shall constitute mutually exclusive categories. For each category enumerated in §20-1203(2)(b)(i), each notice shall include both the amount incurred during the reporting period and the cumulative amount incurred from January 1 through the end of the applicable reporting period.

(g) A lobbying firm or a lobbyist not associated with a lobbying firm shall sign the reports submitted by each principal for whom the lobbying firm or lobbyist is registered to attest to the validity and accuracy to the best of the attester's knowledge. A lobbying firm or lobbyist may attach a statement to the report of a principal, describing the limits of the knowledge of the lobbying firm or lobbyist concerning the information contained in the expense report.

(h) The expense report shall also include the name, permanent business address and daytime telephone number of any individual, association, corporation, partnership, business trust or other business entity that contributed more than 10% of the total resources received by the principal during the reporting period.

(3) A lobbying firm or a lobbyist not associated with a lobbying firm shall submit an expense report if during the reporting period the lobbying firm or lobbyist engaged in lobbying that was not contained in any expense report filed by a principal or principals represented.

(4) A registered principal that attempts, or that retains a lobbying firm or lobbyist to attempt, to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in any expense report filed under subsection §20-1203(2)(b).

(5) *A lobbying firm or a lobbyist not associated with a lobbying firm shall submit a report if the lobbying firm or lobbyist engaged in lobbying on behalf of any entity that is exempt under §20-1204(7) relating to City officials acting in an official capacity.*

(6) *Records Retention. A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under this Section for four years from the date of filing the subject report. Upon request by the Board, these materials shall be made available for inspection within ten (10) business days.*

(7) *Thresholds for Reporting. An expense report required under this Section shall be filed when total expenses for lobbying exceed \$2,500 for a registered principal in a reporting period. In a reporting period in which total expenses are \$2,500 or less, a statement to that effect shall be filed.*

§20-1204. Exemption from registration and reporting. The following persons and activities shall be exempt from registration and reporting:

(1) *An individual who limits lobbying to preparing testimony and testifying before a committee of Council, or participating in an administrative proceeding of an agency.*

(2) *An individual who is an employee of an entity engaged in the business of publishing or broadcasting while engaged in the gathering and dissemination of news and comment on the news to the general public in the ordinary course of business.*

(3) *An individual who does not receive economic consideration for lobbying.*

(4) *An individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.*

(5) *An individual who engages in lobbying on behalf of the individual's employer if the lobbying represents less than 20 hours during any reporting period.*

(6) *Except as required under §20-1203(7), a principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.*

(7) *A City official who acts in an official capacity.*

(8) *An individual representing a bona fide church or bona fide religious body of which the individual is a member where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.*

(9) *An individual who is not a registered lobbyist and who serves on an advisory board, working group or task force at the request of a City agency.*

(10) *Participating as a party or as an attorney at law or representative of a party, case or controversy in any administrative adjudication.*

(11) Expenditures and other transactions subject to reporting under Article XVI of The Pennsylvania Election Code.

(12) Activities and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals.

§20-1205. Required and prohibited activities.

(1) Indirect Communication Disclosure. Whenever any person makes an expenditure for indirect communication for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication or education campaign, the communication shall clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.

(2) Political Committees. A lobbyist may not serve as a treasurer or other officer who must be included in a registration statement under Section 1624(b)(2) and (3) of The Pennsylvania Election Code, for a candidate's political committee or a candidate's political action committee if the candidate is seeking City elected office.

(3) Fee Restrictions. A lobbyist may not charge a fee or receive economic consideration based on a contract, either written or oral, that any part of the fee or economic consideration will be converted into a contribution to a candidate for public office or a political committee subject to reporting under Article XVI of The Pennsylvania Election Code.

(4) Falsification. A lobbyist, lobbying firm or principal may not, for the purpose of influencing legislative action or administrative action, transmit, utter or publish to a City official or employee a communication, knowing that the communication or a signature on the communication is false, forged, counterfeit or fictitious.

(5) Conflicts of Interest.

(a) Except as permitted by subsection (b), a registrant may not lobby on behalf of a principal on any subject matter in which the principal's interests are directly adverse to the interests of another principal currently represented by the lobbyist or previously represented by the lobbyist during the current four-year session of Council, or directly adverse to the lobbyist's own interests.

(b) A lobbyist may represent a principal in circumstances described in subsection (a) if:

(i) the lobbyist reasonably believes that the lobbyist will be able to provide competent and diligent representation to each affected principal;

(ii) the lobbyist provides written notice to each affected principal upon becoming aware of the conflict; and

(iii) each affected principal provides written informed consent waiving the conflict of interest.

(c) If a lobbyist represents a principal in violation of this Section or if multiple representation properly accepted becomes improper under this Section and the conflict is not waived, the lobbyist shall promptly withdraw from one or more representations to the extent necessary for remaining representation to not be in violation of this Section.

(d) If a lobbyist is prohibited by this Section from engaging in particular conduct, an employer of the lobbyist or a partner or other person associated with the lobbyist may not engage in the particular conduct.

(e) A principal or lobbyist required to file an expense report under this Chapter shall include in the report a statement affirming that to the best of the principal's or lobbyist's knowledge the principal or lobbyist has complied with this Section.

(f) A lobbyist and principal shall maintain the records relating to the conflict of interest set forth in subsection (b) for a four-year period beginning on the date the conflict is discovered and provide copies of the records to the Board upon request.

(g) Complaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the Disciplinary Board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.

(6) Multiple Principals. Nothing in this Section shall be construed to require a lobbyist representing multiple principals who each have an interest in the budget process to comply with subsection (5)(c) unless a conflict of interest exists under subsection (5)(a).

(7) Contingent Compensation.

(a) A person may not compensate or incur an obligation to compensate a person to engage in lobbying for compensation contingent in whole or in part upon any of the following:

(i) Occurrence, nonoccurrence or amendment of legislative action.

(ii) Occurrence, nonoccurrence or amendment of an administrative action.

(b) A person may not engage in or agree to engage in lobbying for compensation contingent in whole or in part upon any:

(i) Occurrence, nonoccurrence or amendment of legislative action.

(ii) Occurrence, nonoccurrence or amendment of an administrative action.

(8) Unlawful Acts.

(a) A lobbyist or principal may not:

(i) Instigate the introduction of legislation for the purpose of obtaining employment to lobby in opposition to that legislation.

(ii) Knowingly counsel a person to violate this Chapter or any other provision of this Code or of any Federal or State statute.

(iii) Engage in or counsel a person to engage in fraudulent conduct.

(iv) Attempt to influence a City official or employee on legislative or administrative action by making or facilitating the making of a loan to the City official or employee.

(v) While engaging in lobbying on behalf of the principal, refuse to disclose to a City official or employee, upon request, the identity of the principal.

(vi) Commit a criminal offense arising from lobbying.

(vii) Influence or attempt to influence, by coercion, bribery or threat of economic sanction, a City official or employee in the discharge of the duties of office.

(viii) Extort or otherwise unlawfully retaliate against a City official or employee by reason of the City official's or employee's position with respect to or vote on administrative or legislative action.

(ix) Attempt to influence a City official or employee on legislative or administrative action by the promise of financial support or the financing of opposition to the candidacy of the City official or employee at a future election.

(x) Engage in conduct that brings the practice of lobbying or the legislative or executive branches of City government into disrepute.

(xi) Make a material misstatement or omission on a registration statement or expense report filed with the Board pursuant to this Chapter.

(b) The Board:

(i) may, as it deems appropriate, refer an alleged violation of this subsection to any appropriate law enforcement agency for investigation and prosecution; and

(ii) shall, if the subject of the complaint is an attorney at law, refer an alleged violation of this subsection to the Disciplinary Board.

§20-1206. Administration.

(1) Enforcement. The Board shall have the power and duty to administer and enforce this Chapter, pursuant

to the Board's powers and duties set forth in §20-606 of this Code and the regulations of the Board.

(2) Advice And Opinions. The Board shall provide an advisory opinion to a lobbyist, a lobbying firm, a principal, the Disciplinary Board or a City official or employee who seeks advice regarding compliance with this Chapter. A person who acts in good faith based on an advisory opinion issued to that person by the Board shall not be held liable for a violation of this Chapter if the material facts are as stated in the request.

(3) Forms. All registration and reporting forms required to be filed under this Chapter shall be filed electronically, with electronic signature, and in such format as is required by the Board. The forms shall be available on the Board's official website. All information requested on the forms shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.

(4) Public Inspection And Copying. The Board shall make completed registration statements, expense reports and notices of termination, which have been filed with the Board, available for public inspection and provide copies of these documents at a price not in excess of the actual cost of copying. The Board shall make all registrations and reports available on the Board's official website in a searchable format. Documents maintained and reproducible in an electronic format shall be provided in that format upon request.

(5) Annual Reporting.

(a) The Board shall report annually on lobbying activities in the City.

(b) The Board shall at least annually make available on its website a list of all of the following:

(i) Registered principals. The Board shall identify affiliated political action committees and lobbying firms and lobbyists that are registered to lobby for each principal.

(ii) Lobbying firms and lobbyists not associated with lobbying firms. The Board shall identify affiliated political action committees and the principals for whom the lobbying firm or lobbyist is registered to lobby.

(iii) Registered lobbyists for each lobbying firm.

(6) Retention Of Records. Completed registration statements, expense reports and notices of termination shall be available for public inspection with the Board for a four-year period commencing on the date of filing.

(7) Investigation And Hearings. The Board, through its executive director, may initiate an investigation and hold a hearing concerning an alleged violation of this Chapter by a lobbyist or principal.

(8) Directory. By August 1 of each odd-numbered year, the Board shall produce electronically and post on its website a directory of all registered lobbyists, including photographs and registered lobbying firms. Copies of the directory shall be made available to the public at a price not to exceed the actual cost of production.

§20-1207. Penalties.

(1) Penalties for Violations.

(a) A person who violates this Chapter shall be subject to a civil penalty of up to \$2,000.

(b) Notwithstanding subsection (a), above, failure to register or report as required by this Chapter is subject to a civil penalty not exceeding \$250 for each late day, provided that the total fines that may be imposed for failure to file a particular registration or report shall not exceed \$2,000.

(c) In addition to any penalties imposed under this Chapter, the Board may prohibit a person from lobbying for economic consideration for up to five years for intentional violations of this Chapter. The Board shall not impose the prohibition under this subsection, §20-1207(1)(c), unless the person has been afforded the opportunity for a hearing.

(d) The Board shall notify the Disciplinary Board of any lobbyist or principal who is an attorney at law against whom a civil penalty is imposed.

(2) Affirmative Defense. Any of the following is an affirmative defense to an action brought under this Chapter:

(a) The respondent relied on an advisory opinion issued to the respondent by the Board pursuant to §20-1206(1).

(b) The respondent reasonably relied on notice under §20-1203(2)(f).

§20-1208. Registration Fees.

(1) Registration Fees. At the time of each registration, a person required to be registered under this Chapter shall pay a registration fee of \$500, or such other amount as the Board shall by regulation require.

§20-1209. Training for Lobbyists and Principals.

(1) All persons required to be registered under this Chapter are also required to participate in training conducted by the Board of Ethics regarding the requirements of this Chapter and other relevant sections of the Code, including Chapter 20-600. The training shall be in such form and at such frequency as the Board of Ethics shall require by regulation.

§20-1210. Regulations.

(1) The Board shall promulgate regulations necessary to carry out this Chapter.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.