

TEXAS ETHICS COMMISSION

LOBBYING IN TEXAS

A GUIDE TO THE TEXAS LAW



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Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070
(512) 463-5800 FAX (512) 463-5777 TDD 1-800-735-2989

Visit us at <http://www.ethics.state.tx.us> on the Internet.

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LOBBYING IN TEXAS

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THE LOBBY LAW

Chapter 305 of the Government Code requires a person who crosses either a compensation or expenditure threshold to register with the Texas Ethics Commission and to file periodic reports of lobbying activity. Chapter 305 also contains restrictions applicable to persons required to register as lobbyists. This lobby law is administered and enforced by the Ethics Commission. Rules that the Ethics Commission has adopted under the lobby law are in Chapter 34 of title 1 of the Texas Administrative Code (T.A.C.).

Even if you are not required to register as a lobbyist, you should be aware of the bribery, honorarium, and gift prohibitions in chapter 36 of the Penal Code. In addition, you should be aware of title 15 of the Election Code, the campaign finance law, which places restrictions on contributions and expenditures to support, oppose, or assist candidates and elected officeholders.

If you have a question that is not clearly answered by this guide or by the instructions to a lobby report, please contact the Ethics Commission.

WHAT IS LOBBYING?

The lobby law regulates “direct communications” with members of the legislative or executive branch of state government to influence legislation or administrative action. *See* Gov't Code §§ 305.001, 305.003(a). To understand what activity is regulated by the lobby law, it is important to understand the terms “direct communication,” “member of the legislative or executive branch,” and “communication for the purpose of influencing legislation or administrative action.”

DIRECT COMMUNICATION

The lobby law regulates certain “direct communications.” “Direct communication” includes contact in person or by telephone, telegraph, or letter. The communication must be directed to a member of the legislative or executive branch of state government. For example, if an organization publishes a newsletter for its members, the individuals writing the newsletter are not “communicating directly” with members of the legislature, even if a legislator may read the newsletter. *See* Ethics Advisory Opinion No. 85 (1992).

MEMBER OF THE LEGISLATIVE OR EXECUTIVE BRANCH OF STATE GOVERNMENT

The lobby law regulates direct communications to “members of the legislative or executive branch” of state government. This guide uses the term “state officer or employee” as a shorthand term to refer to a member of the executive or legislative branch of state government. You should remember, though, that the term does not include an officer or employee of the judicial branch.

Member Of The Legislative Branch. A “member of the legislative branch” of state government includes a member, member-elect, candidate for, or officer of the legislature or of a legislative committee. Gov't Code § 305.002(7). Employees of the legislature are also “members of the legislative branch” of state government. *Id.*

Member of the Executive Branch. A “member of the executive branch” of state government includes an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of state government. Gov't Code § 305.002(4).

Lobby Law Not Applicable to Communications to Judicial Branch. Communications to a member of the judicial branch of state government (such as a judge or a court clerk) are *not* subject to the lobby law. Such communications may be regulated by other laws.

Lobby Law Not Applicable to Communications to Local Government Officials. The lobby law applies only to communications to *state* officers and employees. It does not apply to a communication made to an officer, an employee, or anyone else who represents a political subdivision of state government, such as a county, city, school district, or other local government or special district. (A person communicating to influence the actions of a local governmental body should check to see whether the local governmental body has adopted its own lobby regulations.)

COMMUNICATING TO INFLUENCE LEGISLATION OR ADMINISTRATIVE ACTION

The lobby law applies to direct communication with state officers and employees to influence “legislation or administrative action.” “Legislation” means a matter that is or may be the subject of action by either house of the legislature or by a legislative committee. *See* Gov't Code § 305.002(6). “Administrative action” means any matter that may be the subject of action by a state agency or executive branch office, including a matter relating to the purchase of products or services by the agency or office. *See id.* § 305.002(1).

The fact that a communication does not include a discussion of specific legislation or administrative action does not mean that the discussion is not a lobby communication. If a communication is intended to generate or maintain goodwill for the purpose of influencing potential future legislation or administrative action, the communication is a lobby communication. *See* Ethics Advisory Opinion Nos. 94, 90, 89, 34, 4 (1992).

DETERMINING WHETHER LOBBY REGISTRATION IS REQUIRED

Lobby registration is required if a person meets either one of two thresholds: the “compensation and reimbursement threshold” or the “expenditure threshold.” A “person” required to register may be a corporation, partnership, association, or other type of business entity as well as an individual. *See* ENTITY REGISTRATION.

COMPENSATION AND REIMBURSEMENT THRESHOLD

Under current Ethics Commission rules, a person who receives, or is entitled to receive under an agreement under which the person is retained or employed, *more than \$1,000* in a calendar quarter as compensation or reimbursement to lobby must register as a lobbyist. 1 T.A.C. § 34.43. (Compensation and reimbursement must be added together to determine whether registration is required. Ethics Advisory Opinion No. 103 (1992).) Compensation for certain communications, however, does not count toward the compensation threshold even though the communications may be intended to influence legislation or administrative action. *See* EXCEPTIONS FROM REQUIRED REGISTRATION.

Also, a person who crosses the compensation threshold is not required to register if lobby activity constitutes no more than five percent of the person's compensated time during a calendar quarter. See EXCEPTIONS FROM REQUIRED REGISTRATION, Incidental Lobbying.

Compensation to Prepare for Lobbying. Compensation received for preparing lobby communications (for example, compensation attributable to strategy sessions, review and analysis of legislation or administrative matters, research, or communication with a client concerning lobbying strategy) is counted toward the compensation threshold. 1 T.A.C. § 34.3. If a person engages in preparatory activities, but does not actually communicate to influence legislation or administrative action, registration is not required. *Id.* A person employed by a lobbyist (or a person employed by the lobbyist's employer who works under the lobbyist's direction) to assist the lobbyist in nonclerical lobby activities must be listed as an assistant on the lobbyist's registration. See REPORTING ASSISTANTS.

Reimbursement for Personal Expenses. Reimbursement that a person receives for the person's own transportation, food and beverage, or lodging is not included for purposes of calculating the compensation and reimbursement threshold.

Reimbursed Office Expenses. Reimbursement for the following office expenses is not included in calculating the compensation threshold and does not have to be reported as compensation or reimbursement received for lobbying:

- long distance telephone charges;
- delivery charges;
- photocopy expenses;
- facsimile expenses;
- office supplies;
- postage; and
- dues and subscriptions.

1 T.A.C. § 34.7.

Allocating Compensation for Services Other Than Lobbying. A lobbyist who receives compensation or reimbursement for both lobbying and non-lobbying services is required to make a reasonable allocation of the compensation or reimbursement for lobbying. Only the compensation or reimbursement attributable to lobbying counts toward the compensation threshold and is reported as compensation. 1 T.A.C. § 34.43(c).

EXPENDITURE THRESHOLD

A person who expends *more than \$500* in a calendar quarter for certain purposes must register as a lobbyist.

What is a Lobby Expenditure? The expenditures that count toward the expenditure threshold are expenditures that benefit a state officer or employee or the immediate family of a state officer or employee, that are made to communicate with a state officer or employee to influence legislation or administrative action, and that fall into one of the following six categories:

- transportation and lodging;
- food and beverages;
- entertainment;
- gifts;
- awards and mementos; and
- the attendance of a state officer or employee at a political fundraiser or charity event.

An “expenditure” is “a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.” Gov’t Code § 305.002(5).

Lobby Expenditure Made on Behalf of Another Person. Beginning on September 1, 2007, if a registrant, or a person on the registrant's behalf and with the registrant's consent or ratification, joins with another person to make an expenditure described by the lobby law, the amount of the expenditure made by or on behalf of the registrant for purposes of the lobby law includes only (1) the amount of the portion of the joint expenditure contributed by the registrant and (2) the amount of any portion of the joint expenditure that: is made on behalf of the registrant by a person who is not a registrant; and is not otherwise reported under the lobby law. Gov't Code § 305.0021.

What Is Not Counted as a Lobby Expenditure?

Taxes and Tips. A tax or tip paid in connection with a lobby expenditure is not counted as part of the lobby expenditure for purposes of calculating the threshold or reporting. 1 T.A.C. § 34.9.

Lobbyist's Own Expenses. An expenditure for a person's own food, beverages, entertainment, transportation, and lodging is neither counted toward the expenditure threshold nor reported on lobby activity reports.

Certain Expenditures Reimbursed by a State Officer or Employee. A payment of less than \$200 is not a lobby expenditure if the person who makes the expenditure is fully reimbursed by the state officer or employee benefiting from the expenditure before the date the expenditure would otherwise be required to be reported. 1 T.A.C. § 34.1 (definition of expenditure).

Gift to a State Agency. A gift to a state agency (as opposed to a gift to or expenditure for an individual officer or employee of that agency) is *not* a lobby expenditure. A gift to a state agency becomes state property, and neither the agency nor any officer or employee of the agency is permitted to use it for personal or private purposes. Ethics Advisory Opinion No. 130 (1993). Whether a state agency may accept a gift depends on the laws specifically applicable to that agency.
Id.

ENTITY REGISTRATION

A corporation, partnership, association, or other type of entity may be required to register as a lobbyist if the entity exceeds either the compensation threshold or expenditure threshold. An entity that is required to register may nonetheless avoid registration if all activity otherwise reportable by the entity is reported by one or more registrants. 1 T.A.C. §§ 34.45, .65, .85. An individual

registrant may report an expenditure made by a lobby entity if the entity requests that the individual do so in order for the entity to avoid registration; and

- (1) the entity makes the expenditure in order for the individual to act on the entity's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; or
- (2) the entity compensates or reimburses the individual to act on behalf of the entity or on behalf of the entity's clients to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

1 T.A.C. § 34.85.

An individual reporting compensation, reimbursement, or expenditures for an entity must indicate that he or she is doing so on the lobby registration or activities report, as applicable.

The fact that an entity has registered does not relieve any individual associated with the entity of the obligation to register if the individual crosses a registration threshold. For example, if a law firm registers, an individual lawyer employed by the firm as a lobbyist for the firm's clients must also register if he or she meets either the compensation or expenditure threshold. *See Ethics Advisory Opinion No. 115 (1993).*

COMMUNICATIONS ON BEHALF OF POLITICAL PARTY

A person who lobbies only on behalf of a political party is subject to a different registration threshold. Registration is required only if the person's lobby compensation and expenditures combined exceed \$5,000 in a calendar year.

INDEPENDENT CONTRACTORS

Effective September 1, 2009, certain persons who have communications in their capacity as independent contractors, as defined by Texas Ethics Commission Rule § 34.1(5), AND whose compensation for those communications is contingent on the outcome of a purchasing decision or negotiations regarding such decisions, are required to register as lobbyists and report information about those communications.¹ An "independent contractor" is defined as a person, including a consultant, who communicates with a member of the executive branch concerning state agency purchasing decisions involving a product, service, or service provider or negotiations regarding such decisions. The term does not include an employee, as defined by section 305.022(e) of the Government Code, of a vendor. 1 T.A.C. § 34.1(5).

¹ Persons who have communications in their capacity as an independent contractor, whose compensation is NOT contingent on the outcome of the purchasing decision or negotiations regarding the purchasing decision, may be required to register under the expenditure threshold.

A person who meets the definition of independent contractor is required to register as a lobbyist if the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions. (To be a legal contingent fee, the amount of the purchasing decision may not exceed \$10 million.) Gov't Code § 305.0041, 1 T.A.C. § 34.46. A person who is required to register as an independent contractor is considered a registrant subject to all the requirements and restrictions under the Texas lobby law.

An independent contractor whose compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such a decision must, in addition to the regular information required on the lobby registration, disclose the vendor as a client, indicate that the client is a vendor of a product or service on whose behalf the independent contractor communicates concerning state agency purchasing decisions or negotiations regarding such decisions, disclose the amount or percentage of the sales commission or such fee, and disclose the amount of the purchasing decision. If the amount of either the sales commission or purchasing decision is not known at the time of the registration, the independent contractor must disclose a reasonable estimate of the maximum amount of the sales commission or purchasing decision and the method under which that amount will be computed. 1 T.A.C. § 34.73.

STATE AGENCY AS A CLIENT

A person who is paid a sales commission or such fee by a state agency is required to disclose on a lobby registration the state agency as a client and disclose certain information regarding the sales commission or fee. 1 T.A.C. § 34.75.

EXCEPTIONS FROM REQUIRED REGISTRATION

Incidental Lobbying. A person is not required to register under the compensation threshold, no matter how much compensation or reimbursement the person receives to lobby, if lobbying constitutes no more than five percent of the person's compensated time during a calendar quarter. 1 T.A.C. § 34.43(b). The "incidental lobbying" exception is not an exception to registration if a person makes lobby expenditures that exceed the expenditure threshold.

Certain Activity Not Included in Calculating Compensation Threshold. Compensation or reimbursement received for the following types of communications to influence a state officer or employee do not count toward the compensation threshold and are not required to be reported:

- oral or written comments, an appearance, or any other type of communication, if documented in public records kept in connection with a legislative hearing;
- responses to a specific request for information from a state officer or employee, when the request was not solicited by or on behalf of the person providing the information;
- communications made by a person who is providing only clerical assistance to someone who is lobbying (for example, a person who merely types or delivers another person's letter to a state officer or employee);
- preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;
- requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;

- communicating merely to demonstrate compliance with an audit, inspection, examination of a financial institution, or government investigation;
- communicating to achieve compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;
- providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, whether or not that proceeding is subject to the Open Meetings Law;
- providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act; and
- communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency.

A person who crosses the compensation threshold on the basis of other lobby communications, or who exceeds the expenditure threshold, is required to register. 1 T.A.C. § 34.5.

Public Officials. A government officer or employee who communicates to influence legislation or administrative action in his or her capacity as a government officer or employee is not required to register on the basis of those communications. This exception does not apply to an officer or employee of a “quasi-governmental body” as defined by section 305.003(b-1) of the Government Code. (**Note:** Chapter 556 of the Government Code restricts the use of appropriated funds for lobbying.)

Exception For Activities in Connection with Certain Events. An expenditure made in connection with an event to promote the interests of a designated geographic area or political subdivision is not included in calculating the expenditure threshold if the expenditure is made by a group that exists for the limited purpose of sponsoring the event or by a person acting on behalf of such a group.

News Media. The statute excepts from the registration requirement a person who owns, publishes, or is employed by a newspaper or other regularly published periodical, a radio station, a television station, a wire service, or any other bona fide news medium that in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements that directly or indirectly oppose or promote legislation or administrative action, provided that the person does not engage in any other activities requiring registration.

Lobbyist's Employer/Client. A person does not have to register if the person's ONLY activity to influence official action is to compensate or reimburse someone else to lobby on the person's behalf.

REGISTERING AS A LOBBYIST

Lobby registrations and lobby activity reports are required to be filed electronically unless the lobby registrant is eligible to claim an exemption. Please check the Texas Ethics Commission's website at <http://www.ethics.state.tx.us> for information about the Ethics Commission's electronic filing software and for information about exemption from the electronic filing requirement.

A lobby registrant who qualifies to file on paper uses Form REG for lobby registration. A lobby registrant who files on paper must also submit the confidential social security information form (Form SSN) to the Texas Ethics Commission in compliance with the Tex Code Sec. 231.302(c)(1). This form is included as part of the software for registrants filing electronically.

REGISTRATION FEE

The annual lobby registration fee is \$750 for all registrants except organizations exempt from federal taxes under the IRS Code, 26 U.S.C. § 501(c)(3), 501(c)(4), or 501(c)(6) and lobbyists who represent only such organizations. The annual fee for those registrants is \$150. The fee is not prorated for lobbyists who are registered for only a portion of the year.

Independent Contractors. The registration fee is \$75 for a person who is required to register under section 305.0041 of the Government Code and who meets all of the following criteria: 1) the person is an independent contractor as defined by Texas Ethics Commission Rule § 34.1(5); 2) the person's only direct communication as a registrant is with a member of the executive branch to influence administrative action as an independent contractor; 3) the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision, or negotiations regarding such decisions, and the amount of the purchasing decision does not exceed \$10 million; and 4) the person is also required to register under the compensation threshold set by section 305.003(a)(2) of the Government Code but does not exceed the expenditure threshold set by section 305.003(a)(1) of the Government Code. An independent contractor who is required to register as a lobbyist under the lobby law but who does not meet all of these criteria is subject to the \$750 registration fee. An independent contractor who qualifies for the \$75 registration fee but who ceases to meet the criteria at any time during the calendar year becomes subject to the \$750 registration fee.

TIME OF FILING

You must file a registration no later than five days after the date you or your employee makes the communication that requires you to register. Gov't Code § 305.005(e). Registration is for a particular calendar year and expires at midnight on December 31 of that year. Even if you do not register until November or December, your registration expires on December 31 of that year. If you are currently registered and it is likely that you will need to register as a lobbyist for the next calendar year, you may submit a new registration in December to avoid a lapse in your lobby registration.

Instructions. Before completing the lobby registration be sure to read the instructions carefully. If the instructions do not answer all of your questions about completing the registration, call the Ethics Commission staff for assistance.

REPORTING EMPLOYERS AND CLIENTS

The lobby registration requires you to provide information about each person that employs, retains, or reimburses you to lobby. If you are employed by a business entity engaged in lobbying for clients, the registration must also identify each of the entity's clients for whom you lobby. You must also provide information about the organizational structure and decision-making process of employers or clients that are unincorporated associations or privately-held corporations.

An independent contractor whose compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such a decision must, in addition to the regular information required on the lobby registration, disclose the vendor as a client, indicate that the client is a vendor of a product or service on whose behalf the independent contractor communicates concerning state agency purchasing decisions or negotiations regarding such decisions, disclose the amount or percentage of the sales commission or such fee, and disclose the amount of the purchasing decision. If the amount of either the sales commission or purchasing decision is not known at the time of the registration, the independent contractor must disclose a reasonable estimate of the maximum amount of the sales commission or purchasing decision and the method under which that amount will be computed. 1 T.A.C. § 34.73.

REPORTING COMPENSATION AND REIMBURSEMENT

On a lobby registration, you must report the compensation and reimbursement that you or your employer receives for your lobbying services. You may report the amount as either an exact figure or in categories established by law.

You may report compensation either as *received*, *earned*, or *prospective*. If you choose to report only income received or earned as of the date of your registration, you are more likely to be required to amend your registration later in the year to reflect a new compensation level.

REPORTING LOBBYING SUBJECT MATTER

On the registration, you must identify the subject matters about which you lobby by checking the appropriate subject matter box or boxes on the registration. You must also indicate the docket number or other designation for an administrative matter on which you will lobby, if applicable.

REPORTING ASSISTANTS

If you employ, retain, or direct a person who assists you in lobbying, you must report information about the assistant and the subject matters the assistant works on. The term "assistant" includes any person who provides administrative or research assistance to a lobbyist, but does not include a person who provides only clerical or secretarial help. 1 T.A.C. § 34.63(a). An assistant may be someone who is also registered as a lobbyist. The fact that a person is named as an assistant to a lobbyist does not relieve the assistant from the obligation to register as a lobbyist if the assistant is otherwise required to register. Ethics Advisory Opinion No. 162 (1993).

MONTHLY VS. ANNUAL FILING

On your registration you must indicate whether you will be filing activity reports on the regular (monthly) filing schedule or on the modified (annual) filing schedule. The option to file annually rather than monthly is available only if you intend to make less than \$1,000 in lobby expenditures during the calendar year. If you register as an annual filer and later exceed the \$1,000 limit, you will have to file monthly reports for the remainder of the year. You may update your registration to switch from the monthly to the annual filing schedule if you are eligible for annual filing. If you do so, your annual report must include all activity during the calendar year of your registration, including any activity you may have already reported on a monthly lobby activity report.

UPDATES TO REGISTRATION

If information reported on the registration changes (other than organizational information about entities for which you lobby), you must file an update to show the change (use Form AREG if you file on paper). An update is due by the 10th day of the month after the month in which the change occurs. (If you are a monthly filer and show the change on your next monthly activity report, you are not required to report the information on an update.) (**Note:** You must correct your registration if the information was incorrect at the time you filed it. You must update your registration if the information has changed.)

Changes to Registration Information During a Regular Legislative Session. If you are registered as a lobbyist with the Texas Ethics Commission and any of the information you reported on either your original lobby registration or on a previous registration amendment changes during a regular legislative session, the update (Form AREG) must be filed no later than the **5th day** after the information changes.

LOBBY ACTIVITY REPORT

Once you register as a lobbyist, you will be responsible for reporting expenditures on a lobby activity report (Form LA if you file on paper). Lobby activity reports for monthly filers are due by the tenth day of each month and cover activities occurring during the preceding calendar month. Annual filers submit one report for the entire calendar year by January 10 of the following year. For detailed information on completing the lobby activity report, please review the instructions for the lobby activity report.

REPORTING LOBBY EXPENDITURES BY CATEGORY

Reporting by Nature of Expenditure. On a lobby activity report, you must report total lobby expenditures in the following categories:

- transportation and lodging;
- food and beverages;
- entertainment;
- gifts other than awards and mementos;
- awards and mementos;

- expenditures made for the attendance of a state officer or employee at a political fundraiser or charity event; and
- mass media expenditures.

You are not required to include in this breakdown expenditures for events to which all legislators are invited.

Mass Media Expenditures. Under the category “mass media expenditures,” a registrant must report expenditures made for broadcast or print advertisements, direct mailings, and other mass media communications that support, oppose, or encourage others to support or oppose pending legislation or administrative action if those communications are made to a person other than a member, employee, or stockholder of an entity that reimburses or employs the registrant. Even though these expenses must be reported by a registrant, they do not count toward the expenditure threshold for registration. (**Note:** If you plan to make mass media communications to influence legislation or administrative action, you should be aware of section 305.027 of the Government Code, which sets out disclosure requirements for legislative advertising.)

Reporting by Category of Persons who Benefit. You must also report total lobby expenditures (other than mass media expenditures) attributable to the following groups:

- expenditures for state senators;
- expenditures for state representatives;
- expenditures for elected or appointed state officers, other than state senators or state representatives;
- expenditures for legislative agency employees;
- expenditures for executive agency employees;
- expenditures for the immediate family (spouse and dependent children) of a state officer or employee;
- expenditures for guests (when invited by a state senator, a state representative, other elected or appointed state officers, a legislative agency employee, or an executive agency employee); and
- expenditures for events to which all legislators are invited.

DETAILED REPORTING

In some cases, you must identify the individual who benefits from a lobby expenditure and provide other details about the expenditure. (You are not required to do detailed reporting of expenditures for events to which all legislators are invited.) Detailed reporting is required if a lobbyist spends:

- more than \$90* in one day for food and beverages, transportation, or lodging for a state officer or employee;
- more than \$90* in one day for entertainment for a state officer or employee *or* for the spouse or dependent child of a state officer or employee;
- any amount for a state officer or employee to attend a political fundraiser or charity event.

Detailed reporting is also required if a lobbyist gives a state officer or employee a gift, award, or memento the value of which exceeds \$50.

* The statute sets this threshold at 60% of the amount of the legislative per diem. Effective March 17, 2011, the per diem is \$150. (Prior to that date, the legislative per diem was \$168.)

GENERAL REPORTING RULES

Associated Expenses. When reporting expenditures for an event such as a banquet, you must include under “food and beverages” all the other expenditures you made to prepare and present the food and beverages, such as the room rental, flowers, printing costs, and name badges. Ethics Advisory Opinions Nos. 136, 119 (1993).

Apportioning Expenditures. If you make a lobby expenditure for a group that includes state officers and employees as well as other people and you cannot reasonably ascertain the exact amount spent on each person, you should apportion the lobby expenditures in accordance with the total number of persons present. Gov’t Code § 305.0062(d).

Allocating to More Than One Category. When a particular lobby expenditure includes expenses categorized under more than one reporting category (for example, a payment to a hotel for “food and beverages” as well as “lodging”), or when a particular category of lobby expenditure is attributable to more than one beneficiary (for example, food and beverages served to a senator and members of the senator's family), the expenditures should be allocated between the appropriate reporting categories. Ethics Advisory Opinions Nos. 91, 29 (1992).

Amount of Lobby Expenditure. It is easy to determine the amount of most lobby expenditures, such as the cost of a meal in a restaurant or of a gift purchased at a store. When the lobby expenditure consists of something that is created or assembled specifically for lobby purposes, the expenditure for reporting purposes is the greater of the “fair market value” or the actual cost of producing the item. Ethics Advisory Opinion No. 67 (1992).

Double Reporting. Do not double report expenditures or compensation and reimbursement.

Attributing Expenditures. On a lobby activity report a lobby expenditure for food and beverages is attributed to the person who consumes the food or beverage; an expenditure for entertainment, transportation, or lodging is attributed to the person for whom admission, transportation, or lodging expenses are paid; and an expenditure for a gift, award, or memento is attributed to the recipient of the item. Gov’t Code § 305.0062(b).

Events to Which All Legislators Are Invited. Lobby expenditures made for an event to which all members of the legislature are invited are reported *only* under the specific category for such expenditures and are not included in any other category or on a detailed report. As long as all the members of the legislature are invited, it does not matter how many legislators actually attend the event. Gov’t Code § 305.0062(d).

Lobby Expenditure or Political Contribution? Sometimes questions arise as to whether a particular expenditure is a political contribution or a lobby expenditure. If an expenditure is required to be reported under the lobby law, it is by definition not a political contribution and is therefore not regulated or reported as a political contribution. Elec. Code § 251.001(2)(B); Ethics Advisory Opinion No. 46 (1992).

TERMINATION OF LOBBY REGISTRATION

If you stop lobbying in Texas *and* want to terminate your lobbyist registration before it automatically expires on December 31, you may file a Lobby Termination Notice (FORM TN) along with a final lobby activity report. If you are a monthly filer, your final lobby activity report will cover the period that begins the day after the last day covered by your most recently filed lobby activity report and continues through the date you file your termination notice. If you are an annual filer, the period covered will begin January 1 and continue through the date you file your termination notice.

PROHIBITIONS AND RESTRICTIONS

RESTRICTIONS ON EXPENDITURES

The lobby law contains a number of restrictions on expenditures by lobbyists. An entity that avoids registration by having one or more individual registrants report all the entity's reportable activity on its behalf becomes subject to the restrictions on the earlier of the date the entity makes the expenditure that would have required the entity to register as a lobbyist or the date the entity receives, or is entitled to receive compensation or reimbursement that would have required the entity to register as a lobbyist. 1 T.A.C. § 34.45(b). The restrictions apply both when the lobbyist makes an expenditure and when someone other than a lobbyist makes an expenditure on the lobbyist's behalf with the lobbyist's consent or ratification. Ethics Advisory Opinion No. 30 (1992). Moreover, lobbyists should be aware not only of the restrictions on expenditures in the lobby law, but also the restrictions in chapter 36 of the Penal Code.

The lobby law also contains a number of restrictions on acceptance of lobby expenditures by state officers, state employees, immediate family and guests of state officers and employees, candidates for state offices, and officers-elect.

Bribery. Under the bribery statute, section 36.02 of the Penal Code, a person may not offer, confer, or agree to confer on a public servant, and a public servant may not solicit, accept, or agree to accept, a "benefit" as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion by the public servant.

Cash Gifts and Loans. A registrant may not give a state officer or employee a gift of cash or a negotiable instrument. Nor may a registrant loan money or provide a guarantee or endorsement of a loan to a state officer or employee, unless the registrant is a corporation or other business entity that has been legally engaged in the business of lending money for more than one year before the loan is made and makes the loan in the due course of business. (An individual related to the state officer or employee within the second degree by consanguinity or affinity is not subject to either of these restrictions.) Gov't Code §§ 305.024, .025(1), (2), (6). An expenditure by a lobbyist of less than \$200 that is fully reimbursed by a state officer or employee before it would otherwise be reportable by the lobbyist is not considered a prohibited loan or a reportable lobby expenditure. 1 T.A.C. § 34.1 (definition of expenditure).

The prohibitions against cash gifts and loans do not apply to political contributions. (Texas campaign finance laws generally prohibit *corporate* contributions or expenditures to support or oppose a candidate or officeholder.)

Transportation and Lodging. A registrant may not provide transportation or lodging to a state officer, state employee, or immediate family or guests invited by a state officer or employee for a ceremonial event or pleasure trip. Gov't Code § 305.024(a)(2)(A). A lobbyist may make necessary expenditures for transportation and lodging for the following purposes only:

- to explore matters directly related to the state officer's or employee's duties, such as a fact-finding trip, including attendance at an informational conference, seminar, educational program, or attendance at an event where the state officer or employee provides services (such as giving a speech or participating on a panel) that are "more than merely perfunctory."
- a trip in connection with a conference, educational program, or similar event, if the state officer or employee provides services at the event (such as giving a speech or participating on a panel) that are "more than merely perfunctory."

Id. at § 305.025(3), (4). A registrant may also make an incidental expenditure for transportation, such as an expenditure for a short ride in a car or taxi. *Id.* § 305.025(5); 1 T.A.C. § 34.13. The registrant must be present either on the trip or at the event for which the expenditures were made.

Food, Beverages, and Entertainment. A registrant may provide food or beverages to a state officer or state employee, or immediate family or guests invited by a state officer or employee only if the registrant is present at the event. A registrant may also make necessary expenditures for food and beverages provided in connection with a conference, seminar, educational program, or similar event in which the state officer or employee provides services (such as giving a speech or participating on a panel) that are "more than merely perfunctory" and the registrant is present at the event. Gov't Code § 305.027.

However, the registrant does not need to be present if the expenditure is for food or beverages with a value of \$50 or less, is intended as a gift for the state officer or employee, and is delivered by first-class United States mail or by common or contract carrier outside the Capitol Complex. Gov't Code § 305.024(a)(2)(E).

There is no monetary limit on the expenditures a registrant may make for food or beverages.

Entertainment. A registrant may provide entertainment to a state officer or state employee, or immediate family or guests invited by a state officer or employee only if the registrant is present at the event. A registrant is subject to an aggregate \$500 maximum annual expenditure limit for entertainment for an individual state officer or employee, or immediate family or guests invited by a state officer or employee. Gov't Code § 305.024.

As of September 1, 2007, the total value of a joint expenditure for entertainment may exceed \$500 IF each portion of the expenditure is made by a registrant and each portion of the expenditure does not exceed \$500. Note that each registrant remains subject to the \$500 expenditure annual threshold.

A registrant may also provide necessary expenditures for entertainment provided in connection with a conference, seminar, educational program, or similar event in which the state officer or employee provides services (such as giving a speech or participating on a panel) that are "more than merely perfunctory" and the registrant is present at the event. Gov't Code § 305.025.

Gifts. A registrant may provide one or more gifts to a state officer or state employee, or to immediate family or guests invited by a state officer or employee, up to a maximum expenditure total of \$500 per officer, employee, immediate family, or guest during a calendar year. Gov't Code § 305.024(a)(2)(C). ("Gift" in this context does not include transportation, lodging, or entertainment, but may include food or beverages in some circumstances.) A gift is illegal if it makes the lobbyist's total expenditures for gifts to a particular state officer or employee, or immediate family or guest invited by a state officer or employee, exceed \$500 in that calendar year.

As of September 1, 2007, the total value of a joint expenditure for a gift may exceed \$500 IF each portion of the expenditure is made by a registrant and each portion of the expenditure does not exceed \$500. Note that each registrant remains subject to the \$500 expenditure annual threshold.

Gifts from a lobbyist related to the state officer or employee, or immediate family or guest invited by a state officer or employee, within the second degree by consanguinity or affinity are not subject to this expenditure limit. *Id.* § 305.025(2).

Note: Although the restrictions in the lobby law are generally stricter than the restrictions on gifts to public servants in Chapter 36 of the Penal Code, in some circumstances, a registered lobbyist may actually be able to give a more valuable gift to a state officer or employee than a person who is not registered as a lobbyist.

Awards or Mementos. An award or memento is treated differently from other types of gifts. A lobbyist may provide an award or memento to a state officer or state employee, or their immediate family or invited guest, if it is not valued at more than \$500. Gov't Code § 305.024(a)(2)(D). An expenditure of more than \$500 for a single award or memento is illegal, but there is no annual limit on the number of awards or mementos that a lobbyist may provide to a state officer or employee, or their immediate family or invited guest.

As of September 1, 2007, the total value of a joint expenditure for an award or memento may exceed \$500 IF each portion of the expenditure is made by a registrant and each portion of the expenditure does not exceed \$500.

Presence Requirement. In order to pay for food and beverages, entertainment, transportation, lodging, or the cost of attendance at a fundraiser or charity event for a state officer or state employee, or their immediate family or invited guest, a registrant must be present "at the event." Gov't Code §§ 305.006(f), 305.024(a)(2)(E). When the person who makes a lobby expenditure is an entity other than an individual, the presence requirement is satisfied if an individual registrant who represents the entity is present, or if an individual who has management or supervisory authority for the event is present. 1 T.A.C. § 34.17.

Political Fundraisers and Charity Events. A registrant may not make an expenditure for the attendance of a state officer or employee at a charity event unless the registrant is present at the event.

Political Contributions. Lobbyists are not prohibited from making campaign or officeholder contributions. The campaign finance law, however, generally prohibits corporations and labor organizations from doing so. Elec. Code § 253.094.

Honoraria. Section 36.07 of the Penal Code provides that “[a] public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.” Thus, a gift to a state officer or employee that is permissible under the lobby law may nonetheless be prohibited under the honorarium provision.

An exception to this prohibition allows transportation, lodging, and meals to be provided for a public servant in connection with a conference or similar event at which the public servant renders a service that is “more than merely perfunctory.” Ethics Advisory Opinion No. 93 (1992).

OTHER RESTRICTIONS

Contingent Fees. It is illegal for a person to retain or employ another to influence legislation or administrative action, or to accept employment or render any services to influence legislation or administrative action, when compensation for that employment or service is totally or partially contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action. Gov't Code § 305.022.

Exceptions. The contingent fee prohibition does not prohibit payment or acceptance of compensation that is expressly authorized by some other law or compensation for legal representation before a state administrative agency in a contested hearing or similar adversarial proceeding prescribed by law or administrative rules. *Id.* § 305.022(d). The prohibition also does not apply to a sales commission payable to an employee of a vendor of a product or service if the amount of the state agency purchasing decision does not exceed \$10 million. Nor does the prohibition apply to a quarterly or annual compensation performance bonus payable to an employee of a vendor of a product or service. *Id.* § 305.022(c). The term "employee" means a person employed full-time by an employer to perform services for compensation. The term does not include an independent contractor or consultant. *Id.* § 305.022(e). A sales commission or other such fee payable to an independent contractor of a vendor of a product or service is not a prohibited contingent fee if the amount of the state agency purchasing decision does not exceed \$10 million and the independent contractor is a lobby registrant who reports the vendor as a client and reports the full amount of the commission or fee as required by section 34.73 of the Ethics Commission Rules. *Id.* § 305.022(c-1). The contingent fee prohibition also does not prohibit a commission or fee paid to a person by a state agency if the person paid the commission or fee is a lobby registrant who reports the state agency as a client and reports the full amount of the commission or fee as required by section 34.75 of the Ethics Commission Rules. *Id.* § 305.022(c-2).

Conflicts Of Interest. The lobby law sets out circumstances in which a lobby registrant may not represent a client. Gov't Code § 305.028. The lobby law also sets out circumstances in which a lobby registrant may represent a client only if the registrant satisfies certain conditions. On each report filed with the Ethics Commission, a lobby registrant must affirm that he or she has complied with the statutory provisions regarding conflicts of interest.

False Communications. A person violates section 305.021 of the Government Code if, for the purpose of influencing legislation or administrative action, the person knowingly or willfully makes a false statement or misrepresentation of fact to a state officer or employee. It is also a violation of this section to cause a copy of a document the person knows to contain a false statement to be received by a state officer or employee without notifying the state officer or employee in writing of the truth.

Access to the Floor of the Legislature. A lobbyist may not go on to the floor of either house of the legislature while that house is in session unless invited by that house. Gov't Code § 305.023.

PENALTIES

The law provides criminal and civil sanctions for violation of the lobby law or the Penal Code.

CRIMINAL PENALTIES

- Bribery is a second-degree felony, punishable by imprisonment of no more than twenty years and no less than two years. Additionally, a fine not to exceed \$10,000 may be imposed.
- Violation of the prohibition against contingent fees for lobbying under section 305.022 of the Government Code is a third degree felony, punishable by imprisonment of no more than ten years and no less than two years. Additionally, a fine not to exceed \$10,000 may be imposed.
- Any other intentional or knowing violation of a provision of the lobby law, or of one of the Penal Code prohibitions against accepting or offering a benefit, is a Class A misdemeanor, punishable by a jail term of up to one year, a fine not to exceed \$4,000, or both.

An allegation that someone has violated a provision of the Penal Code, or any other criminal offense, is investigated and prosecuted under criminal laws by a district or county attorney.

SWORN COMPLAINTS

An individual who believes a person has violated a provision of the lobby law or the Ethics Commission's rules may file a sworn complaint with the Ethics Commission. The Ethics Commission may assess a civil penalty against a person it determines has violated the lobby law. Possible civil sanctions include:

- denial, suspension, or revocation of the lobby registration of a person convicted of a criminal offense under chapter 36 of the Penal Code or under the lobby law; and
- assessment by the Ethics Commission of a civil penalty in an amount up to \$5,000 or triple the amount at issue, whichever is greater, if the Ethics Commission finds that a person has violated the lobby law.

The Ethics Commission does not have authority to impose civil penalties for violations of Penal Code provisions. For more information about sworn complaints, contact the Ethics Commission.

LATE FINES FOR REPORTS

A lobby registrant who fails to file a report by the applicable deadline is subject to a minimum \$500 late-filing penalty. Fines paid to the Ethics Commission are deposited into the state's general revenue fund.

LOBBYIST INFORMATION AVAILABLE TO THE PUBLIC

Lobbyist registration and activity reports filed with the Ethics Commission are public information and may be reviewed on the Ethics Commission's website or at the Ethics Commission's offices during regular business hours. Copies of the registrations and reports are also available by mail. Also, lists of registered lobbyists and their employers and clients are available on the Ethics Commission's website at <http://www.ethics.state.tx.us>. The lists are available sorted by lobbyist, by employer/client, and by subject.