

STATE OF NEW JERSEY OFFICE OF THE STATE COMPTROLLER

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THE USE OF PUBLIC FUNDS TO LOBBY NEW JERSEY STATE GOVERNMENT



**3/26/2009
EV-01**

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INTRODUCTION

The Office of the State Comptroller undertook this study to provide information to the public and to state policy-makers concerning the practice of government entities in New Jersey hiring lobbying firms to lobby New Jersey state government.¹ In this report, we look specifically at the nature of lobbying efforts being made on behalf of government entities and the public funds being devoted to those efforts. We conclude that this practice suffers from a lack of transparency and we make a series of recommendations to achieve cost savings in this area.

BACKGROUND

Lobbying has been defined succinctly as “an effort designed to affect what the government does.” Anthony J. Nownes, *Total Lobbying* 5 (2006). Lobbying can take a wide variety of forms, ranging from advocating for particular legislation on behalf of a client to attempting to shape administration of a program by the executive bureaucracy. *See id.* at 17-21.

New Jersey law generally uses the term “governmental affairs agent” to refer to lobbyists. Under state law, a governmental affairs agent, i.e., lobbyist, is defined as someone who “receives . . . compensation . . . to influence legislation, to influence regulation or to influence governmental process . . . by direct or indirect communication with . . . a member of the Legislature, legislative staff, the Governor, the Governor’s staff, or any officer or staff member of the

Executive Branch” N.J.S.A. 52:13C-20(g).

New Jersey law does not preclude New Jersey government units from retaining a lobbyist, although legislation periodically has been introduced that would do so. Several other states have made distinctions in their law between private entities using private money to hire a lobbying firm and public entities using taxpayer dollars for such services. Specifically, Connecticut, Florida, Texas, Utah, and Virginia have enacted legislation banning certain government entities from retaining lobbyists. *See* Conn. Gen. Stat. § 1-101bb; Fla. Stat. § 11.062; Texas Gov. Code § 556.005; Utah Code Ann. § 63J-1-302; Va. Code Ann. § 2.2-434. Similarly, federal law prohibits recipients of federal appropriations from using those funds to lobby government officials. *See* 18 U.S.C. § 1913.

In a number of other states, court challenges have been brought alleging that it is unlawful for government entities to hire a lobbyist. Courts have, however, tended to find that where there is no legislation explicitly banning the practice, such lobbying efforts are lawful as an implied power of municipal and other government units. *See* David Morgan, *Note: The Use of Public Funds for Legislative Lobbying and Electoral Campaigning*, 37 Vand. L. Rev. 433, 438-43 (1984) (citing cases).

While little mainstream academic literature has been published concerning the issue, the practice of government entities hiring lobbying firms to lobby other government entities continues to be the subject of debate. Arguments

¹ This study was conducted in accordance with *Designing Evaluations* guidance issued by the U.S. Government Accountability Office.

made in favor of lobbying by government units have included:

- The legislative and regulatory process can be complicated, and local governments need the assistance of someone who has the expertise and time to advocate for local interests through the course of that process.
- Lobbyists provide substantial and helpful assistance to local governments seeking information about grant opportunities at the state and federal levels and in preparing such grant applications.
- Lobbyists provide valuable help to local interests that are seeking to gain access to and be taken seriously by key government officials with whom the lobbyists have preexisting relationships.
- Similar to private companies and individuals, public bodies should have a right to free expression and advocacy that includes the right to hire a lobbyist on their behalf.

Arguments in opposition to lobbying by government entities have included:

- Government units have less of a need than private entities to hire a lobbying firm to gain access to officials and handle the government bureaucracy because government units are themselves part of that same government apparatus. Lobbyists acting on behalf of government units are

essentially doing the job that local public officials were elected or appointed to perform -- contacting their elected state or federal representatives on behalf of the local government unit.

- Unlike a situation involving expenditures on core government functions or basic services, taxpayers have not expressly or impliedly consented to the use of their tax dollars for lobbying purposes.
- It is not appropriate to use taxpayer dollars to, in effect, lobby other government entities for more taxpayer dollars. This is particularly the case where the government unit is lobbying for a controversial cause with which a majority of local constituents may disagree.
- As some government entities retain lobbyists to advocate for them, other government officials may feel compelled to do the same to achieve an even playing field in the competition for state and federal dollars. This financial escalation is ultimately not in the interest of taxpayers.

STUDY RESULTS

The practice of lobbying state officials in New Jersey is regulated by the Legislative and Governmental Process Activities Disclosure Act (the "Act"). The Election Law Enforcement Commission ("ELEC") oversees the administration of the Act. The Act requires all lobbyists to be registered with ELEC. *See* N.J.S.A. 52:13C-21.

In the interest of transparency, the Act further requires that those who lobby in New Jersey and their clients file periodic reports. Those reports include information concerning the nature and expense of lobbying services that have been provided. N.J.S.A. 52:13C-22, -22.1. The reports are filed with ELEC and are available to the public.

Notably, the Act exempts from its coverage “acts of an officer or employee of the Government of this State or any of its political subdivisions . . . in carrying out the duties of their public office or employment.” Through administrative decision, ELEC has ruled that this exemption applies not only to lobbying activities by government employees, but also by lobbying firms hired by a government unit. See ELEC Advisory Opinion 01-2006 (*In re University of Medicine & Dentistry of New Jersey*).

As a result, government entities need not file the lobbying disclosure reports that are required of their private-sector counterparts. Despite the controversial nature of lobbying by government units, under the current regulatory system this type of lobbying is actually subject to less oversight than lobbying by the private sector.

Although government units themselves are not required to report such lobbying-related information to ELEC, the Act requires all lobbying firms to file quarterly reports of their lobbying activity, including an identification of the clients on whose behalf they have lobbied. We identified the 74 New Jersey government entities reflected in those client lists during the time period under review. We then obtained relevant records directly from each of

those 74 government units to confirm and/or supplement the information in the lobbyist filings.

It is possible that some lobbying firms concluded on the basis of ELEC Advisory Opinion 01-2006 (discussed above) that they were permitted to omit mention of their government clients when submitting information to ELEC. As a result, the cost information presented below cannot definitively be considered to reflect the totality of public dollars spent on lobbying.

Reported Costs of Lobbying Efforts

In the most recently concluded state legislative session (2006-2007), government entities in New Jersey reported spending \$3.87 million in public dollars to hire lobbying firms to lobby state government. That amount is based on information reported by the government units themselves in response to the above-described information requests by this office. It does not include expenses associated with lobbying carried out by government employees themselves. Also, the figure does not include dues paid to cooperative associations that lobby on behalf of municipalities, counties, or other government units jointly.

Moreover, that \$3.87 million (as well as other dollar amounts set forth in this report) does not include expenses associated with lobbying the federal government exclusively. Records of federal lobbying are not maintained with ELEC. However, federal lobbying records maintained by the Center for Responsive Politics indicate that 11 of the 74 New Jersey government units referred to in this report engaged in

federal lobbying efforts during the 2006-2007 time period at issue, at an additional cost of close to \$1.9 million.

Our analysis revealed that the hiring of lobbying firms is not limited to certain kinds of government entities in New Jersey. Rather, a variety of government units hired such firms, including municipalities, counties, school districts, improvement authorities, utilities authorities, and parking authorities. Moreover, municipalities of all sizes retained lobbyists during the time period at issue, ranging from the Borough of Sea Bright (population 1,818) to the City of Newark (population 273,546).

The specific breakdown of money spent on lobbying firms by type of government

entity is set forth in Figure 1 below. As the chart indicates, public authorities and commissions spent more on lobbying than did other types of government entities.

The government entities in our data set that individually spent more than \$100,000 on lobbying firms during the time period at issue are set forth on the following page in Table 1, along with the nature of the services rendered.

Figure 1: Total Lobbying Expenditures by Public Entity Type, 2006-2007

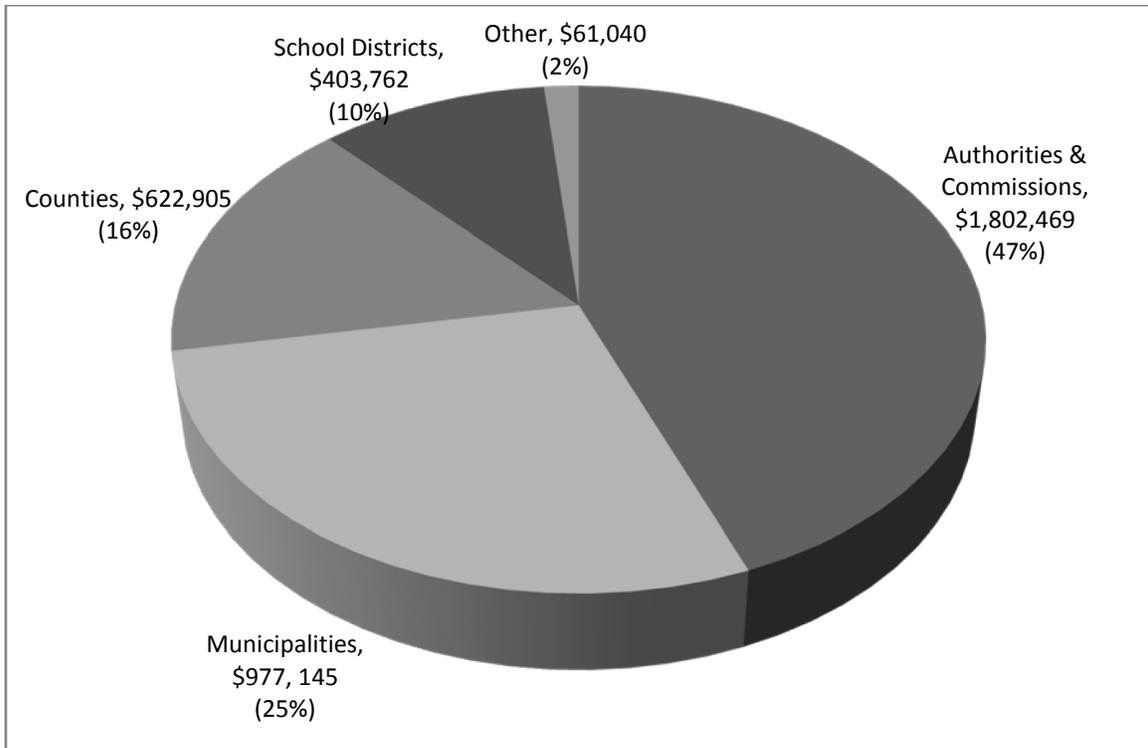


Table 1: Government Entities that Spent More Than \$100,000 on Lobbying Firms

Government Entity	Amount Spent on Lobbying, 2006-2007	Nature of lobbying services rendered (as per ELEC records)
Passaic Valley Sewerage Commissioners	\$536,000	Promote various bills concerning wastewater treatment, financing for infrastructure projects, and other issues; interact with the Department of Environmental Protection concerning the Passaic River clean-up, grant applications, permitting issues, and other issues; interact with other executive branch agencies
County of Monmouth	\$286,614	Various meetings and efforts relating to the proposed Monmouth-Ocean-Middlesex rail line
Bergen County Utilities Authority	\$223,815	Monitor or promote legislation on various issues including governance and powers of independent authorities, telecommunications service, tort liability, service fees and assessments, energy efficiency, waste management, recycling, water resources and supply, environmental infrastructure funding, and the state budget
City of Newark	\$164,032	Promote, oppose, or monitor various legislative efforts on issues such as the state budget, eminent domain, voting machines, and tax/surcharge issues; related meetings with executive branch agencies
Bergen County Improvement Authority	\$161,855	Monitor or promote legislation on a variety of issues, such as governance and powers of independent authorities, contracting and procurement, economic development, consolidation of local government entities, telecommunications service, self-insurance, energy efficiency, recycling, environment-related grants, and the state budget
Mercer County Improvement Authority	\$132,090	Monitor legislation on various issues, such as governance and powers of independent authorities, telecommunications service, economic development, consolidation of local government entities, self-insurance, energy efficiency, environmental remediation, and the state budget; interact with New Jersey Transit concerning rail service issues
North Jersey District Water Supply Commission	\$110,025	Address legislation concerning water supply and water quality issues; interact with the Department of Environmental Protection

Three of the four government entities that spent the most on lobbying hired multiple lobbying firms during the time period at issue. The Passaic Valley Sewerage Commissioners and the County of Monmouth each contracted with three firms for state lobbying. The City of Newark hired two firms to lobby at the state level.

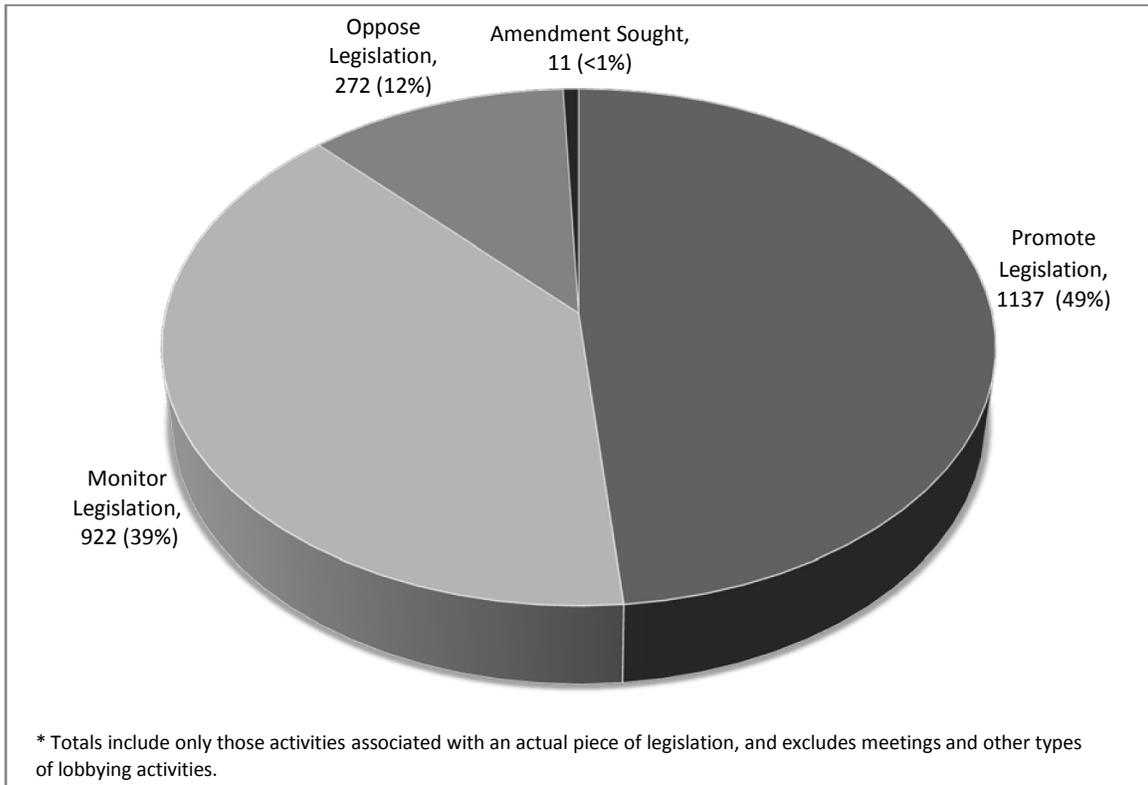
Nature of Lobbying Efforts

According to information filed by lobbying firms with ELEC, the majority of lobbying efforts on behalf of government entities related to pending legislation. Public entities directed a far

smaller number of lobbying efforts to other types of lobbying, such as (in descending order) regulatory lobbying, obtaining grants and other available public funding, and setting up meetings and networking with state officials.

With regard to legislative lobbying specifically, information on file with ELEC reflects the particular type of legislative action sought by lobbyists acting on behalf of public entities. We tabulated that data in Figure 2 below.

Figure 2: Type of Legislative Action Sought by Lobbyists Acting on Behalf of Public Entities, 2006-2007*



As indicated in Figure 2, public entities directed nearly half of their legislative lobbying at promoting particular bills.

The next most common type of legislative lobbying involved simply monitoring pending bills. Thirty-nine percent of legislative lobbying by public entities consisted of such monitoring. Use of lobbying firms for monitoring legislation is notable in view of the fact that the State Legislature's website enables members of the public to monitor pending legislation on-line. Legislation can be tracked by reference to bill number or subject matter. The Legislature also offers a free service that notifies the subscriber whenever any legislative action is taken on bills pre-selected by the subscriber.

In addition to the type of lobbying services provided, lobbying firms also file with ELEC information concerning the subject matter of their lobbying efforts. That data revealed that the five subject matter areas most commonly at issue in lobbying by government entities are education, environment, public safety, civil rights, and labor, in that order.

In analyzing the nature of lobbying services provided, we also reviewed documents obtained from government entities themselves. Those documents revealed that some government units engaged firms to lobby on a specific issue, while others gave the lobbying firm a broad mandate.

For example, according to the executed Services Agreement, the Township of Montgomery engaged a lobbyist to "provide government relations services on behalf of the Township in connection

with the Township's purchase of the North Princeton Developmental Center . . . from the State of New Jersey." An exhibit attached to the agreement describes even more specifically the state offices that the lobbyist will contact to promote the desired sale of the property.

In contrast, other government units engaged a lobbyist for a far less defined scope of services. For example, according to the executed Agreement for Services, the Township of Readington hired a lobbying firm to "represent the Township on all governmental relations matters relating to the Township's legislative and regulatory matters."

In instances involving such a general scope of services, records that the lobbying firm itself later filed with ELEC provide more specific information concerning the work actually performed.

For example, in response to a request for information from this office, the Neptune Township School District stated that the district had hired a lobbying firm "to provide the district board and administration with the latest committee and bill introduction information relative to developments that would/could impact the district and community. Further, guidance was obtained regarding testimony at committee meetings and networking with legislative committees and sub-committees." Information on file with ELEC reveals that the lobbying firm ultimately lobbied on the school district's behalf concerning numerous specific bills, including, among others:

- A bill that “designates May 27 of each year as ‘School Bus Driver Appreciation Day’”;
- A bill that “increases fines for violation of Open Public Meetings Act, provides for enforcement by certain parties, and requires audio or video recording of meeting to be part of minutes”; and
- A bill that “establishes NJ Task Force on Gasoline, Diesel Fuel and Heating Oil Reserves”.

Information filed with ELEC also indicates that government entities may be overlapping their efforts in their retention of lobbying firms. For example, ELEC records revealed that four government entities each paid a different firm to lobby concerning the “Recycling Enhancement Act” (A1886/S557). One of those entities sought to promote the passage of the bill, while three others sought merely to monitor its progress. Similarly, four government units each paid different lobbying firms to lobby concerning the “Property Assessment Reform Act” (A14/S39).

In contrast, documents provided to us also revealed instances of government units collaborating on retaining lobbying firms. For example, the Borough of Cliffside Park and the Borough of Fairview split the fees of a lobbying firm they jointly hired to assist with obtaining funding in connection with a new Department of Public Works facility.

Duplication of efforts in some instances may be avoided through use of associations that lobby on behalf of their

government-unit members collectively. Government units in New Jersey are frequently dues-paying members of such associations. For example, all New Jersey municipalities are members of the New Jersey State League of Municipalities, an organization that advocates on behalf of its members at the state and federal levels as authorized by state statute. *See* N.J.S.A. 40:48-22. Similar associations exist at other levels of government, such as the New Jersey Association of Counties and the New Jersey School Boards Association.

Payment of Lobbying Firms

Our study revealed that public entities used varying approaches in compensating the lobbying firms they retained.

In the vast majority of instances, government entities hiring lobbying firms paid their lobbyist equal, pre-set amounts each month, regardless of the extent of lobbying services rendered during a particular time period. In the contracts between the parties, these amounts are typically referred to as “retainer” payments.

By way of example, records provided by the North Jersey District Water Supply Commission (NJDWSC) reveal monthly billings in the pre-set amount of \$5,000 for lobbying services. Monthly reports submitted to NJDWSC by its lobbying firm reflect varying lobbying efforts being performed each month. For example, work in April 2007 consisted of review of a New Jersey Department of Environmental Protection (DEP) public notice, three conversations with DEP employees, and a conversation with an NJDWSC employee. Lobbying

efforts during the preceding June appear to have been more substantial, consisting of attending three legislative committee hearings, a review of relevant regulations, a review of several pending bills, and attendance at a meeting with NJDWSC. In each month, however, as in all months for which records were provided, the fee was the same.

Similarly, records provided by the Hudson County Improvement Authority (HCIA) reveal billings by a lobbying firm in the amount of \$3,500 each month. Reports submitted to HCIA by the lobbying firm reflect varying lobbying efforts each month. The two-page report for June 2007 includes monitoring five legislative committee meetings, two Assembly voting sessions, a Senate voting session, and numerous bills, along with attending the HCIA's monthly meeting. The three-sentence report for the next month simply states that the Legislature was not in session that month and that the lobbying firm attended the monthly HCIA meeting and otherwise "provide[d] monitoring and assistance . . . as required and requested." Although in this instance the lobbying contract on its face called for hourly billing (\$175 per hour), the invoiced amount was the same each month. In response to inquiries from this office, HCIA stated that the contract's reference to an hourly rate was an error.

In contrast, there were several government units in our data set that paid their lobbyist varying monthly amounts based on an hourly rate. In the contracts provided to this office these rates ranged from \$125 per hour to \$250 per hour.

In addition, in some instances where a lobbying firm was retained for a specific project, the government entity paid the lobbying firm a pre-set, one-time sum for its work instead of a monthly amount. For example, the Township of Montgomery paid a lump sum fee of \$17,000 for the services described in the preceding section of this report.

Lastly, one municipality provided compensation to the principal of a lobbying firm by paying the individual as a salaried municipal employee. The individual's lobbying firm listed the municipality, Jersey City, as one of its clients in an annual report filed with ELEC, including the individual's salary from the city as part of its annual receipts. In response to an inquiry from this office, Jersey City stated that the individual is employed by the city and that his responsibilities include lobbying and tracking legislation for the city. We referred this matter to the Department of the Treasury, Division of Pensions and Benefits (the Division), which on February 25, 2009 issued an administrative decision determining that the lobbyist's arrangement with the city was actually that of an independent consultant, not an employee. As a result, the Division discontinued the individual's participation in the state pension system, subject to his right to appeal the decision within 45 days.

RECOMMENDATIONS

Whether New Jersey should follow the lead of those states that have adopted a partial or complete ban on public entities hiring lobbyists is a policy decision to be made by the state's elected officials. We recommend the following steps to limit the cost of such expenditures and

promote an appropriate level of transparency.

Transparency-related recommendations:

1) Similar to their private-sector counterparts, public entities should be required to disclose to ELEC their retention of outside lobbying firms. There is no apparent justification for requiring disclosures by private companies hiring lobbying firms while having an exception for public entities.

2) In view of the implications for public dollars, state officials should consider requiring disclosures concerning lobbying by public entities in addition to those required for private entities. Specifically, the additional disclosures made to ELEC on an annual basis should include:

- justification for and the purpose of retaining the lobbying firm;
- the terms of the lobbying contract;
- the ultimate cost of the services; and
- what was accomplished as a result of the lobbying efforts.

In addition, state officials should consider requiring that these disclosures be made to ELEC by the government unit itself, instead of permitting the lobbying “client” to delegate the disclosure obligation to its lobbying firm as current law permits in some instances.

Cost-related recommendations:

3) Government units that are using lobbying firms exclusively or partially to monitor pending state legislation should consider whether these efforts could be accomplished instead by employees of the government unit. Using staff to monitor bills on line can be more cost effective than paying a firm to perform that service, particularly in cases where the government unit in question already employs a legislative affairs liaison.

4) Government units should attempt to use existing local resources to handle other lobbying-related efforts as well. Local officials should consider whether they or other local personnel should contact state officials directly, rather than hire a lobbyist to set up meetings with those officials or communicate their positions to them.

5) Government units should ensure that they are making appropriate use of cooperative associations established to lobby on their collective behalf. When dealing with issues that have relevance for the other members of the association, government units should determine whether such cooperative associations are able to assist before hiring a private lobbying firm. In instances where cooperative associations are unable to assist, government units should evaluate the possibility of pooling their individual lobbying efforts in a way that would avoid paying different lobbying firms to lobby on identical bills.

6) Where a government unit deems it appropriate to retain a lobbying firm, it should consider the contractual terms carefully to avoid unnecessary expenditure of public dollars. For

example, government units should evaluate:

- whether savings can be achieved by making payment based on an hourly rate rather than committing to pre-set monthly amounts for a 12-month period; and
- whether it would be appropriate to limit the retention of the lobbying firm to a specific task, rather than committing public dollars to ongoing general lobbying services.