

Chapter 22

Organizations that Lobby Without a Paid Lobbyist

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Not all lobbying in the commonwealth is conducted by legislative agents, executive agents, or lobbyist entities. A corporation or business may only have an infrequent or sporadic interest in legislative or executive matters and therefore determines that it need not hire a lobbyist. In order to protect those interests in legislation or executive decisions, an officer, employee or a board member may lobby on behalf of the company. As with companies that hire agents or lobbyist entities, the public interest is served through registration and expenditure reporting with the secretary (*See discussion in Chapter 21*). Essentially, organizations that spend over \$250 per calendar year on lobbying without a registered agent must register as a Section 44 organization and file semiannual financial disclosure statements with the secretary. This chapter will explore when an organization must register and file reporting statements as a Section 44 organization.

Practice Note

The 2009 amendments to the Lobbying Law (St. 2009, c. 28, § 2) drastically tightened the so-called “safe harbor” provision by which an individual’s lobbying activity is presumed to be “simply incidental to his regular and usual business or professional activities” and is therefore exempt from the registration and expenditure reporting requirements of the law. G.L. c. 3, §§ 39, 43, 44, 47. Consequently, those officers, employees or board members of a corporation or business who engage in infrequent lobbying activity might now well be considered lobbyists, thereby disqualifying said corporation or business from Section 44 treatment.

§ 22.1 REGISTRATION OF SECTION 44 ORGANIZATIONS

The Legislature has specifically mandated that:

[o]n or before the fifteenth day of July . . . and the fifteenth day of January . . . any group or organization, however constituted, *not employing an executive or legislative agent* which as part of an organized effort, expends in *excess of two hundred and fifty dollars* during any calendar year to promote, oppose or influence legislation, or the governor’s veto or approval thereof, or to influence the decision of any officer or employee of the executive branch or an

authority, including, but not limited to statewide constitutional officers and employees thereof, where such decision concerns legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or to do any act to communicate directly with a covered official to influence a decision concerning policy or procurement shall register with the state secretary. . . .

G.L. c. 3, § 44.

Practice Note

The secretary examined a grass roots lobbying campaign in *Lobbying Opinion 98-2*, and provided distinguishing factors in determining whether lobbying was conducted. In an instance where a company that does not hire an executive or legislative agent sends a newsletter to its employees encouraging them to contact their legislator to act on a particular piece of legislation, the company has performed an “act to promote, oppose or influence” that particular legislation. Conversely, a company that sends a newsletter to simply educate its employees and does not encourage action is not lobbying. The opinion concludes that it is the call to action or organized direction from the company to influence a particular piece of legislation that invokes the application of the Section 44 registration and reporting requirements. Accordingly, expenses related to the effort of drafting and distributing the newsletter encouraging action must be calculated and reported to the secretary. Although not included in the opinion, it is worth noting that the statement of intent that accompanied the lobbying laws when first enacted, indicates that the legislative purpose of the statute is to require the registration and expenditure reporting by those who solicit others in efforts to persuade members of the General Court or executive branch to take action. 1973 Mass. Acts c. 981, § 1.

Prior to July 1, 1999, organizations simply submitted a statement of their own design providing the appropriate information. The secretary has since developed a form for Section 44 organizations to register and report expenditures and contributions received. Accordingly, as of July 1, 1999, the secretary requires the submission of a properly completed registration form that can be found at the secretary’s Web site at <http://www.sec.state.ma.us>.

Section 44 organizations must submit a statement, under oath, referencing the names and addresses of the principals of such group and the purpose of the organization. G.L. c. 3, § 44.

Practice Note

In *Lobbying Opinion 99-1*, the secretary held that an individual who owned shares in a small corporation who was lobbying on behalf of that company, but was not being paid for his or her efforts did not have to register as an executive or legislative agent. The opinion notes that if the company is spending more than \$250, then it is subject to Section 44 registration and reporting requirements. Expenditures that are considered in the calculation of the \$250 threshold include preparing and mailing letters by regular U.S. mail or e-mail, and preparing a newsletter encouraging employees to contact their legislators to act on a particular piece of legislation.

§ 22.2 DISCLOSURE STATEMENTS

The reporting requirements of a Section 44 organization are similar to those of legislative and executive agents and their employers. The disclosure statement must include an itemized accounting and shall include specific expenditures for meals, transportation, entertainment, advertising, public relations, printing, mailing, and telephone, and shall include the name of the payees and the amount paid to each payee. G.L. c. 3, § 44.

It should be noted that expenditures for meals, entertainment, or transportation shall be identified by date, place, amount, and the names of all persons in the group partaking in, or of, such meal, entertainment, or transportation. G.L. c. 3, § 44.

As part of its disclosure mandate, a Section 44 organization must also include “a listing of the names and addresses of every person, group or organization from whom \$15 or more was contributed during the year for lobbying objectives. No expenditure or contribution shall be split to evade this section.” G.L. c. 3, § 44.

Finally, a Section 44 organization is bound by the same requirement as legislative and executive agents to report campaign contributions (as defined in G.L. c. 55) made by the group to a political candidate or committee. G.L. c. 3, § 44. No contribution may be split or divided for the purposes of evading any reporting requirements.

§ 22.3 EXCEPTIONS

Section 44 provides *an exemption from the registration and expenditure reporting requirements of the law* for certain organizations that engage in lobbying activity and meet all of the following criteria:

- does not employ an executive or legislative agent;
- does not realize a profit;
- does not make a contribution (as defined by G.L. c. 55, § 1) to a political candidate or committee;
- does not pay a salary or fee to any member for any activity performed for the benefit of the group or organization; and
- expends \$2,000 or less during any *calendar year* on lobbying.

§ 22.4 FINES

The statutory deadline for a Section 44 organization to file its financial disclosure statements is the same as that of executive and legislative agents and their employers: January 15 and July 15. G.L. c. 3, §§ 43, 44, 47. The reporting period also runs the same. That is, reports filed on July 15 include expenditures made from January 1 through June 30; those filed on January 15 should include expenditures from July 1 to December 31 of the preceding year. G.L. c. 3, §§ 43, 44, 47.

As with executive and legislative agents and their employers, there are penalties associated with late filings. G.L. c. 3, §§ 43, 44, 47. An organization that files its statement one to twenty days late shall be assessed a penalty of \$50 per day and an additional \$100 per day for every day after the twentieth day until the statement is filed. The secretary may waive the penalty for good cause if the report is filed less than thirty days late. G.L. c. 3, § 44. The failure of a Section 44 organization to register or file proper

disclosure statements after a notice of delinquency from the secretary can result in fines from \$100 to \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both. G.L. c. 3, § 48.

Practice Note

The 2009 amendments to the Lobbying Law (St. 2009, c. 28, § 11, 14) made the fines associated with Section 44 organizations the same as those applicable to executive or legislative agents or their employers.

Organizations that Lobby Without a Paid Lobbyist, by Benjamin Fierro III from the MCLE, Inc. publication "Massachusetts Election Administration, Campaign Finance, and Lobbying Law" (3rd Edition 2012)