ASSEMBLY, No. 2432

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)
Assemblyman PARKER SPACE
District 24 (Morris, Sussex and Warren)

Co-Sponsored by:
Assemblyman Wirths

SYNOPSIS

Establishes "Local Governmental Process Activities Disclosure Act."

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 10/8/2020)

AN ACT establishing the "Local Governmental Process Activities Disclosure Act" and supplementing Title 52 of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature affirms that the preservation of responsible government requires that the fullest opportunity be afforded to the people of the State to petition their local governments for the redress of grievances and to express freely to individual members of the local governing bodies, to governing bodies at all local government levels, and to their local chief executives their opinion on local measures and current issues; to local government officers and agencies their opinion on local rules and regulations developed and promulgated by those officers and agencies in the exercise of powers delegated to them by law; and to the local chief executives and local government officers and agencies their opinion on matters involving the administration of various local governmental processes by the chief executives and those officers and agencies in the exercise of powers delegated to them by law.

The Legislature finds, however, that the preservation and maintenance of the integrity of the process for the adoption of local measures, of the local regulatory process, and of the local governmental process, including the development and promulgation of local rules and regulations or the administration of various local governmental processes to effectuate the implementation of law, requires the identification in certain instances of persons and groups who seek to influence the content, introduction, passage or defeat of local measures, the proposal, adoption, amendment, or repeal of local rules and regulations or the administration of various local governmental processes, and, where it is not otherwise apparent or readily ascertainable, the nature of the interest which those persons and groups seek to advance or protect through such activity.

It is in the public interest to closely monitor the activities of governmental affairs agents and lobbyists with respect to their involvement in influencing the adoption of local measures and local regulatory and governmental processes to ensure the integrity of government.

Therefore, it is the purpose of this act, P.L. , c. (C.) (pending before the Legislature as this bill), to require adequate disclosure in certain instances in order to make available to the Legislature, local governmental officials and the public information relative to the activities of persons who seek to influence the content, introduction, passage or defeat of local measures, the proposal, adoption, amendment or repeal of local rules and regulations or the administration of various local governmental processes by such means.

2. This act shall be known as the "Local Governmental Process Activities Disclosure Act."

3. For the purposes of this act, P.L. , c. (C.) (pending before the Legislature as this bill), unless the context clearly requires a different meaning:

a. The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

b. The term "local measure" includes all ordinances, resolutions, amendments, nominations and appointments pending or proposed in a local governing body, and all ordinances and resolutions which having been approved by the local governing body are pending implementation.

c. The term "local governing body" means:

(1) in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality;

(2) in the case of a county, the board of chosen freeholders, or, in the case of a county having adopted the provisions of the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), as the governing body is defined in the form of government adopted by the county under that act;

(3) in the case of an authority, a body, public and corporate, created by one or more municipalities or counties pursuant to any law authorizing that creation, which law provides that the public body so created has at least the following powers: to adopt and use a corporate seal; to sue and be sued; to acquire and hold real or personal property for its purposes; and to provide for and secure the payment of its bonds or other obligations, or to provide for the assessment of a tax on real property within its district, or to impose charges for the use of its facilities or any combination thereof; and

(4) in the case of a school district, the board of education of any local school district, consolidated school district, regional school district, county vocational school and any other board of education or other similar local body established and operating under the provisions of Title 18A of the New Jersey Statutes, and also including the board of trustees of a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.).

d. The term "lobbyist" means any person, partnership, committee, association, corporation, labor union or any other organization that employs, engages or otherwise uses the services of any governmental affairs agent to influence local measures, local regulations or local governmental processes.

e. The term "local chief executive" means:

(1) in the case of a municipality, the mayor or chief executive of the municipality, whatever his official designation may be;

(2) in the case of a county, the chief executive of the county, whatever his official designation may be;

(3) in the case of an authority, the chief executive of the authority, whatever his official designation may be;

(4) in the case of a school district, the chief executive of the school district, whatever his official designation may be; and

(5) any person designated to act in the role of the local chief executive, or elected or appointed to fill a vacancy in that office.

f. The term "communication with a member of the local governing body", "with staff of the local governing body," "with the local chief executive," "with staff of the local chief executive," or "with a local government officer or employee" means any communication, oral or in writing or any other medium, addressed, delivered, distributed or disseminated, respectively, to a member of the local governing body, to staff of the local governing body, to the local chief executive, to staff of the local chief executive, or to a local government officer or employee, as distinguished from communication to the general public including but not limited to a member of the local governing body, to staff of the local governing body, to the local chief executive, to staff of the local chief executive, or to a local government officer or employee. If any person shall obtain, reproduce or excerpt any communication or part thereof which in its original form was not a communication under this subsection and shall cause such excerpt or reproduction to be addressed, delivered, distributed or disseminated to a member of the local governing body, to staff of the local governing body, to the local chief executive, to staff of the local chief executive, or to a local government officer or employee, such communication, reproduction or excerpt shall be deemed a communication with the member of the local governing body, with staff of the local governing body, with the local chief executive, with staff of the local chief executive, or with a local government officer or employee by such person.

g. The term "governmental affairs agent" means any person who receives or agrees to receive, directly or indirectly, compensation, in money or anything of value including reimbursement of his expenses where such reimbursement exceeds $100 in any three-month period, to influence a local measure, to influence local regulation or to influence local governmental processes, or all of the above, by direct or indirect communication with, or by making or authorizing, or causing to be made or authorized, any expenditures providing a benefit to, a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or any local government officer or employee, or who holds himself out as engaging in the business of influencing local measures, local regulations or local governmental processes, by such means, or who incident to his regular employment engages in influencing local measures, local regulations or local governmental processes, by such means; provided, however, that a person shall not be deemed a governmental affairs agent who, in relation to the duties or interests

of his employment or at the request or suggestion of his employer, communicates with a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee concerning any local measure, local regulation or local governmental process, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of his employment.

h. The term "influence a local measure" means to make any attempt, whether successful or not, to secure or prevent the initiation of any local measure, or to secure or prevent the passage, defeat, amendment or modification thereof by the local governing body, or the approval, amendment or disapproval thereof by the local chief executive in accordance with his authority.

i. The term "statement" includes a notice of representation or a report required by this act.

j. The term "member of the local governing body" includes any member or member-elect of, or any person who shall have been selected to fill a vacancy in, the local governing body, and any other person who is a member or member-designate of any committee or commission established by the local governing body.

k. The term "staff of the local governing body" includes all staff, assistants and employees of the local governing body or any of its members in the member's official capacity, whether or not they receive compensation from public funds.

l. The term "staff of the local chief executive" includes the heads of principal local government departments and agencies, the secretary to the local chief executive, the counsel to the local chief executive, and all professional employees in the office of the counsel to the local chief executive, and all other employees of the office of the local chief executive.

m. The term "local government officer or employee" means any assistant or deputy heads of principal local government departments or agencies, and any officer of a local government department or agency who is not included among the foregoing or among the staff of the local chief executive who is empowered by law to issue, promulgate or adopt local administrative rules and regulations or to administer local governmental processes, and any person employed in the office of such an officer who is involved with the development, issuance, promulgation or adoption of such local rules and regulations or administration of local governmental processes in the regular course of employment.

n. The term "local regulation" includes any local administrative rule or regulation affecting the rights, privileges, benefits, duties, obligations, or liabilities of any one or more persons subject by law to regulation as a class, but does not include a local administrative action (1) to issue, renew or deny, or, in an adjudicative action, to suspend or revoke, a license, order, permit or waiver under any law or administrative rule or regulation, (2) to impose a penalty, or (3)

to effectuate an administrative reorganization within a single local government department or agency.

o. The term "influence local regulation" means to make any attempt, whether successful or not, to secure or prevent the proposal of any local regulation or to secure or prevent the consideration, amendment, issuance, promulgation, adoption or rejection thereof by an officer or any local government department or agency empowered by law to issue, promulgate or adopt local administrative rules and regulations.

p. The term "expenditures providing a benefit" or "expenditures providing benefits" means any expenditures for entertainment, food and beverage, travel and lodging, honoraria, loans, gifts or any other thing of value, except for (1) any money or thing of value paid for past, present, or future services in regular employment, whether in the form of a fee, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense, or any combination thereof, or (2) any dividends or other income paid on investments, trusts, and estates.

q. The term "commission" means the Election Law Enforcement Commission established pursuant to section 5 of P.L.1973, c.83 (C.19:44A-5).

r. The term "communication with the general public" means any communication:

(1) disseminated to the general public through direct mail or in the form of a paid advertisement in a newspaper, magazine, or other printed publication of general circulation or aired on radio, television, or other broadcast medium, and

(2) which explicitly supports or opposes a particular item or items of a local measure or local regulation, or the content of which can reasonably be understood, irrespective of whether the communication is addressed to the general public or to persons in public office or employment, as intended to influence a local measure or to influence local regulation.

s. The terms "influence local governmental processes", "influencing local governmental processes" or "influence local governmental process" means to make any attempt, whether successful or not, to assist a represented entity or group to engage in communication with, or to secure information from, a local government officer or employee, or any local government department or agency, empowered by law to administer a local governmental process or perform other functions that relate to such processes.

t. The term "local governmental process" means:

promulgation of local administrative orders;

rate setting;

development, negotiation, award, modification or cancellation of public contracts;

issuance, denial, modification, renewal, revocation or suspension of permits, licenses or waivers;

procedures for bidding;

imposition or modification of fines and penalties;

procedures for purchasing;

rendition of local administrative determinations; and

award, denial, modification, renewal or termination of financial assistance, grants and loans.

u. The term "public contract" means a contract the cost or price of which is to be paid with or out of public funds or the funds of an independent local authority.

4. a. Any person who is employed, retained or engages himself as a governmental affairs agent shall, prior to any communication with, or the making of any expenditures providing a benefit to, a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee, and in any event within 30 days of the effective date of this act, P.L. , c. (C.) (pending before the Legislature as this bill), or of such employment, retainer or engagement, whichever occurs later, file a signed notice of representation with the Election Law Enforcement Commission in such detail as the commission may prescribe, identifying himself and persons by whom he is employed or retained, and the persons in whose interests he is working, and the general nature of his proposed services as a governmental affairs agent for such persons, which notice shall contain the following information:

(1) his name, business address and regular occupation;

(2) the name, business address and occupation or principal business of the person from whom he receives compensation for acting as a governmental affairs agent;

(3) (a) the name, business address and occupation or principal business of any person in whose interest he acts as a governmental affairs agent in consideration of the aforesaid compensation, if such person is other than the person from whom said compensation is received; and

(b) if a person, identified under paragraph (2) of this subsection as one from whom the governmental affairs agent receives compensation, is a membership organization or corporation whose name or occupation so identified does not, either explicitly or by virtue of the nature of the principal business in which the organization or its members, or the corporation or its shareholders, is commonly known to be engaged, clearly reveal the primary specific economic, social, political, or other interest which the organization or corporation may reasonably be understood to seek to advance or protect through its employment, retainer, or engagement of the governmental affairs agent, a description of that primary economic, social, political, or other interest and a list of the persons having organizational or financial control of the

organization or corporation, including the names, mailing addresses and occupations, respectively, of those persons. The commission shall promulgate rules and regulations to govern the content of any information required to be disclosed under this subparagraph and shall take such steps as are reasonably necessary to ensure that all such information is, in accordance with those rules and regulations, both accurate and complete.

Any list of governmental affairs agents and their principals required to be published quarterly under subsection h. of section 16 of P.L. , c. (C.) (pending before the Legislature as this bill) shall include, for each such principal for whom it is not otherwise apparent, the primary specific interest which the principal may reasonably be understood to seek to advance or protect through its engagement of the governmental affairs agent and the category of persons required to file additional information, as that interest and such category shall have been determined under subparagraph (b) of this paragraph;

(4) whether the person from whom he receives said compensation employs him solely as a governmental affairs agent, or whether he is a regular employee performing services for his employer which include but are not limited to the influencing of local measures, local regulations or local governmental processes;

(5) the length of time for which he will be receiving compensation from the person aforesaid for acting as a governmental affairs agent, if said length of time can be ascertained at the time of filing; and

(6) the type of local measure, local regulation or local governmental process or the particular local measure, local regulation or local governmental process in relation to which he is to act as governmental affairs agent in consideration of the aforesaid compensation, and any particular local measure, local regulation or local governmental process or type of local measure, local regulation or local governmental process which he is to promote or oppose.

b. Any governmental affairs agent who receives compensation from more than one person for his services as a governmental affairs agent shall file a separate notice of representation with respect to each such person; except that a governmental affairs agent whose fee for acting as such in respect to the same local measure, local regulation or local governmental process or type of local measure, local regulation or local governmental process is paid or contributed to by more than one person may file a single statement, in which he shall detail the name, business address and occupation or principal business of each person so paying or contributing.

5. Any governmental affairs agent or lobbyist not a resident of this State, or not a corporation of this State or authorized to do business in this State, shall file with the Election Law Enforcement

Commission, before attempting to influence a local measure, local regulation or local governmental process, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

6. a. No lobbyist or governmental affairs agent shall offer or give or agree to offer or give, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value to a local government officer or employee or member of the local governing body or staff of the local governing body, totaling more than $250 in a calendar year. The $250 limit on any compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the local governing body, which means a spouse, child, parent, or sibling of the member residing in the same household as the member of the local governing body.

b. The prohibition in subsection a. of this section on offering or giving, or agreeing to offer or give, any compensation, reward, gift, honorarium or other thing of value shall not apply: (1) if it is in the course of employment, by an employer other than a public employer, of an individual covered in subsection a. of this section or a member of the immediate family; or (2) if receipt is from a member of the immediate family when the family member received such in the course of his or her employment; or (3) if it is in accordance with the terms of regulations promulgated by the commission with regard to coworkers employed by the same public employer and the governmental affairs agent is a fellow employee of that public employer not acting as a governmental affairs agent with respect thereto pursuant to the provisions of section 10 of this act, P.L. , c. (C.) (pending before the Legislature as this bill).

c. Subsection a. of this section shall not apply if the local government officer or employee or member of the local governing body or staff of the local governing body who accepted any compensation, reward, gift, honorarium or other thing of value offered or given by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

7. Any person who knowingly employs another person to serve as a governmental affairs agent who is not registered as required by section 4 of this act, P.L. , c. (C.) (pending before the Legislature as this bill), except upon the condition that such person register as a governmental affairs agent as provided by law or who

continues to employ any such person who has not registered within the time required by law, shall, upon conviction, be guilty of a crime of the fourth degree.

8. Any governmental affairs agent who knowingly represents an interest adverse to any of his employer's without first obtaining such employer's written consent thereto, after full disclosure to such employer of such adverse interest, shall, upon conviction, be guilty of a crime of the fourth degree.

9. Any governmental affairs agent who knowingly causes, influences, or otherwise secures the introduction of any local measure or amendment thereto for the purpose of thereafter being employed to prevent the passage thereof, shall upon conviction be guilty of a crime of the fourth degree.

10. a. As used in this section, "person" means any member of the local governing body, the local chief executive, or the head of a principal local government department or agency.

b. No person shall act as a "governmental affairs agent" as defined in section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) with respect to any local measure, local regulation, or local governmental process of the municipality, county, authority, or school district with which the person holds office or is employed and for one year next subsequent to the termination of the office or employment of the person.

c. Any person who knowingly and willfully violates the provisions of subsection b. of this section shall be subject to a penalty of not more than $10,000.

d. Upon receiving evidence of any violation of this section, the Election Law Enforcement Commission shall have the power to hold, or to cause to be held, hearings about the violation and, upon finding any person to have committed a violation, to assess such penalty, within the limits prescribed herein, as it deems proper under the circumstances, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

11. A governmental affairs agent shall not enter into any agreement, arrangement, or understanding under which the governmental affairs agent's compensation, or any portion thereof, is made contingent upon the success of any attempt to influence a local measure, local regulation or local governmental process.

12. a. Every governmental affairs agent shall file with the commission a signed quarterly report of his activity in attempting to influence local measures, local regulations or local governmental processes during each such quarter.

b. The quarterly reports required under this section shall be made in the form and manner prescribed by the commission and shall be filed between the first and tenth days of each calendar quarter for such activity during the preceding calendar quarter. The commission may, in its discretion, permit joint reports by persons subject to this act, P.L. , c. (C.) (pending before the Legislature as this bill).

c. Each such quarterly report shall:

(1) describe the particular items of local measure, local regulation or local governmental process, the particular items in the annual local budget ordinance or resolution or any measure that is supplemental to that ordinance or resolution, and any general category or type of local measure, local regulation or local governmental process regarding which the governmental affairs agent acted as a governmental affairs agent during the quarter, and any particular items or general types of local measures, local regulations, or local governmental processes which he actively promoted or opposed during the quarter; and

(2) supply any information necessary to make the notice of representation filed by the governmental affairs agent pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), current and accurate as of the final day of the calendar quarter covered by the report.

13. Each governmental affairs agent or lobbyist shall make and certify the correctness of a full annual report to the Election Law Enforcement Commission, of those moneys, loans, paid personal services or other things of value contributed to it and those expenditures made, incurred or authorized by it for the purpose of communication with or providing benefits to any member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee, or a communication with the general public, during the previous year. The report shall include, but not be limited to, the following expenditures which relate to communication with, or providing benefits to, any a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee, or communication with the general public: media, including advertising; entertainment; food and beverage; travel and lodging; honoraria; loans; gifts; and salary, fees, allowances or other compensation paid to an agent. The expenditures shall be reported whether made to the intended recipient of the communication or benefit, to a governmental affairs agent or a lobbyist, or in the case of a communication to the general public, to the publisher of that communication. The expenditures shall be reported in the aggregate by category, except that if the aggregate expenditures on behalf of the member of the local governing body, staff of the local governing body, the local chief

executive, staff of the local chief executive, or a local government officer or employee exceed $25 per day, they shall be detailed separately as to the name of the member of the local governing body, member of the staff of the local governing body, the local chief executive, member of the staff of the local chief executive, or a local government officer or employee, date and type of expenditure, amount of expenditure and to whom paid. Where the aggregate expenditures for the purpose of communication with or providing benefits to any one member of the local governing body, member of the staff of the local governing body, the local chief executive, member of the staff of the local chief executive, or a local government officer or employee exceed $200 per year, the expenditures, together with the name of the intended recipient of the communication or benefits, shall be stated in detail including the type of each expenditure, amount of expenditure and to whom paid. Where those expenditures in the aggregate, or where the aggregate expenditures for the purpose of communication with the general public, with respect to any specific occasion are in excess of $100, the report shall include the date and type of expenditure, amount of expenditure and to whom paid. The Election Law Enforcement Commission may, in its discretion, permit joint reports by governmental affairs agents. No governmental affairs agent shall be required to file a report unless all moneys, loans, paid personal services or other things of value contributed to it for the purpose of communication with or making expenditures providing a benefit to a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee or for the purpose of communication with the general public exceed $2,500 in any year or unless all expenditures made, incurred or authorized by it for the purpose of communication with or providing benefits to a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee or for the purpose of communication with the general public exceed $2,500 in any year.

Any lobbyist who receives contributions or makes expenditures to influence a local measure or local regulation shall be required to file and certify the correctness of a report of such contributions or expenditures if the contributions or expenditures made, incurred or authorized by it for the purpose of communication with or providing benefits to a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee exceed, in the aggregate, $2,500 in any year. Any lobbyist required to file a report pursuant to this section may designate a governmental affairs agent in its employ or otherwise engaged or used by it to file a report on its behalf; provided such designation is made in writing by the lobbyist, is acknowledged in writing by the designated governmental affairs agent and is filed with the Election Law

Enforcement Commission on or before the date on which the report of the lobbyist is due for filing, and further provided that any violation of this act shall subject both the lobbyist and the designated governmental affairs agent to the penalties provided in this act.

Any person other than a governmental affairs agent or lobbyist who receives contributions or makes expenditures for the purpose of communication with the general public shall be required to file and certify the correctness of a report of such contributions or expenditures in the same manner as governmental affairs agents under the provisions of this section if the contributions or expenditures made, incurred or authorized by the person for the purpose of communication with the general public exceed in the aggregate $2,500 in any year.

This section shall not be construed to authorize any person to make or authorize, or to cause to be made or authorized, any expenditure providing a benefit, or to provide a benefit, the provision or receipt of which is prohibited under any current law or any code of ethics promulgated thereunder, or under any other order, rule or regulation.

14. A person who is registered as a governmental affairs agent and who serves or shall serve as a member of any independent State authority, county improvement authority or municipal utilities authority, or as a member from New Jersey on an inter-state or bi-state authority, or as a member of any board or commission established by statute or resolution or by executive order of the Governor or by the Legislature or by any agency, department or other instrumentality of the State, or established by a local governing body or local chief executive, shall disclose such service, including the name of the authority, board or commission and the date upon which his term as a member thereof expires, in the annual report required to be made under section 13 of P.L. , c. (C.) (pending before the Legislature as this bill).

15. a. Each governmental affairs agent and lobbyist shall provide to each member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee who receives a benefit that is required to be reported to the commission pursuant to section 13 of P.L. , c. (C.) (pending before the Legislature as this bill), a full written and certified report describing the benefit, including a description of the benefit, the amount of the benefit, the date it was provided and to whom it was paid.

b. The reports shall be transmitted to the member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or the local government officer or employee by each governmental affairs agent or lobbyist no later than February 1 of each year and shall cover benefits

provided in the immediately preceding calendar year. In the event that a governmental affairs agent or lobbyist provides more than one benefit to a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee during a calendar year, the reports describing those benefits required pursuant to subsection a. of this section may be combined into one report or filed as separate reports.

16. The commission shall:

a. permit public inspection of all statements filed pursuant to this act, P.L. , c. (C.) (pending before the Legislature as this bill);

b. compile and summarize information contained in statements filed pursuant to this act, and report the same to the Legislature and the Governor;

c. ascertain whether any persons have failed to file statements as required by this act, or have filed incomplete or inaccurate statements, and give notice to such persons to file such statements as will conform to the requirements of this act;

d. investigate violations of this act, report to the Legislature and the Governor thereon, and notify the Attorney General of any possible criminal violations of this act, that may warrant further investigation and action;

e. make such recommendations to the Legislature and the Governor as will tend to further the objectives of this act, and take such other action as shall be necessary and proper to effectuate the purposes of this act;

f. report to the Legislature and the Governor annually on the administration of this act;

g. develop and prescribe methods and forms for statements required to be filed by this act, and require the use of such forms by persons subject to this act;

h. compile and publish quarterly a list of all governmental affairs agents then registered, together with the information contained in their notices of representation and last quarterly report, which compilation shall be distributed to all members of the Legislature and the Governor, and published in the New Jersey Register;

i. prepare and publish a summary and explanation of the registration and reporting requirements of this act, for the use and guidance of those persons who may be required to file statements under this act;

j. in accordance with a fee schedule adopted by the commission as a rule or regulation, establish and charge reasonable fees for the filing of notices of representation and quarterly and annual reports pursuant to this act, provided that such fees shall not apply to the organizations which qualify under subsection (b) of section 9 of chapter 30 of the laws of 1966, as amended (C.54:32B-

9), and provided further that the amount of such fees shall not exceed the cost to the commission of processing and maintaining those notices and reports and of compiling, summarizing and publishing the information contained therein as prescribed by this act; and

k. during periods when the Legislature is in session, report monthly to the members of the Legislature and the Governor and his staff all new notices of representation, notices of termination and other notices filed pursuant to this act, during the preceding month.

17. In addition to any fee collected pursuant to subsection j. of section 16 of P.L. , c. (C.) (pending before the Legislature as this bill), the commission shall establish and collect no later than January 31 of each year a fee from each governmental affairs agent, in an amount to be set by the commission through regulation, for deposit into the General Fund. Such moneys shall be allocated annually by the Legislature for use by the commission.

18. Upon receiving evidence of any violation of P.L. , c. (C.) (pending before the Legislature as this bill), the commission shall have power to bring complaint proceedings, to issue subpoenas for the production of witnesses and documents, and to hold or to cause to be held by the Office of Administrative Law, hearings upon such complaint. In addition to any other penalty provided by law, any person who is found to have committed such a violation shall be liable for a civil penalty not in excess of $1,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

19. The commission shall adopt such rules and regulations as may be necessary to effectuate the purposes of this act, P.L. , c. (C.) (pending before the Legislature as this bill).

20. Any person engaged in activity which makes him subject to filing a statement under this act, P.L. , c. (C.) (pending before the Legislature as this bill), shall keep and preserve all records of his receipts, disbursements and other financial transactions in the course of and as a part of his activities as a governmental affairs agent. Such records shall be preserved for a period of three calendar years next succeeding the calendar year in which they were made. The provisions of this section shall not apply to any governmental affairs agent with respect to any quarterly period within which the total of his compensation including reimbursement of expenses is less than $500.00.

The commission shall conduct random audits of records kept and preserved pursuant to this section.

21. a. Every governmental affairs agent shall file a notice of termination report within 30 days after his activity shall cease, on such form as the commission shall prescribe, and any person who engages a governmental affairs agent may file a notice of termination after such agent ceases to represent such person.

b. A governmental affairs agent who receives or agrees to receive compensation for acting as such from any person not named in the notice of representation filed pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) shall, within 15 days of receiving or agreeing to receive such compensation, file an appropriate notification thereof in writing with the commission.

c. A governmental affairs agent shall notify the commission in writing of any material change in the information supplied by him in the notice of representation filed pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) within 15 days of the effective date of such change.

22. The statements required by this act, P.L. , c. (C.) (pend ing before the Legislature as this bill), to be filed with the commission (a) shall constitute part of the public records of the office of the commission and shall be available for public inspection; and (b) shall be preserved by the commission for a period of five years from the date of filing.

23. This act shall not apply to the following activities:

a. the publication or dissemination, in the ordinary course of business, of news items, advertising which does not constitute communication with the general public, editorials or other comments by a newspaper, book publisher, regularly published periodical, or radio or television station, including an owner, editor or employee thereof;

b. acts of an officer or employee of the Government of this State or any of its political subdivisions, or of the Government of the United States or of any state or territory thereof or any of their political subdivisions, in carrying out the duties of their public office or employment, except as provided in section 10 of P.L.2009, c.308 (C.18A:3B-55);

c. acts of bona fide religious groups acting solely for the purpose of protecting the public right to practice the doctrines of such religious groups;

d. acts of a duly organized national, State or local committee of a political party;

e. acts of a person in testifying before a local governing body, at a public hearing duly called by the local chief executive on a local measure, or before any officer or body empowered by law to issue, promulgate or adopt administrative rules and regulations in behalf of a nonprofit organization incorporated as such in this State who receives no compensation therefor beyond the reimbursement of necessary and actual expenses, and who makes no other

communication with a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee in connection with the subject of his testimony;

f. acts of a person in communicating with or providing benefits to a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee if such communication or provision of benefits is undertaken by him as a personal expression and not incident to his employment, even if it is upon a matter relevant to the interests of a person by whom or which he is employed, and if he receives no additional compensation or reward, in money or otherwise, for or as a result of such communication or provision of benefits;

g. with regard to influencing local governmental processes as defined in subsections s. and t. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), any communications, matters or acts of an attorney falling within the attorney-client privilege while engaging in the practice of law to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; and

h. with regard to influencing governmental processes as defined in subsections s. and t. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), any communications, matters or acts involving collective negotiations, or the interpretation or violation of collective negotiation agreements, of a labor organization of any kind which exists or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

24. Every governmental affairs agent who, for the purpose of influencing a local measure, is in a public building or other location when and where an authorized meeting of a local governing body is being held shall at all times wear a descriptive name tag of a type prescribed by the commission.

25. All staff, assistants and employees of the local governing body who receive for their services a stated salary or similar compensation from public funds are forbidden to act as governmental affairs agents, or to seek, receive or agree to receive, directly or indirectly, compensation, in money or any thing of value, for influencing or purporting to influence a local measure, local regulation, or local governmental process of the municipality, county, authority, or school district in which the office or employment is held. Whoever violates this section is guilty of a crime of the fourth degree.

26. Any person who knowingly and willfully falsifies all or any part of any statement, notice or report under this act, P.L. , c. (C.) (pending before the Legislature as this bill), shall, upon conviction, be guilty of a crime of the fourth degree.

27. Any person who shall transmit, utter or publish to the local governing body or the local chief executive or his staff any communication relating to any local measure or be a party to the preparation thereof, knowing such communication or any signature thereto is false, forged, counterfeit, or fictitious, shall upon conviction, be guilty of a crime of the fourth degree.

28. Upon the failure to comply with any provisions of this act, P.L. , c. (C.) (pending before the Legislature as this bill), by any person subject thereto the commission may institute a civil action to enjoin such person from engaging in activity covered by this act until such time as he shall perform any duty imposed thereby and to require him to file any statement required by this act, as amended and supplemented, for the period he acted in violation thereof, and the court may proceed in a summary manner.

29. Any governmental affairs agent required to file a notice of representation or report or maintain any record under this act, P.L. , c. (C.) (pending before the Legislature as this bill), who fails to file such a notice or report or maintain such record shall, upon conviction, be guilty of a crime of the fourth degree.

30. Every officer, or person performing the functions of an officer, of any person required by this act to file any statement shall be under obligation to cause such person to file such statement within the time prescribed by this act, P.L. , c. (C.) (pending before the Legislature as this bill).

The obligation of any person to file any statement required by this act shall continue from day to day, and discontinuance of the activity out of which the obligation arises shall not relieve any person from the obligation to file any statement required for any period of time prior to such discontinuance.

31. The commission shall make provision to accept statements similar to statements required by this act, P.L. , c. (C.) (pending before the Legislature as this bill), from persons who are not required by law to file such statements but who choose to make reports upon their activities in influencing local measures. The commission shall have full discretion in prescribing the form and detail of such voluntary statements and may by general rules delimit classes of voluntary filings which it will or will not accept in order to further the purposes of this act, and the efficient administration thereof. The information contained in such voluntary statements as

are accepted by the commission shall be included in the periodic reports and summaries which it is required to make.

32. a. When it shall appear to the commission that a person required to file any statement under this act, P.L. , c. (C.) (pending before the Legislature as this bill), has failed to file such required statement, or has filed a statement false, inaccurate or incomplete in any material matter, or has otherwise violated the provisions of this act, or when the commission believes it to be in the public interest that an investigation should be made to ascertain whether a person has in fact violated any of the provisions of this act, it may apply to the Superior Court for an order or orders directing:

(1) that any such person or persons make available to the commission's inspection, or to the inspection of any of its authorized deputies or agents, such records as are required to be kept by that person pursuant to section 20 of P.L. , c. (C.) (pending before the Legislature as this bill); or

(2) that any such person file a statement or report in writing under oath concerning the facts and circumstances upon which the commission's belief in the necessity of an investigation is based; or

(3) that any person submit to examination under oath by the commission in connection with said circumstances, and produce any and all records, books and other documents which may be specified by order of the court; or

(4) that the commission may impound any record, book or other documents specified by order of the court.

b. Such application by the commission shall set forth all the facts and circumstances upon which its belief in the necessity of an investigation is based. The court may proceed on such application in a summary manner; and if the court determines that from the evidence submitted it appears that a person required to file any statement under this act, has failed to file such statement, or has filed a statement false, inaccurate or incomplete in any material respect, or has otherwise violated any of the provisions of this act, or that it is in the public interest that an investigation be held to determine whether such violation has occurred, the court shall issue such order pursuant to subsection a. of this section as it may deem necessary and proper.

c. The commission shall hold as confidential all statements, books, records, testimony and other information or sources of information coming into its possession or knowledge as a result of an investigation pursuant to this section and shall not disclose or divulge any such materials or information to anyone except the court under whose order such material or information comes into its knowledge or possession, unless the court shall order its disclosure to a grand jury of this State or other appropriate authorities for the purposes of enforcing the provisions of this act, or any other law.

d. If any person shall refuse to testify or produce any book, paper or other document in any proceeding under this section as ordered by the court on the grounds that the testimony or evidence, documentary or otherwise, which is required of him may tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper or document, he shall comply with such direction. A person who is entitled by law to assert such privilege, and does so assert, and thereafter complies with such direction, shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury on false swearing committed by him in giving such testimony.

e. In any action brought under this section, the court may award to the State all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If costs are awarded in such an action brought against a governmental affairs agent, the judgment may be awarded against the governmental affairs agent, and the governmental affairs agent's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court and paid by the State of New Jersey.

33. This act shall take effect immediately.

STATEMENT

This bill extends the same disclosure, reporting, and other requirements that govern the activities of governmental affairs agents to their activities with respect to all local government levels.

Under the bill, a governmental affairs agent acting on behalf of a lobbyist who seeks to influence a local measure, local regulations, the local governmental process, or to provide a benefit to certain local officials, would be required to file a statement of representation with the Election Law Enforcement Commission (ELEC) prior to attempting to exercise such influence or provide such benefit. These activities would include communications with: (1) the local governing body of a municipality, a county, a local authority, or a school district, including a charter school; (2) the local chief executive of the municipality, county, authority, or school district; (3) their respective staffs, as defined in the bill, which includes the heads of principal local government departments and agencies; and (4) local government officers and employees, which includes the deputy heads of principal local government departments and agencies.

The bill defines a "local measure" as including all ordinances, resolutions, amendments, nominations and appointments pending or proposed in a local governing body, and all ordinances and resolutions which having been approved by the local governing body are pending implementation. A "local regulation" includes any local administrative rule or regulation affecting the rights, privileges, benefits, duties, obligations, or liabilities of any one or more persons subject by law to regulation as a class, but does not include a local administrative action (1) to issue, renew or deny, or, in an adjudicative action, to suspend or revoke, a license, order, permit or waiver under any law or administrative rule or regulation, (2) to impose a penalty, or (3) to effectuate an administrative reorganization within a single local government department or agency. The "local governmental process" includes the promulgation of local administrative orders; rate setting; the development, negotiation, award, modification or cancellation of public contracts; issuance, denial, modification, renewal, revocation or suspension of permits, licenses or waivers; procedures for bidding; imposition or modification of fines and penalties; procedures for purchasing; rendition of local administrative determinations; and the award, denial, modification, renewal or termination of financial assistance, grants and loans.

Among other provisions, the bill:

(1) requires a governmental affairs agent to file with ELEC a statement or signed notice of representation prior to any communication with, or providing a benefit to, a member of the local governing body, staff of the local governing body, the local chief executive, staff of the local chief executive, or a local government officer or employee. The statement must disclose, among other information, the name and address of the governmental affairs agent, the lobbyist retaining the services of that agent, and the specific or general types of local measures, local regulations, or local governmental processes that the agent is employed to influence (section 4);

(2) prohibits a lobbyist or a governmental affairs agent from offering or giving or agreeing to offer or give, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value to a local government officer or employee or a member of the local governing body or staff of the local governing body, totaling more than $250 in a calendar year. This prohibition also applies with respect to each member of the immediate family of a member of the local governing body, which means a spouse, child, parent, or sibling of the member residing in the same household as the member of the local governing body. The bill also provides for certain exemptions (section 6);

(3) prohibits a member of the local governing body, the local chief executive, or the head of a principal local government department or agency from acting as a governmental affairs agent with respect to any local measure, local regulation, or local

governmental process of the municipality, county, authority, or school district with which the person holds office or is employed and for one year next subsequent to the termination of the office or employment of the person (section 10);

(4) requires the governmental affairs agent to file with ELEC quarterly reports of his or her activities (section 12); and requires the governmental affairs agent or lobbyist to file a full annual report of the moneys or other things of value received for, and of those amounts expended in, communications with or the awarding of benefits to intended recipients, governmental affairs agents or lobbyists, and the general public or publisher of the communication, when the annual amounts either received or expended exceed $2,500 in any year (section 13);

(5) require each governmental affairs agent or lobbyist to provide each recipient of benefits a full written and certified report describing the benefit, including a description of the benefit, the amount of the benefit, the date it was provided and to whom it was paid by February 1 of each year (section 15);

(6) empower ELEC with specific power and duties for its implementation of the various requirements in the bill, including the ability to establish and collect reasonable fees for the filing of statements of representation and quarterly and annual reports, and an annual fee to be paid by each governmental affairs agent for allocation to ELEC; and

(7) establish the due process to be followed to prosecute violations of this bill, including the penalties for violations.

This bill is modeled upon the "Legislative and Governmental Process Activities Disclosure Act," P.L.1971, c.183 (C.52:13C-18 et seq., which governs the activities and disclosures of governmental affairs agents and lobbyists who seek to influence legislation, regulations, and governmental processes at the State government level. The intent of this bill is to impose the same or substantially the same provisions of current law on governmental affairs agents and lobbyists who seek to influence local measures, regulations, and governmental processes at the county, municipality, local authority, and school district level.