

# ENERGY LOBBYING IN A PAGE



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## MANY COMPANIES ARE REGISTERED AND MOST SHOULD BE

A review of state lobbying filings show a number of energy companies in the state registered as “lobbyists.” In our experience, this is not surprising as most of the companies we advise are lobbying on a wide variety of projects, requiring registration with New York state and/or New York City.

## THE THRESHOLD FOR TRIGGERING REGISTRATION IS LOW

For NYS and NYC, the threshold is \$5,000 in compensation (i.e., a percentage of employee salaries) or expenses across the entire organization. This threshold is significantly lower and easier to trigger than the federal level. For example, three company employees with annual salaries of \$100,000+ who spend only 2 percent of their time annually on lobbying activities would trigger the NYS or NYC registration requirement. This low hurdle is why many energy companies are registered with NYS and/or NYC.

## NOW IN EFFECT: NEW LOBBYING REGULATIONS

The Joint Commission on Public Ethics (JCOPE) recently promulgated New York state’s first set of “Comprehensive Lobbying Regulations,” which went into effect in January 2019 with updates that went into effect January 1, 2021. We have received numerous questions and concerns under the new regulations – including its impact on boards of directors. While the new regulations clarified some areas, they also expanded interpretations of certain definitions.

## TYPES OF EMPLOYEES REGISTERED

A review of current energy companies show a variety of executives and employees registered as lobbyists, including: Chairmen and CEOs, CFOs, Executive VPs, Board members, Regulatory or Government Affairs officers, and Communications / Public Relations personnel.

## GIFTS PROHIBITED

As a lobbyist or client of a lobbyist, your organization is subject to a ban on giving gifts to Public Officials or employees. One of the most frequently asked questions we receive involves determining whether a gift is permissible or impermissible. From working lunches, to tickets, to attendance at a fundraiser, to contributions to local municipalities, to charitable organizations at the behest of an official — navigating the state’s gift laws can be confusing.

## INDUSTRY ASSOCIATIONS

Many energy companies rely on industry associations such as IPPNY, ACE NY, or NYSEIA to advance their collective interests in Albany, NYC, or Washington, D.C. Registration as a lobbyist does not change this relationship, but may trigger reporting requirements depending on the type of activities you are engaged in.

## DOES HARRIS BEACH OFFER FILING SERVICES?

Yes, Harris Beach has a premier Lobbying Compliance Team that can relieve your organization from the confusion and uncertainty of state and municipal lobbying filings. Furthermore, Harris Beach does not lobby, we focus solely on making sure your organization is at ease and in compliance. In addition, we provide attorney-client privileged counsel and live training in the areas of ethics, lobbying, and campaign finance. Raising your organization’s awareness is key to complying with the technicalities of the lobbying law.

## WHAT IS LOBBYING?

Generally, any “attempt to influence” a specified government action which includes but is not limited to: state or municipal legislation, executive orders, regulations, state procurements, or disbursements of public monies. Common areas of lobbying include: NYS Budget; NYS policy; municipal resolutions; moratoriums and PILOTs.

### BUT WE HAVE OUTSIDE LOBBYISTS!

Just because your organization retains an external lobbying firm does not mean you are excused from also registering as a “lobbyist.” An organization can be both a “lobbyist” and a “client” of a lobbyist, depending upon the activities of its executives and employees.

## SO AM I A “LOBBYIST”?

We have frequently heard responses such as “I only speak with public officials once a year on that issue!” or “I didn’t think that was lobbying.” Even if lobbying is not a significant portion of your job duties, and for most in an energy company it is not, some activities may constitute “lobbying” requiring registration and periodic reporting.

## EXCEPTION FOR “TECHNICAL SERVICES”

A person is NOT lobbying if:

- Attending a meeting to provide technical information or to address technical questions
  - Must be limited to technical advice, not advocacy for the project
- Generally limited to engineers, architects, accountants, or other scientific or technical analysis

If you have any questions concerning your lobbying compliance, please contact:

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