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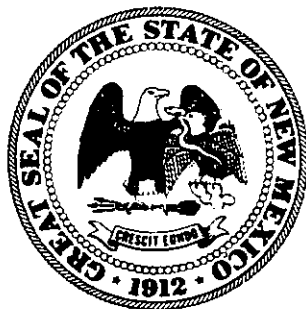
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**THE LOBBYIST
REGULATION ACT
Sections 2-11-1 to 2-11-9
NMSA 1978**

*A Compliance Guide for Businesses,
Lobbyists, Public Officials and Citizens*



STATE OF NEW MEXICO

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August 1984




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This COMPLIANCE GUIDE is provided to guide and assist those who come within the definition of "lobbyist" or who perform "lobbying" as those terms are set forth in the Act. Those who fall under these definitions shall register and thereafter file the required financial reports with the Secretary of State as filing officer under the provisions of the LOBBYIST REGULATION ACT.

It is advisable that any person who wishes to lobby review the entire COMPLIANCE GUIDE to determine if he is required to register as a lobbyist, and, if so required, to be apprised of the requirements of the Act. There is no filing fee required to register as a lobbyist under this Act.


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Lobbyists contribute to constructive debates about pending legislation, answer legislator's questions, and provide information to government agencies. Thus, lobbying activities are important to the legislative process. Since lobbyists play such an important role in our government, their activities are of interest to the voting public. The Lobbyist Regulation Act is designed not only to prohibit certain conduct, but also to provide the public with information concerning lobbying activities. Such disclosure increases the voting public's awareness of how their government works.

We hope this guide is useful in expediting compliance with the Act, and in deterring potential violations of its provisions.

A handwritten signature in cursive script that reads "Paul Bardacke".

PAUL BARDACKE
Attorney General

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Lobbyist Regulation Act

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2-11-1. Short Title.

This act [2-11-1 to 2-11-9 NMSA 1978] may be cited as the "Lobbyist Regulation Act."

History: 1953 Comp., § 2-13-1, enacted by Laws 1977, ch. 261, § 1. Am. Jur. 2d, A.L.R. and C.J.S. references.--51 Am. Jur. 2d Lobbying §§ 8, 14.

Validity and construction of enactments regulating lobbying, 42 A.L.R. 3d 1046. 82 C.J.S. Statutes §§ 6, 7.

2-11-2. Definitions.

As used in the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978]:

A. "compensation" means any money, per diem, salary, fee or any portion thereof, or their equivalent in services rendered or in-kind contributions, received, or to be received, in return for lobbying services performed or to be performed;

B. "contribution" means a loan, gift, forgiveness of indebtedness, donation, pledge or their equivalent in services rendered, and includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events and the granting of discounts or rebates not extended to the public generally;

C. "expenditure" means a payment, contribution, subscription, distribution, loan, advance, deposit or gift of money or anything of value, and includes a contract, promise or agreement whether or not legally enforceable,

to make an expenditure; but do not include personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities, or compensation paid to a lobbyist by a lobbyist's employer;

D. "lobbying" means attempting to influence any decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor;

E. "lobbyist" means any person who is compensated for lobbying or who in the course of his employment lobbies except:

(1) any elected officer of the state or its political subdivisions acting in his official capacity;

(2) a member of the legislature, the staff of any member of the legislature or the staff of any legislative standing or interim committee;

(3) any witness called by any legislative committee and compensated wholly or in part by public funds; or

(4) any individual who merely appears for himself before a committee of the legislature to testify in support of or in opposition to legislation;

F. "lobbyist's employer" means the person by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist;

G. "person" means an individual, partnership, committee, a federal, state or local governmental entity or agency however constituted, association, public or private corporation and any other organization or group of persons who are voluntarily acting in concert; and

H. "prescribed form" means a form prepared and prescribed by the secretary of state.

History: 1953 Comp., § 2-13-2, enacted by Laws 1977, ch. 261, § 2.

2-11-3. Registration; filing; publication of names; amendment.

A. In the month of January prior to each regular session or the fourteen days immediately preceding any special session of the legislature or before any service covered by the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] commences, any person who is employed or retained as a lobbyist shall register with the secretary of state by filing a registration statement under oath on a prescribed form showing:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. For each employer listed in Paragraph (2) Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

2-11-3

2-11-5

(2) a written statement from each of the lobbyist's employers authorizing him to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or his employer who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

C. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist, the lobbyist shall notify the secretary of state within one month of such occurrence and shall furnish full information concerning such modification or termination.

History: 1953 Comp., § 2-13-3, enacted by
Laws 1977, ch. 261, § 3.

2-11-4. Enforcement of act; investigations by the attorney general; duties of the secretary of state.

A. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. Upon the sworn complaint of any person who has reason to believe, and presents an affidavit listing the basis for such complaint, that there is, or has been, a violation of the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978], the attorney general shall investigate the allegation when there is reason to believe such person, lobbyist or lobbyist's employer is, or has been, acting in violation of the Lobbyist Regulation Act.

C. When the attorney general has reason to believe that any person, lobbyist or lobbyist's employer has violated or is violating any provision of the Lobbyist Regulation Act, he shall notify the suspected violator of the alleged violation and hold an informal hearing before initiating further action. The attorney general shall bring a civil action to force compliance with the requirements of the Lobbyist Regulation Act or to revoke the lobbyist's registration and enjoin his lobbying activities for a period not to exceed three years.

History: 1953 Comp., § 2-13-4, enacted by
Laws 1977, ch. 261, § 4.

2-11-5. Other powers and duties of attorney general not limited or restricted.

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

History: 1953 Comp., § 2-13-5,
enacted by Laws 1977, ch. 261, § 5.

Cross-reference. -- For general
duties of attorney general, see
8-5-2 NMSA 1978.

2-11-6. Statement to be filed; contents; reporting periods.

A. Each lobbyist shall file with the secretary of state, on a prescribed form, a sworn statement containing the totals of all expenditures by category made or incurred by the lobbyist for lobbying purposes. The statements required under the provisions of this section shall be filed:

(1) upon filing a registration statement for all pre-session or other lobbying expenses incurred up to the date of filing and not previously reported; and

(2) prior to the sixtieth day after the end of any regular or special session for all lobbying expenses incurred since the last filing.

B. The totals as provided for under Subsection A of this section shall include, but are not limited to, the following:

(1) entertainment, including food and beverage;

(2) advertising; and

(3) contributions, including political contributions.

C. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities need not be reported.

D. Each expenditure, in excess of fifty dollars (\$50.00) made to, or for the benefit of, any one legislator or employee of the legislature or any one state officer or state employee, shall be identified by date, amount and name of the individual receiving, or to be benefited by, each such expenditure.

E. A lobbyist shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] for a period of two years from the date of filing of the statement containing such items. When the lobbyist is required under the terms of his employment to turn over any such records to his employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

F. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

History: 1953 Comp., § 2-13-6, enacted by
Laws 1977, ch. 261, § 6.

2-11-7. Registration and statement of expenditures; preservation as public record.

Each lobbyist's registration and statement of expenditures as required by the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] shall be preserved by the secretary of state for a period of two years from the date of filing as a public record, open to public inspection at any reasonable time.

History: 1953 Comp., § 2-13-7, 14-2-1 NMSA 1978 et seq. For enacted by Laws 1977, ch. 261, § 7. Public Records Act, see 14-3-1 Cross-references. -- As to inspection of public records, see to 14-3-16, 14-3-18 NMSA 1978.

2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

History: 1953 Comp., § 2-13-8, enacted by Laws 1977, ch. 261, § 8.

2-11-9. Penalties.

Any person who knowingly violates any of the provisions of the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000).

History: 1953 Comp., § 2-13-9 enacted by Laws 1977, ch. 261, § 9. Severability clauses. -- Laws 1977, ch. 261, § 11, provides for the Effective dates. -- Laws 1977, § 12, makes the act effective part or application thereof is on July 1, 1977. & held invalid.

I. INTRODUCTION

Lobbyists are persons employed to attempt to influence legislative matters being considered by the Legislature or awaiting action by the Governor. The primary purpose of the Lobbyist Regulation Act (Sections 2-11-1 to 2-11-9 NMSA 1978) is to require the registration of lobbyists. The Act also requires each registered lobbyist to report his lobbying expenses to the Secretary of State.

The Attorney General is authorized by Section 2-11-4 of the Act to enforce its provisions. Accordingly, this Compliance Guide has been prepared to explain who is subject to the Act, to describe procedures for compliance with the Act, and to note the penalties for violation of the Act.

The Act is drafted in nine sections which define the terms used, establish the reporting and registration requirements, and provide for enforcement. One should refer first to the subsections defining "lobbyists" and "lobbying" and the explanation of those subsections to determine if or when he is subject to the Act.

The Act applies only to a person who meets both of the following two tests:

1. He must be engaged in "lobbying" (as the word is defined by the Act),
and
2. He must be a "lobbyist" (as the word is defined by the Act).

If the Act applies, one should refer next to the sections which set out registration and reporting requirements. The other definitions and provisions of the Act should also be studied to insure proper compliance with its requirements.

II. SECTION 2-11-1 NMSA 1978: TITLE

This act (2-11-1 to 2-11-9 NMSA 1978) may be cited as the "Lobbyist Regulation Act."

This section simply names the Act which includes this and the following eight sections of the New Mexico statutes.

III. SECTION 2-11-2 NMSA 1978: DEFINITIONS

As used in the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978]:

A. "compensation" means any money, per diem, salary, fee or any portion thereof, or their equivalent in services rendered or in-kind contributions, received, or to be received, in return for lobbying services performed or to be performed;

B. "contribution" means a loan, gift, forgiveness of indebtedness, donation, pledge or their equivalent in services rendered, and includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events and the granting of discounts or rebates not extended to the public generally;

C. "expenditure" means a payment, contribution, subscription, distribution, loan, advance, deposit or gift of money or anything of value, and includes a contract, promise or agreement whether or not legally enforceable, to make an expenditure; but does not include personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities, or compensation paid to a lobbyist by a lobbyist's employer;

D. "lobbying" means attempting to influence any decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor;

E. "lobbyist" means any person who is compensated for lobbying or who in the course of his employment lobbies, except:

(1) any elected officer of the state or its political subdivisions acting in his official capacity;

(2) a member of the legislature, the staff of any member of the legislature or the staff of any legislative standing or interim committee;

(3) any witness called by any legislative committee and compensated wholly or in part by public funds; or

(4) any individual who merely appears for himself before a committee of the legislature to testify in support of or in opposition to legislation;

F. "lobbyist's employer" means the person by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist;

G. "person" means an individual, partnership, committee, a federal, state or local governmental entity or agency however constituted, association, public or private corporation and any other organization or group of persons who are voluntarily acting in concert; and

H. "prescribed form" means a form prepared and prescribed by the secretary of state.

A. COMMON TERMS

This section defines the terms used in the Act. As noted above, the critical terms are "lobbying" and "lobbyist," but the Legislature has also defined such general or common terms as "compensation," "contributions," "expenditures" and "person." These words are used throughout the Act and must be applied as defined.

Example 1:

Louis Little, a paid registered lobbyist, is preparing his report of lobbying expenditures for the session. Louis' well-trained and careful secretary reminds him that the letters she typed and sent out for Representative Jones to his constituents would be considered a "gift" of "services rendered" within the definition of "contribution." The value of those services rendered is an "expenditure" for purposes of the Act.

Example 2:

Max Maxwell, a genial fellow, intends to spend quite a bit of time, now that he is retired, talking to legislators about supporting one of several bills to establish a beer and wine license. He is not getting paid for this effort but has been promised a free meal or two at several local restaurants which want one of those licenses. Maxwell should be aware of the fact that those free meals in exchange for his efforts during the session constitute "compensation" within the meaning of the Act.

B. LOBBYING.

The definition of lobbying only deals with attempts to influence the outcome of legislative matters. The Act is not intended to regulate attempts to lobby state officials on non-legislative matters. Nor is every activity which brings a person into contact with legislators necessarily lobbying.

Example 3:

Bea Bizee works for a publication service which puts out a newsletter on energy related matters. Bizee's beat includes the Legislature, which she covers during the session. Although her job involves talking to legislators about various bills, she does not attempt to influence any legislator with respect to legislative matters and is not lobbying.

Example 4:

During the last session, the legislature appropriated \$500,000 to the capital program fund for the remodeling and equipping of a detoxification facility in McKinley County. Arthur Whiskey is the director of a non-profit corporation which operates such a facility. He would like to contract with the state to use the money and has discussed the matter with several legislators and the governor. These discussions are not lobbying because Arthur is not attempting to influence a matter which is still being considered by the legislature. The appropriation, having passed, is now an executive rather than a legislative matter.

C. LOBBYIST.

The Act defines a lobbyist as a person who is compensated for lobbying or who lobbies as part of his regular employment. Unless a person fits one of these categories, he is not considered a lobbyist for purposes of the Act.

Example 5:

Molly Maloney is a woman who shows up at the roundhouse every year to buttonhole the lawmakers on her favorite causes. Molly is not employed and is in no way compensated for her lobbying activity. She is not, therefore, a lobbyist within the meaning of the Act.

Example 6:

Billy Barton is a wholesale liquor dealer. Every year, rather than hire a lobbyist, Billy goes to Santa Fe to wine and dine lawmakers and discuss with them the relative merits of proposed liquor legislation. Since Billy is trying to influence matters affecting his business, he is lobbying in the course of his employment and must register as a lobbyist.

Persons who are compensated for lobbying or who lobby in the regular course of their employment may, nevertheless, be exempt from the provisions of the Act if they fall within one of the four exceptions to the definition of lobbyist. These exceptions are only applicable to those who would otherwise be considered lobbyists for purposes of the Act.

EXCEPTION 1: Any elected officer of the state or its political subdivisions acting in his official capacity.

Example 7:

Blip Brown is an elected member of a local school board. He is regularly employed by a large trucking company as a public relations officer. One of his duties is to try to get legislation enacted favorable to his company. If Blip tries to testify for a bill to deregulate trucking, he will not fall within this exception as he is not acting in his official capacity as a school board member.

Example 8:

Marvin Marsh has been elected to the Corporation Commission and also intends to testify for the bill to deregulate trucking during the session. Although Marvin is lobbying in the course of his employment, he is exempt from the requirements of the Act by virtue of this exception to the definition of lobbyist.

EXCEPTION 2: A member of the legislature, the staff of any member of the legislature or the staff of any legislative or interim committee.

Example 9:

Tillie Tucker is a staff member of the Legislative Council Service. She may, in the course of her duties, testify before a legislative committee or confer with legislators on technical points of a bill she helped draft. Even if she attempts to influence decisions on the bill, she need not register as a lobbyist as she falls within this exception to the definition of lobbyist.

EXCEPTION 3: Any witness called by any legislative committee and compensated wholly or in part by public fund.

Example 10:

The Senate Judiciary Committee is considering a bill to amend the Children's Code. The committee asks an assistant attorney general, a district attorney, and a city police officer to testify. All these witnesses, although attempting to influence the legislature in the course of their employment, are exempt from the requirements of the Act by virtue of this exception to the definition of lobbyist. Another witness is Larry Lloyd, a private attorney who is under contract with the Public Defender to defend juveniles. Larry is also exempt under this exception because he is paid, in part, by public funds.

Generally, this exception does not require a formal or written request from the committee. It is necessary only that the person be invited to testify, and not be speaking on his own initiative.

EXCEPTION 4. Any individual who merely appears for himself before a committee of the legislature to testify in support of or in opposition to legislation.

Example 11:

Sally Slade is a paid lobbyist for a teachers union and tries to get legislation passed favorable to the teachers. For these efforts, she is subject to the requirements of the Act. Sally, however, is also interested in environmental matters and testifies on her own behalf in favor of a bill to tax non-recyclable containers. For that activity, she is not subject to the Act under this exception and need not register or report.

IV. SECTION 2-11-3 NMSA 1978: REGISTRATION

A. In the month of January prior to each regular session or the fourteen days immediately preceding any special session of the legislature or before any service covered by the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] commences, any person who is employed or retained as a lobbyist shall register with the secretary of state by filing a registration statement under oath on a prescribed form showing:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) a written statement from each of the lobbyist's employers authorizing him to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or his employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

C. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist, the lobbyist shall notify the secretary of state within one month of such occurrence and shall furnish full information concerning such modification or termination.

Lobbyists who are engaged in lobbying as defined by the Act are required to register and report their expenditures. This section details the registration requirements. It describes what information must be given, and where and when a lobbyist must register.

A. WHEN A LOBBYIST MUST REGISTER.

Lobbyists must register in January before each regular legislative session, or during the 14 days immediately preceding each special

session, or before he commences any service covered by the Act. There is no filing fee for registration as a lobbyist.

Example 12:

In June, Elmer Doer is hired on a yearly contract to represent the interests of Empire Gas Company. He plans to attend a July meeting of an interim legislative committee and discuss several energy bills with the committee members. Elmer must register as a lobbyist prior to the July meeting. In addition, he plans to lobby for Empire at the regular legislative session beginning in January. He must, however, re-register as a lobbyist in January.

B. WHERE A LOBBYIST MUST REGISTER.

Registration must be made with the Secretary of State's Office on the forms prescribed. These forms are available from the Office of the Secretary of State, Room 400, Legislative-Executive Building, Santa Fe, New Mexico 87503. Copies are attached to this Compliance Guide in the Appendices.

C. INFORMATION THE LOBBYIST MUST PROVIDE ABOUT HIMSELF AND HIS EMPLOYERS.

The information which the lobbyist must provide in accordance with Section 2-11-3 is specified by the prescribed forms.

1. Lobbyist Registration Form (Appendix A).

Each individual who qualified as a lobbyist and who intends to lobby must complete one of these forms for each person or organization for whom he is performing a lobbying service. The lobbyist's signature on these forms must be notarized.

Example 13:

Bill Jones is an expert lobbyist and has been hired by the doctors, the lawyers, and the Indian tribes to lobby during the regular legislative session on behalf of their respective interests. In January, Bill must file a separate Lobbyist Registration Form for each of his clients, the Bar Association, the Medical Association, and the Indian Tribal Association.

Example 14:

The law firm of Hickory, Dickory, Dock and Bernstein lobbies for numerous clients every year. Although the firm itself may register as the lobbyist for each client employer, nevertheless each lawyer in the firm who will be talking to legislators on behalf of the various clients must file a Lobbyist Registration Form for each client he represents.

Example 15:

Mack Noble lobbies for the Association of Big and Small Businesses (ABSB). When he registers with the Secretary of State, he need not list each member of the association as an employer. He merely names the ABSB as the employer for whom he is lobbying on line 4 of the Lobbyist Registration Form.

2. EMPLOYER'S STATEMENT OF AUTHORIZATION (Appendix B).

Every lobbyist must submit a current written statement of authorization from each person or organization employing him to lobby on its behalf. This may be done by letter or by using the Employer's Statement of Authorization (Appendix B). The person or organization signing the authorization letter or form should be the same as that listed by the lobbyist on line 4 of the Lobbyist Registration Form (Appendix A). Since each lobbyist must submit written authorization, employers of lobbyists should execute an authorization for each lobbyist they employ.

Example 16:

The Super Corporation has a variety of interests to advocate during the regular session and hires Bill Black and Willie White as lobbyists. As

each must submit written authorization from Super with his Lobbyist Registration Form, Super should provide separate authorization for Black and White.

3. Modification or Termination of Lobbyist's Employment (Appendix C).

This form is supplied for the convenience of lobbyists who, in compliance with Section 2-11-3(C), must notify the Secretary of State of any change in information already submitted or of a termination of the lobbying arrangement. Section 2-11-3(C) requires this notification to be submitted within one month.

V. SECTION 2-11-4 NMSA 1978: CIVIL ENFORCEMENT BY ATTORNEY GENERAL AND DUTIES OF THE SECRETARY OF STATE

A. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. Upon the sworn complaint of any person who has reason to believe, and presents an affidavit listing the basis for such complaint, that there is, or has been, a violation of the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978], the attorney general shall investigate the allegation when there is reason to believe such person, lobbyist or lobbyist's employer is, or has been, acting in violation of the Lobbyist Regulation Act.

C. When the attorney general has reason to believe that any person, lobbyist or lobbyist's employer has violated or is violating any provision of the Lobbyist Regulation Act, he shall notify the suspected violator of the alleged violation and hold an informal hearing before initiating further action. The attorney general shall bring a civil action to force compliance with the requirements of the Lobbyist Regulation Act or to revoke the lobbyist's registration and enjoin his lobbying activities for a period not to exceed three years.

This section defines the civil remedies for violations of the Act. Complaints filed with the Secretary of State alleging violations of the Act must be written, detail the nature of the violation, and be sworn by the complainant. The Secretary of State will forward such complaints to the Attorney General for investigation. After an informal hearing, the Attorney General may institute a civil action asking the court to order compliance with the Act or to revoke a lobbyist's registration and enjoin him from lobbying for up to three years.

VI. SECTION 2-11-5 NMSA 1978: OTHER POWERS AND DUTIES OF ATTORNEY GENERAL

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

This section simply makes it clear that the authority of the Attorney General to enforce other laws and bring other actions is not limited by any of the provisions of this Act.

VII. SECTION 2-11-6 NMSA 1978: REPORTING

A. Each lobbyist shall file with the secretary of state, on a prescribed form, a sworn statement containing the totals of all expenditures by category made or incurred by the lobbyist for lobbying purposes. The statements required under the provisions of this section shall be filed:

(1) upon filing a registration statement for all pre-session or other lobbying expenses incurred up to the date of filing and not previously reported; and

(2) prior to the sixtieth day after the end of any regular or special session for all lobbying expenses incurred since the last filing.

B. The totals as provided for under Subsection A of this section shall include, but are not limited to, the following:

(1) entertainment, including food and beverage;

(2) advertising; and

(3) contributions, including political contributions.

C. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities need not be reported.

D. Each expenditure, in excess of fifty dollars (\$50.00) made to, or for the benefit of, any one legislator or employee of the legislature or any one state officer or state employee, shall be identified by date, amount and name of the individual receiving, or to be benefited by, each such expenditure.

E. A lobbyist shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978] for a period of two years from the date of filing of the statement containing such items. When the lobbyist is required under the terms of his employment to turn over any such records to his employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

F. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

This section of the Act describes when and how a lobbyist must report his lobbying expenditures. It also describes the type of information that must be reported and the requirements for preserving documents to substantiate the reports.

A. WHEN A LOBBYIST MUST FILE EXPENDITURE REPORTS.

There are two reporting times for lobbyists. The first coincides with the January registration. At that time a lobbyist must report all pre-session or other lobbying expenses not previously reported. The second reporting time is during the sixty-day period following the end of any regular or special session. At that time, the lobbyist is required to report all expenses incurred during the session.

Example 17:

Calvin Cool, a Santa Fe lawyer and veteran lobbyist, is always careful to comply with the reporting requirements of the Act. When he registers every January, he reports all lobbying expenses he incurred since his last report at the close of the previous session. In February or March, after the lawmakers have gone home, Calvin reports all the expenses of his lobbying efforts during the session just past.

Example 18:

At the end of the regular legislative session there are still several important matters to be acted upon. The Governor calls a special session which begins ten days after the regular session and runs for one week. Calvin Cool explains to his colleagues that the sixty-day time period for reporting expenditures made in the regular session begins to run when that session ends. The sixty-day time period for reporting expenditures made in the special session begins to run when the special session ends.

B. INFORMATION REQUIRED TO BE REPORTED.

There are two forms for the reporting of expenditures "made or incurred by the lobbyist for lobbying purposes," the Report of Expenditures (Appendix D) and the Lobbyist's Statement of Itemized Expenditures (Appendix E). The signature on these reports, as with the Lobbyist Registration Form, must be notarized, and a set of these two forms should be submitted for every client named on Line 4 of each Lobbyist Registration Form a lobbyist files. The Secretary of State's office keeps a separate file for each client of every registered lobbyist.

Example 19:

Edward Edwards registers as a lobbyist for the ABC Company, the DEF Company and the GHI Company. During the session he runs up a \$600 tab at the Palace for food and drink entertaining legislators which he intends to split among his three clients. In reporting expenses for the session, Edwards may also split the tab and allocate \$200 to each of his clients to be included in the entertainment total on the Report of Expenditures forms submitted for ABC Co., DEF Co., and GHI Co.

1. Report of Expenditures (Appendix D).

The Report of Expenditures requires only a statement of expenditure totals in four categories: entertainment, advertising, contributions, and other.

Example 20:

Gomer Gabbler, a hired lobbyist, is making every effort on behalf of his client Coal Company to get a particular Senator to support a certain bill. He and his wife take the Senator and his wife to the Compound Restaurant for a \$92 dinner for four. As half that amount was spent for the Gabblers' dinners, the expenditure for the benefit of the Senator is within the \$50 limit and need not be separately reported. It would be included in the entertainment total on Report of Expenditures Gabbler submits for Coal Company.

Example 21:

Senator Betty Barnes and lobbyist Tom Thompson are neighbors in Las Cruces. Both spend the weeks of the legislative session in Santa Fe. Tom decides to drive home one weekend during the session and invites Senator Barnes to ride along. Tom spends most of the trip explaining the merits of an amendment to a bill advocated by his client, the Jogger's Association. Senator Barnes' share of the cost of the trip should be included in the "other" category and reported as an expenditure incurred by Tom for lobbying purposes on the Report of Expenditures Tom submits for the Jogger's Association.

2. Lobbyist's Statement of Itemized Expenditures (Appendix E).

The Lobbyist's Statement of Itemized Expenditures requires an itemized list of all expenditures over \$50 made to or for the benefit of any one legislator, state officer or state employee. Each such expenditure must be identified by date, amount and name of the individual to whom it is made. Even where there are no itemized expenses to be reported for a particular client, it would be advisable to submit a blank form to keep the file for the client complete.

Example 22:

Elena Rena, a registered lobbyist for the XYZ Company, attends a candidate reception at the Sheraton. Near the chili con queso dip, she encounters a young lawyer who is running for attorney general, a rancher seeking a first term in the legislature, and a former district attorney who is a candidate for the Court of Appeals. Elena wishes them all well, and gives each a check for \$100 to help with their campaigns. She need not report the contributions, since none of the three is a legislator or state employee. However when Elena, in the course of lobbying for her client, makes a \$100 contribution to Senator John Folks, who has announced his candidacy for governor, she must list the contribution separately on the Lobbyist's Statement of Itemized Expenditures filed for XYZ.

Example 23:

Jane Jacobs, a state employee from Las Cruces, has come to Santa Fe on business unrelated to the legislative session in progress. She is unable to find a room, and Roger Rogers, a registered lobbyist, offers to let her use one of his \$30 rooms at the Inn at Loretto at no charge for the three days. As there is no attempt to influence legislation, this expenditure

for the benefit of a state employee is not for the purpose of lobbying and need not be reported.

3. Exempt Expenses.

The only expenses related to lobbying which the Act specifically exempts from the reporting requirement are personal living expenses and incidental office expenses. These are expenses which a lobbyist could reasonably claim as overhead. It should be noted that the definition of "expenditure" in Section 2-11-2 also excludes such expenses.

Example 24:

Lorenzo Long, a lobbyist for a utility company, takes a suite at the Hilton during each session. One of the rooms is equipped as an office with extra telephones, typewriters and secretarial help. Although the utility company will fully compensate Lorenzo for the cost of the office, this expenditure may be considered an incidental office expense which need not be reported.

C. REQUIREMENTS IMPOSED ON LOBBYISTS FOR PRESERVING RECORDS.

The accounts, bills, receipts and documents necessary to substantiate the expenditure reports filed by lobbyists need not be submitted with the reports. They must, however, be retained for two years and are subject to review upon written request by the Secretary of State or Attorney General. If the lobbyist is required by the terms of his employment agreement to turn over these supporting documents to the employer, the employer is then responsible for retention of the documents.

D. LOBBYISTS'S EMPLOYER.

Finally, as Subsection (F) emphasizes, a lobbyist's employer who himself engages in lobbying becomes a "lobbyist" and must comply with the Act and the reporting requirements of Section 2-11-6 NMSA 1978.

Example 25:

Bluster Oil Company has hired Tom Tompson to lobby during the session. Mr. Bluster, however, likes to show up and take the legislators out to lunch himself. As these lunches are clearly for the purpose of influencing legislators, they must be reported. The fact that Bluster has hired Tompson does not exempt him from the requirements of the Act and he must file a Lobbyist Registration Form and the forms for reporting expenditures.

VIII. SECTION 2-11-7 NMSA 1978: PRESERVATION OF RECORDS

Each lobbyist's registration and statement of expenditures as required by the Lobbyist Regulation Act (Sec. 2-11-1 to 2-11-9 NMSA 1978) shall be preserved by the secretary of state for a period of two years from the date of filing as a public record, open to public inspection at any reasonable time.

This section requires the Secretary of State to maintain completed forms and make them open to public inspection during regular working hours for a period of two years from the date they are filed.

IX. SECTION 2-11-8 NMSA 1978: PROHIBITED ACTS

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

This section limits the kind of employment arrangements which may be made with a lobbyist. The compensation paid a lobbyist cannot depend on the outcome of the proposed legislation.

Example 26:

Herman Berman owns several factories in the state. He would like to see the minimum wage reduced, and tries to hire lobbyist Sam Worker to help. "Tell you what I'm gonna do," Herman tells Sam. "For every penny you get knocked off the minimum wage, I'll pay you a hundred bucks. What do you say?" Sam declined the offer, explaining to Herman that the scheme is prohibited by Section 2-11-8 NMSA 1978.

X. SECTION 2-11-9 NMSA 1978: CRIMINAL PRACTICES

2-11-9. Penalties.

Any person who knowingly violates any of the provisions of the Lobbyist Regulation Act (2-11-1 to 2-11-9 NMSA 1979) is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000).

This section defines the criminal penalty for violation of the Act. The failure of a lobbyist to properly register and report could result in a criminal conviction. By specifying that a violation of the Act is a misdemeanor, the legislature has provided an additional enforcement mechanism for use by either the Attorney General or a district attorney.