

PENNSYLVANIA'S NEW LOBBYING EQUITY REPORT: SHORT LEGISLATION LEADS TO LONG LIST OF QUESTIONS

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U.S. Policy and Regulatory Alert

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Tucked into an obscure corner of Pennsylvania's Administrative Code by Act 70 of 2021 is a brief paragraph that is now causing significant confusion for Pennsylvania's lobbying community. Beginning 7 October 2021 and continuing annually by 30 July, lobbyists and lobbying firms registered with the commonwealth will be required to report equity interests held in the entities they represent. The failure of the legislation to define what constitutes an "equity" and the extent of the information required to be reported has posed significant challenges for the Pennsylvania Department of State, which is charged with administration of the commonwealth's Lobbying Disclosure Act. This Alert describes the legislation and what we know so far, and highlights suggested next steps.

APPLICABLE STATUTORY LANGUAGE

Pennsylvania's Act 70 of 2021 included a new requirement for lobbyists and lobbying firms to report equity interests in the clients they represent. The relevant portion of Act 70 reads as follows:

Section 816. Equity Reporting. -- Each lobbying firm and lobbyist required to register under 65 Pa.C.S. § 13A04(a) (relating to registration) shall, subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), electronically file an equity report thirty days after the effective date of this section, and beginning in 2022, by July 30 annually thereafter using the computerized filing system developed by the Department of State. Equity reports shall disclose each equity a lobbying firm or lobbyist holds in an entity for which they are lobbying and shall be consistent with the purpose of 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure). Equity reports may include additional information required by the Department of State.

The negligent failure to file these reports when due can result in civil penalties of US\$50 for the first ten late days, US\$100 for each late day after the first 10 late days through the 20th late day, and US\$200 for each late day after the first 20 late days. If the failure to file is found to be intentional, a lobbyist or lobbying firm may be subject to a misdemeanor prosecution and fined up to US\$25,000 and may be prohibited from lobbying for up to five years.

The Department of State is requiring the first Equity Report, capturing the reporting period of 1 July 2020 through 30 June 2021, be submitted by 7 October 2021, and then each year by 30 July starting in 2022. The form is to be submitted via [PA Lobbying Services](#), a web portal used for lobbying disclosure registration and submissions.

GUIDANCE FROM THE DEPARTMENT OF STATE

The Department of State (Department) has provided a list of Frequently Asked Questions (FAQs), which are available [here](#). The Department's FAQs, which do not constitute legally binding regulations, define the term "equity" as follows:

Equity means any interest or ownership. The term "interest or ownership" includes, but is not limited to: any interest in any shares (however designated, whether voting or nonvoting); membership interests (however designated, whether voting or nonvoting); partnership interests (whether general or limited); and, any other interest that confers the right to receive a share of the profits and losses of, or distributions of property of, any partnership or business.

The FAQs require that for each equity interest held, a lobbyist or lobbying firm must report the value of the interest or the percentage ownership conferred in any entity for which lobbying is conducted.

At this time, there are many unanswered questions about the information required in these reports. For example:

- The Department has indicated that each report must identify either the value of equity held or the percentage of ownership, but has not clarified how to determine the value of shares that fluctuate or the value of stock options.
- The Department has not clarified whether it is sufficient to report the number of shares owned, especially when shares are publically traded and the value of shares is reported on stock exchanges.
- The Department has not clarified whether shares in mutual funds and other regulated investment companies that may own shares of a company represented by lobbyists or lobbying firms must be disclosed.

NEXT STEPS

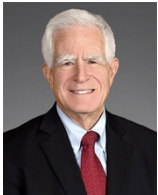
While waiting for additional guidance from the Department, we recommend that lobbyists, lobbying firms, and principals using the services of lobbyists ensure that each individual or organization required to file reports is aware of these new requirements and the applicable deadlines, and files reports not later than 7 October 2021. This would include each individual lobbyist and lobbying firm registered with the Department at any time during the reporting period of 1 July 2020 through 30 June 2021. Reports should be filed even if a lobbyist or lobbying firm has no equity interests that require disclosure. Reporting requirements apply only to lobbyists and lobbying firms, and do not require the filing of additional reports by principals that utilize the services of lobbyists.

We will share additional information from the Department of State or the Pennsylvania Ethics Commission when it becomes available.¹ Please check back periodically for additional information.

FOOTNOTES

¹ Please note that any oral advice or any FAQ posted by the Department constitutes non-binding guidance. The only way to ensure that reliance on advice provided precludes any enforcement actions is to request and obtain written advice or a written opinion from the Pennsylvania Ethics Commission.

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