

**Statement of William Heinzen, Deputy Counselor to the Mayor,
on Introductory No. 1172**

**Submitted to New York City Council Committee on Governmental Operations
November 7, 2013**

The Administration respectfully submits this statement in support of Intro. No. 1172, which would amend the City's Administrative Code to implement the recommendations of the joint mayoral-Council Lobbying Commission, which reviewed the Lobbying Law reforms of 2006.

The proposed revisions include increasing the amount of information reported by the Lobbying Bureau, clarifying and expanding the definition of lobbying activities to include a wider range of efforts to influence official action, and making information about City lobbying more transparent through the Lobbyist Database. Specifically, Intro. 1172 will provide greater guidance to architects and engineers who participate in the City's land use process about which activities are covered, and it will allow for the exemption of certain actions by architects and engineers, rather than capturing all professional activities such as drafting and design work done as part of the City's land use process.

Mindful that a strict interpretation would bring scores of architects and engineers with smaller practices into the lobbying regulation regime – as well as their clients, many of whom are single-family owners – the goal of Intro. 1172 is to provide the Clerk's office with limited discretion to promulgate common sense rules that will avoid ensnaring these smaller firms and their clients, while capturing lobbying activities expended on major projects. The administration supports these actions because they reinforce the common sense approach inherent in the Lobbying Laws and will not overwhelm the Lobbying Bureau's regulatory oversight.

Intro. 1172 would also increase the dollar threshold that triggers the requirement to register from \$2,000 to \$5,000 (expended annually) for most lobbyists, while raising it to \$10,000 for architects and engineers and also easing the reporting burden for smaller organizations that do not have outside lobbyists and that expend between \$5-10,000 per year on lobbying. Finally, Intro. 1172 would provide for a short-term amnesty to bring previously unregistered lobbyists and their clients into the City's regulatory system. Because the new rules enabled by Intro. 1172 will require time for drafting and implementation, the effective date provision appropriately reflects the time needed for drafting and implementation of the regulations, as well as the outreach and education that should be done about these new issues, prior to any enforcement actions being taken against professionals or their clients.

Mayor Bloomberg has been a strong proponent of reforms to the City's political culture, and in 2006 the administration joined with the City Council under Speaker Christine C. Quinn to introduce legislation to strengthen New York City's laws regulating lobbyists. As you know, after the Council conducted extensive hearings, we learned then what many had suspected: that the City's system for regulating lobbying was insufficient and often ignored, and that while the City collected information about lobbying, that information was not made available to the public or used in a constructive way, largely because the lobbying regulation mechanisms had not caught up with technological advances.

Accordingly, the Council passed, and the Mayor signed, three major pieces of reform legislation. This legislation greatly strengthened New York City's regulation of lobbying by expanding the range of covered activities and giving real enforcement power to the Clerk; modernizing the reporting process by shifting from paper to an electronic system; and enhancing

transparency about the identity and activity of lobbyists, their clients and their targets. The legislative package also contained major campaign finance reforms that lessened the power of lobbyists to influence City officials through campaign contributions.

The 2006 legislation required the formation of a joint Mayoral-Council Commission to (1) recommend any changes to strengthen the administration and enforcement of the Lobbying Laws; (2) evaluate whether or not the dollar threshold that triggers the obligation to file as a lobbyist should be increased; and (3) review and evaluate the activities and performance of the Clerk in implementing the Lobbying Laws. The Council and the Mayor appointed five commissioners: Herbert Berman, Margaret Morton, Jamila Ponton-Bragg, Elissa Velasquez and Lesley Horton. The Council's Deputy General Counsel Jim Caras and I served as co-directors of the Lobbying Commission.

Over several months, the Lobbying Commission heard hours of testimony by scores of witnesses, and commissioners and staff met with several stakeholders. The Commission concluded that the City had made great strides in implementing the new lobbying regime, but that there was room for improvement both of the law itself, and of the regulatory system it created, including the e-Lobbyist electronic filing system. In its Final Report, the Commission made several legislative recommendations, and on behalf of Mayor Bloomberg, I am pleased to support Intro. 1172, which will implement those recommendations.

The Administration believes that Intro. 1172 will achieve several goals. Intro. 1172 will broaden and clarify the definition of "lobbying activities." For example, Intro. 1172 will clarify that a piece of legislation does not need to be introduced before attempts to influence City officials count as lobbying for purposes of the law, and it will expand the definition of lobbying

to include such activities as lobbying the Mayor to issue, or not issue, an executive order, or to lend the support of the Mayor's Office to state or federal legislation or regulation.

At the same time, Intro. 1172 slightly increases the financial threshold for reporting lobbying activities, in order to prevent small organizations that do minimal lobbying on their own behalf from having to register. By raising the threshold from \$2,000 to \$5,000, and by easing the reporting requirement in some instances for entities that expend between \$5,000 and \$10,000, Intro. 1172 will avoid placing unnecessary burdens on persons and organizations that expend minimal amounts of money on lobbying and therefore present negligible risks for undue influence on the political process.

Intro. 1172 will also bring needed clarity to the regulation of the professional activities of architects and engineers. It is important to note that this new legislation will not increase regulation of architects and engineers. Their activities have always been covered by the Lobbying Laws, as is made clear both in the laws' terms, and in Clerk's Office Advisory Opinions. Yet while these professionals are clearly covered by existing law, in many instances the reporting of their activities would not further the goals of transparency and reducing the influence of money on City government. The Commission wrestled with several issues involving the regulation of architects and engineers – professionals who perform technical work, but who are often enlisted for advocacy in the City's land use process. It quickly became clear that there was misunderstanding in the regulated community about the extent to which architects and engineers' activities were covered, because of a persistent misconception that the law does not cover mere "technical" work. Intro. 1172 will empower the Clerk's Office to promulgate rules clarifying which activities constitute lobbying. For example, Intro. 1172 will allow the

Clerk to exclude, from the category of actions deemed to be “lobbying activity,” design and drafting work done in anticipation of meeting with public officials. Additionally, Intro. 1172 will allow the Clerk to exclude activities that involve routine and minor land use actions, where literal adherence to the Lobbying Law would require hundreds if not thousands of single family homeowners to register with the Lobbying Bureau as clients. To further ease this burden, the threshold for registering with the Lobbying Bureau has been raised to \$10,000 for architects and engineers. Thus, Intro. 1172 simply acknowledges that to broadly apply the Lobbying Laws as drafted to all activities by architects and engineers would be a significant hardship on many within those professions.

For all of these reasons, the Administration strongly supports Intro. 1172, and we are grateful for the opportunity to work with the Council to strengthen the landmark reform legislation introduced by Speaker Quinn and Mayor Bloomberg in 2006. We believe that lobbying reform is one of many enduring legacies of the partnership between the Council and Mayor that has made New York City’s lobbying and campaign finance regulatory systems the most comprehensive and transparent in the country.

NONPROFIT

Coordinating Committee of New York

November 6, 2013

Hon. Gale Brewer
Committee on Government Operations
250 Broadway
New York, New York 10007

FOR THE RECORD

Re: Int. No. 1172 to Amend the Administrative Code
Res. No. 1988 to Call upon the State Legislature to Take Certain Actions

Dear Council Member Brewer:

On behalf of the Nonprofit Coordinating Committee of New York (NPCC), I take this opportunity to submit this written testimony to the hearing called by the Government Operations Committee, scheduled for November 7, 2013, **supporting proposed Int. No. 1172 and Res. No. 1988**, additional comments as set forth below.

NPCC is an umbrella organization representing some 1,500 member nonprofit 501(c)3 organizations throughout New York City, Long Island and Westchester. NPCC helps its members to work more efficiently and cost effectively, and govern themselves better, through its programs, workshops and roundtables, and keeps them abreast of sector-wide government and legislative issues. As such, we are especially concerned with the efficient and transparent operation of nonprofits to assure they are able to use their scarce resources for the achievement of their missions to serve New Yorkers, while doing so in a manner that engenders trust in their operations by donors and the public.

NPCC urges support for **Int. No. 1172**, to amend the Administrative Code in relation to lobbying regulations. In this regard, NPCC is in accord with the thoughtful and thorough comments contained in the testimony submitted by the Lawyers Alliance for New York and the Human Services Council. In particular we highlight changes that would:

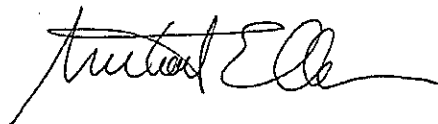
- (a) raise the threshold for lobby registration, and a limited reporting scheme for those lobbying on their own behalf;
- (b) grant the City Clerk discretion in assessing fines, as well as reducing fines for first time filers;
- (c) establish an amnesty for lobbyists who fail to timely register; and
- (d) require the City Clerk to contact groups who may be engaged in lobbying, and to create a robust educational outreach program.

However, NPCC would respectfully request that consideration be given to the following:

- (1) In regard to raising the threshold for registration, we would suggest that the \$5000 threshold (Sec. 13(a)(1)) for lobbyists (other than an architects, et al.) be increased to perhaps \$10,000, and from \$10,000 to \$15,000 for those lobbying on their own behalf (Sec. 13(a)(2). Alternatively, provide 501(c)(3) organizations with the same \$10,000 threshold as contained in Sec. 13(a)(1) for architects. In small and medium sized nonprofits, the regulatory regime that must be complied with once the threshold is crossed is not insignificant, especially considering the cost of staff time in allocating and accounting for their time, preparation and submission of periodic reports at both the City and State levels (which are likely to be different in form and content) – time and assets that could be better used in fulfilling their missions. Further, if distributed among more than one lobbying effort, the sum expended per issue almost becomes de minimus given the cost of internal analysis, legal advice, administrative burden, etc., to undertake a lobby effort.
- (2) In regard to the amnesty, we would suggest allowing amnesty at any time. The registration laws are not simple and the effort to reach out to those who must be informed of the new regulations, how they might relate to them, and to prepare and disseminate thorough and clear educational materials/programs, be it by the City Clerk or others, is itself no small effort, particularly in light of the fact that, if passed, these regulations will take effect 150 days after enactment.

In regard to **Res. No. 1988**, NPCC fully supports the effort to have the State Legislature act to require the Joint Committee on Public Ethics (JCOPE) to accept filings from the City for lobbyists who must register with the State solely on the basis of their City lobbying. This would go a long way toward a more efficient, less costly, and less burdensome registration and filing process, which again is especially important to small and medium sized nonprofits.

Respectfully submitted,



Michael E. Clark
President

Testimony of Herbert E. Berman, Chair
New York City Lobbying Commission
Before the Committee on Governmental Operations
November 7, 2013

Good morning Madame Chair and Members of the Committee on Governmental Operations. My name is Herb Berman and I had the honor of chairing the joint Council-Mayoral New York City Lobbying Commission. I am pleased to testify on behalf of the Lobbying Commission in support of Intro. No. 1172 and Reso. No. 1988, a proposed local law and resolution that embody the recommendations of the Final Report issued by our Commission earlier this year.

As you know, in 2006 the Council passed and the Mayor signed a package of legislation designed to strengthen the New York City laws regulating lobbying activities and to make government more transparent and accessible to New Yorkers and reduce the perception of undue influence by lobbyists on government decision-making.

A provision in one of those pieces of legislation, Local Law 15 for 2006, called for the formation of a joint Mayoral-Council Commission to evaluate the implementation of the Lobbying Laws, recommend any changes to strengthen the

administration and enforcement of the Lobbying Laws and specifically to evaluate whether or not the dollar threshold that triggers the obligation to file as a lobbyist should be increased.

In March 2011 the Lobbying Commission convened. I was fortunate to Chair this Commission comprised of very dedicated and able fellow Commissioners. Those Commissioners were Margaret Morton, Leslie Horton, Elisa Velazquez and Jamilla Ponton-Bragg. The Commission did an enormous amount of outreach and listening to all those involved in lobbying – regulators, lobbyists, good government groups – and my fellow Commissioners devoted an enormous amount of time and effort to try to come up with the best set of recommendations possible.

We conducted six public meetings and hearings during which we heard extensively from those responsible for enforcing the Lobbying Laws, those subject to its requirements and good government groups who follow the City and State lobbying laws closely. We then issued a Preliminary Report and heard extensive public comments on the Preliminary Report in another hearing. Finally after a total of seven public meetings and hearings, and numerous staff meetings with representatives of for profit lobbyists, not-for-profit lobbyists and good

government groups, many of which were also attended by Commission Members, the Commission issued and approved a Final Report on March 13, 2013.

The Commission's recommendations fall into four broad areas:

1. Expand, and where necessary, clarify the definition of "lobbying activities" to cover additional types of advocacy activities and at the same time increase the dollar threshold so that smaller organizations, whose advocacy on their own behalf is minimal, will no longer have to register;
2. Enhance the education and outreach activities by the Clerk so that those engaged in the activities covered by the expanded scope of the law and those currently operating outside of the system are aware of their filing obligations;
3. Enhance enforcement efforts to target unregistered and non-compliant lobbying and bring unregistered lobbyists into the City's system; and
4. Require continuing technological changes and increase the availability of public information to facilitate the filing process and increase transparency surrounding lobbying activities in New York City.

I will now hit the highlights of each one of these broad areas of changes. The Commission recommended, and the legislation contains provisions, increasing the dollar threshold triggering the obligation to register as a lobbyist to

\$5,000 from the current amount of \$2,000 which has been in effect since the 1980s. In addition, the Commission would allow organizations which do not hire outside lobbyists and which spend between \$5,000 and \$10,000 on lobbying to file only two yearly reports instead of the current 6.

In addition the legislation embodies the Commission's recommendations to expand the definition of lobbying activities to make clear that it is not just influencing decisions on formal proposals that constitute lobbying, but influencing decisions before proposals are actually formalized. Thus, lobbying on a legislative proposal that is not yet introduced, lobbying to prevent rule changes from ever being considered, and lobbying to keep something off or get something on the calendar of a board or commission would be expressly covered as a lobbying activity. Finally, lobbying on Mayoral executive orders and on an oversight hearing and its scope would also be considered lobbying.

A huge portion of the Commission's time was spent dealing with the applicability of the Lobbying Laws to architects and engineers. It became clear to us that the current Lobbying Laws make no distinction between a law firm lobbyist, an in house government relations professional, or an architect or engineer trying to influence a City Planning Commission or ULURP decision. In

fact, a City Clerk Opinion from 1987 says as much. However, we also realized that applying every provision of the laws equally to architects and engineers would result in turning most of the work of an architecture firm with significant business before City planning into Lobbying activities – even if this work consisted of preparing plans and blueprints. So the Commission recommended, and the proposed legislation contains several exceptions for architects and engineers:

1. design work and drafting of plans would be exempt from the definition of lobbying
2. appearances before Community Boards would not be considered lobbying if attempts to influence the ultimate determination on which the Community Board is making its recommendation would not be lobbying, such as decisions of the Board of Standards and Appeals;
3. attempts to influence Boards or Commissions or other City Officials on Capital Projects under the direction of a City agency where those attempts are made by agents of the City; and
4. certain land use actions viewed as minor in the context of the goals of the Lobbying Laws identified by the City Clerk by rule that will be guided by explicit standards and factors set forth in the law.

I want to be clear that without these exceptions, it is our opinion that the Architects and Engineers would be treated just like any other person engaged in lobbying in their work and dealings with City agencies and the Council.

The second category of our proposal is designed to enhance education and outreach by the Clerk on the expanded reach of the law and to segments of the lobbying industry currently operating outside of the system . We recommended and the legislation includes:

1. A requirement for training every two years for all registered lobbyists, to be administered by the Clerk.

In addition, we also recommend that the Clerk's Lobbying Bureau should have a designated full-time staff person responsible for conducting education and outreach not just to registered lobbyists, but in venues where there are likely to be people who may be subject to the requirements of the Lobbying Laws but may not be registered.

The third category of proposals are designed to enhance enforcement efforts for targeting unregistered and non-compliant lobbying and bring

unregistered lobbyists into the City's registration system. These proposals are, and the legislation contains provisions to:

1. Allow the Clerk to exercise limited discretion to waive or reduce late filing penalties but only when certain specifically enumerated factors, are found to mitigate the imposition of the penalties;
2. A one-time amnesty from late filing and civil penalties for new registrants under the Lobbying Laws who have never previously registered;
3. A new protocol for the Clerk to proactively identify individuals and organizations that should be registered as lobbyists.

The last area of our report contained recommendations to require technological changes to facilitate filing and increase the availability of information about lobbying activities in New York City. We recommend and the legislation contains the following proposals:

1. That more information from the e-Lobbyist system should be publicly available and in an easily searchable format, which is closer to what the State system does;

2. That the Lobbying Laws should be clarified to ensure that lobbyists are required to report both the person before whom the lobbyist is lobbying and the agency;

3. The Clerk should report more information about lobbying activities and benchmarks on the operations of the Clerk's office, such as the number of phone calls and emails received by the Lobbying Bureau for assistance, the response time to these inquiries and the number of first time filers. In addition, the Clerk's Office should report on issues or legislation that were the subject of the most intense lobbying, entities or officials most lobbied and other "macro" trends."

Finally, a recommendation embodied in Resolution No. 1187 would call on the State to accept the City filings for those lobbyists who file with the State solely by virtue of their lobbying activities directed at New York City officials.

Again, I would like to express my gratitude to you at having been selected to Chair this Commission and to my fellow Commissioners for their hard work and dedication to this undertaking. And I urge you all to support the legislation and resolution in front of you today.

**TESTIMONY OF THE NEW YORK ADVOCACY ASSOCIATION
NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENTAL
OPERATIONS
NOVEMBER 7, 2013**

On behalf of the New York Advocacy Association, I would like to thank the New York City Council for holding this hearing and the New York City Lobbying Commission and its staff for its thoughtful approach throughout the process of amending New York City's lobbying act. We are pleased that many of the recommendations that we have made to the Commission during this process were included in its Preliminary and Final Reports. However, not all of the issues we raised were addressed. Therefore, we bring our concerns to this Committee in an effort to have them addressed in the final version of the legislation that gets voted on by the entire Council. These issues include:

1. Applying the lobbying threshold to each client rather than to each lobbyist. While we applaud the Commission and the Council for raising the amount of the lobbying threshold, we respectfully suggest that the threshold amount be applied to the client rather than the lobbyist. Under the current rules, once a lobbyist exceeds the threshold amount, he or she must register all of his or her clients, even below-the-threshold and pro bono clients. The practical effect of this rule is that it creates a class of clients – those who generate less than the threshold amount in annual compensation – whose decision to register with the City is dependent upon the type of lobbyist they hire. Applying the lobbying threshold to the client, rather than the lobbyist, would resolve this issue.
2. With respect to the reporting trigger, the NYAA maintains that the Council should replace the “reasonably anticipates” standard with the requirement that all lobbyists should register “within ten days of the commencement of lobbying activity.” Under the current “reasonably anticipates” standard, lobbyists occasionally encounter the situation where they register a client because they “anticipate” lobbying in the future, but ultimately never perform any lobbying activities. In such an instance, both the lobbyist and the client are subject to unnecessarily filings.
3. Clients who only have one lobbyist should not have to file a Client Annual Report. These reports disclose no new information and serve no public purpose. Additionally, clients often have difficulty completing these reports and the burden falls on their lobbyist to ensure that they are filed correctly and timely.
4. The NYAA is concerned that the factors included in Intro 6947 for the City Clerk to take into consideration when assessing late fees or penalties apply more to clients than to lobbyists and lobbying firms. The City Clerk should have discretion in the event that a lobbyist submits a late filing due to special or extenuating circumstances, including bona fide clerical errors. It is unclear as to whether the fifth factor included in the bill – “the significance of the impediments to timely filing faced by the lobbyist or client” – sufficiently covers such situations. The NYAA further submits to the Commission that there should be no late fee or penalty in the event that a party self-reports an erroneous filing. This policy would provide all filers the incentive to register and complete filings

and to adjust incorrect filings and would further the goal of complete and accurate disclosure.

5. The filing fees should be consistent for all clients. Currently, the Clerk charges \$150 for the first client registered and \$50 for each additional client. This system serves no public purpose and puts lobbyists in the awkward position of having to choose which of their clients must pay the larger filing fee.

6. The NYAA would like to see the City institute an "early termination" option so that lobbyists and clients can terminate their relationship at any point. Under the current system, even after a client-lobbyist relationship is terminated the lobbyist must still submit a year end report to the Clerk. Even more burdensome, the terminated client must submit a Client Annual Report or sign an "under threshold" letter at the end of the year. The NYAA recommends that both parties be able to submit all remaining paperwork at the time of the termination.

7. While we are encouraged by the language contained in Intro 6946 asking the State to accept City lobbying filings, we believe the Resolution can be strengthened by calling for the removal of the current double filing requirement and reduce the paperwork burden faced by lobbyists and clients. The NYAA asks the Council to amend the Resolution to include language asking that the State require the Joint Committee on Public Ethics to cede the municipal lobbying disclosure function to municipalities, like New York City, that have comprehensive lobbying reporting requirements in their local lobbying law.

The NYAA would again like to express its gratitude to the Committee and its staff for the hard work that you have put into this very important initiative. We would also like to thank City Clerk Michael McSweeney and his staff making the administration of the lobbying law run more smoothly. Additionally, we would like to thank Bill Heizin from the Office of the Mayor and Jim Caras from the City Council staff for their thoughtful comments during this process. As always, we are available to meet with the Committee or its staff to discuss any of our suggestions. Thank you.

Good morning Chairperson and committee members.

Thank you for the opportunity to speak before you today.

In 2006, Mayor Bloomberg and the City Council worked together to enact ground breaking legislation that reformed the City's Lobbying Law to make lobbying activities more transparent. Pursuant to Local Law 15, a Lobbying Commission was appointed to evaluate the City Clerk's enforcement of the Lobbying Law and to recommend changes and improvements based upon the experience of the City Clerk and others involved with Lobbying Law enforcement. After several public hearings and testimony from lobbyists, non-profit organizations, our state counterpart, the Joint Commission of Public Ethics or JCOPE, good government groups, and other City agencies, the Lobbying Commission issued its final report on March 13, 2013, which can be found at http://www.nyc.gov/html/lobby/downloads/pdf/final_report_adopted_3_13_13.pdf. In its report the Lobbying Commission approved of the City Clerk's performance in enforcing the Lobbying Law and made several recommendations to improve enforcement. These recommendations form the basis of this intro.

City governance of lobbying in New York dates back to 1972 when lobbyists were called "municipal legislative advocates" and were required to comply with the law if they earned \$25 per calendar year. Over the next 34 years, the law has been amended several times. The most significant changes to the Lobbying Law occurred in 2006. Government groups favored those amendments to the Lobbying Law because they were concerned that the Lobbying Law did not do enough to increase transparency in government. There were also concerns about the effect of fundraising on decisions made by public officials. As a result, in 2006 the Council enacted Local Laws 15, 16 and 17. Local Law 15 is administered by the City Clerk while Local Laws 16 and 17 are administered by the Conflict of Interest and Campaign Finance Boards, respectively.

Local Law 15 increased the disclosure of lobbying activities and created more effective enforcement mechanisms. It also required lobbyists to file fundraising and political consulting reports. Most significantly the local law increased penalties for violations by adding a penalty for the late filing of reports. It empowered the City Clerk to conduct random audits and required

that lobbyists' spouses or domestic partners and unemancipated children (under limited circumstances) be listed on statements of registration. It also required the City Clerk's investigative staff to be trained by the Department of Investigation. It increased civil penalties for knowing and willful violations and for late filings. Local Law 15 also directed the City Clerk to post an annual report on its website by March 1st and mandated electronic lobbyist and client filings. As a result, the City Clerk, in conjunction with DOITT, created an electronic filing system known as the e-Lobbyist system.

Since then, the City Clerk has held several trainings for lobbyists and clients, conducted several investigations regarding unreported lobbying, and held over 200 audits of filings. The e-Lobbyist system has been upgraded and enhanced over the years in an effort to create a user-friendly and efficient electronic filing system. In addition, there have been over 100 hearings at the Office of Administrative Trials and Hearings (OATH), the adjudicator of Lobbying Law violations, and the City Clerk has assessed over two million dollars in penalties. Lastly, the number of registered lobbyists has more than quadrupled and the number of clients has more than doubled since Local Law 15 took effect. In 2006, there were 246 lobbyist entities registered and 1,433 clients. In our 2012 annual report, we reported that there were 1,083 lobbyists and 3,229 clients enrolled in e-Lobbyist.

The first set of proposed amendments to the Lobbying Law effectively broaden the definitions of lobbying or lobbying activities listed in section 211(c)(1). Several changes in this section were necessitated by the failure of the current law to encompass many activities that ought to constitute reportable lobbying.

One issue is the question of when does lobbying begin. The law currently states that any attempt to influence the passage or defeat of a local law by the Council constitutes lobbying. As a result, some lobbyists have suggested that because a local law does not come into being until it is passed by the Council, under current law, lobbying does not begin until after its passage. This issue also existed at the state level. To resolve this issue, section 1-c(c)(i) of the New York State Legislative Law clarified that lobbying includes the introduction of legislation and the intended introduction. The City's Lobbying Law should likewise clarify this issue because most related lobbying activity may well take place prior to the passage of legislation.

The proposed changes to the definition of lobbying including lobbying: (1) both the Council and Mayor prior to the introduction of legislation in sections 211(c)(1)(i) and (ii); (2) the proposal of a rule by an agency in section 211(c)(1)(vi); (3) the decision to hold a rate-making proceeding in section 211(c)(1)(vii); and (4) to influence the contents of the agenda in addition to any determination of a board or commission in section 211(c)(1)(viii). These proposed amendments all address this crucial question: at what point does lobbying begin? The proposed changes provide clearer guidance as to when lobbying begins and consequently, when a lobbyist's reporting obligations start.

In addition, some specific types of lobbying activities that were altogether missing from the current Lobbying Law are now included. These additions to section 211(c)(1) include: (1) influencing any determination regarding the calendaring or scope of any Council oversight hearing; (2) influencing the issuance, repeal, modification or substance of a mayoral executive order; and (3) lobbying a city official or employee to take a position on state or federal legislation.

In addition to proposed changes to the definitions of lobbying activities, there are also proposed amendments to section 211(c)(3) which sets forth exemptions from the definition of lobbying activities. The proposed amendments seek to add architects and engineers acting in certain capacities to the list of exempt activities. These exceptions focus on architects and engineers when performing in the normal course of business—adjudicatory proceedings before a community board, regular design work and draft plans and presumably smaller projects—compared to the instances in which such professionals assume the role of influencing specific outcomes.

The second set of proposed amendments is to the duties of the City Clerk contained in section 212. These proposed additions include requiring the City Clerk to: (1) include more regulatory information in its annual report; (2) increase public outreach and investigations; (3) establish a training program that contains an anti-corruption component; and (4) require the formation of another lobbying commission.

In recent years, we have increased the amount and quality of the information included in our annual report. For example, we included: the number of first-time filers, top subject matters lobbied and targets reported and lobbyists and clients that receive the highest compensation. The proposed changes to the Lobbying Law codifies the reporting of these trends and adds the reporting of the number and types of requests from the public for assistance as well as the average response and closure resolution times of such requests in our annual report.

The proposed amendments also require the City Clerk to increase public outreach and investigations. This amendment is aimed at increasing the reporting of lobbying activity and thus will further transparency. The amendments mandate that the City Clerk expand its outreach efforts by developing notices and advertisements in conjunction with City agencies and the Council in order to reach various organizations that do business with the City who may be unaware of the Lobbying Law requirements. In addition, the amendments seek to codify protocols, some of which are already in place, to identify unreported lobbying. These protocols include reviewing: (1) state lobbying reports; (2) notices of appearances filed with various City agencies including the Landmarks Preservation Commission and the City Planning Commission; and (3) reviewing the doing business database.

The proposed amendments also include a provision requiring an online training program for lobbyists that must include an anti-corruption component. Over the past year the City Clerk has greatly expanded its training programs. We have conducted training for newly-enrolled lobbyists and clients to help them better understand their duties under the Lobbying Law. This course has been accredited by the New York State Continuing Legal Education Board and attorney attendees can receive 1.5 CLE credits. The additional training will help increase awareness of, and compliance with, the law.

The next group of proposed changes deals with amendments to a lobbyist and client's reporting requirements outlined in the Lobbying Law.

The first of such proposed amendments are to section 213, the section that addresses the statement of registration requirements. The statement of registration is the initial lobbyist filing. Local Law 14 of 1986 increased the reporting threshold so that any person or organization that

expended or incurred in excess of \$2,000 in combined reportable compensation and expenses in a calendar year was required to file a statement of registration. For the past 27 years, however, this reporting threshold has remained unchanged. Given changes in the cost of living index, inflation and the current levels of reported lobbying compensation, the current reporting threshold is outdated. Increasing the threshold would have the added benefit of alleviating any reporting requirements on several smaller not-for-profits by exempting them from the Lobbying Law altogether.

It should be noted that the New York Temporary State Commission on Lobbying, which is now known as JCOPE, increased its reporting threshold from \$2,000 to \$5,000 in 2005. Our reporting threshold is being increased to match the State's for the vast majority of filers.

The remaining amendments to section 213 codify ongoing City Clerk procedures including the following amendments: (1) amending section 213(a)(2) to provide that statements of registration must be filed by January 15th, which acknowledges the traditional grace period for filing statements of registration; (2) amending section 213(a)(3) to require that both the lobbyist and the client enroll in the electronic filing system which is a practical necessity of the e-Lobbyist filing system; (3) amending section 213(c)(6) to require the reporting of both the person and agency or agencies lobbied, which clarifies the law as previously addressed by our office through an advisory opinion; and (4) adding section 213(c)(8) to require a separate statement of registration for each client, which clearly sets forth a longstanding City Clerk policy that was an apparent omission in the law. This provision is identical to New York State Legislative Law §1-e(c)(7).

Lastly, the changes listed in section 213(d)(1) address the issue of filing amended statements of registration. A statement of registration is an anticipatory filing in which the lobbyist details anticipated lobbying activity for the upcoming year. Therefore lobbyists should not be required to amend this information every time a target or lobbying activity changes because the information will be accurately captured in the periodic reports. Given that the periodic report lists the actual targets and lobbying activity, it is unnecessary and unduly burdensome to lobbyists to require an amendment each time such information changes. Amending section 213(d)(1) removes the need for this redundant reporting.

The second set of amendments to the reporting requirements deals with section 216, the periodic reports section. Pursuant to Local Law 15 of 2006 the City Clerk conformed the periodic reporting periods to match those of JCOPE by amending the Rules of the City of New York. The proposed amendments to section 216 seek to codify these changes in the Administrative Code.

The proposed amendments also provide that lobbyist/client filers whose threshold is between \$5,000 and \$10,000 file only two periodic reports, the first and sixth periodic reports, instead of six periodic reports.

The cumulative threshold (based on a lobbyist's annual combined compensation and expenses) that triggers the filing of a statement of registration is mirrored in the Lobbying Law section covering the filing of periodic reports. Currently, section 216(a)(2) provides that a periodic report is not required if in the given period the lobbyist does not earn or incur in excess of \$500 in combined compensation and expenses. The proposed changes in this periodic reporting threshold mirror the increase of the annual threshold. As a result, the amendment of this section (renumbered 216(a)(3)) increases such threshold from \$500 to \$1,000 per period.

The other proposed amendments to section 216 include: (1) requiring reporting both persons and agencies lobbied (proposed amendment to section 216(b)(4)); (2) requiring the reporting of expenses reimbursed by the client in a given period (proposed addition of subparagraph (vi) to section 216(b)(5)); and (3) requiring an amended periodic report when information in the report changes (proposed new subdivision 216(d)).

Next, there are two minor amendments to section 216.1, which address fundraising and political consulting reports. These amendments to section 216.1(b)(i), fix an omission in the current law by requiring the reporting of expenses incurred by filers engaged in these activities as well as requiring filers to amend these reports when there is a change in information.

The last section involving changes to the reporting requirements is section 217, the annual reports section. This section is being changed to mirror the proposed amendments made to other sections of the Lobbying Law with respect to lobbyists' reporting requirements. These changes include: (1) raising the reporting threshold for the client to file its annual report to in

excess of \$5,000 of combined reportable compensation and expenses reimbursed to its lobbyist; (2) raising the reporting threshold for a client whose lobbyist is an architect or engineer; and (3) requiring reporting the person and agencies before which the lobbyist has lobbied.

The next set of proposed amendments deal with the obligations of lobbyists. One major amendment to this section is requiring all filers to undergo training of the Lobbying Law and the e-Lobbyist system. Making training mandatory rather than optional is essential to educate lobbyists and clients as to the proper method of filing reports and to the various filing issues they may face during the year. This will drastically lower many inquiries our office receives during the year regarding assistance with filing reports and will allow us to refocus these resources on other matters such as investigations, audits and outreach.

Section 219(h) sets up a mandatory training for all first-time filers. The amendment provides that first-time filers must be registered for training within fifteen days of the commencement of lobbying. In addition, all repeat filers must complete training biennially. Repeat filers must have at least one person complete this training. However, if a lobbyist lists more than five lobbying employees on their statement of registration and have registered thirty or more clients, then the lobbyist must have at least two employees complete the training, one of which must be a lobbyist.

Section 221 addresses the creation of a computerized database of all the reported data searchable by lobbyist name, client name, target and subject matter. This will increase accessibility of information to the public effectively increasing transparency, the primary goal of the Lobbying Law.

The last set of proposed amendments is to section 223, the penalties section of the Lobbying Law. Section 223(c) is being amended to clarify the daily late filing penalty. In 2006, pursuant to Local Law 15, the City Clerk established rules for late filing penalties that complied with a state "schedule." The "schedule" adopted by the City Clerk in its rules included the fine amounts of \$10 per day for first-time filers and \$25 per day for repeat filers. However, it was determined that the City Clerk's rules did not go far enough in adopting the specific state "schedule" that existed at the time. The proposed amendments of sections 223(c)(1) and (2) will

codify the fines without having the fines subject to any interpretation of their conformity to any “schedule” established by JCOPE or any other state entity.

In addition to amending the daily late filing penalties section, the proposed changes confer very limited discretion upon the City Clerk to waive or reduce late filing penalties under certain circumstances. The Rules of the City of New York currently provide that late filing penalties are automatic and not waivable or reducible for any reason. However, in very limited circumstances a waiver or reduction of the fines may be merited. The proposed amendments to section 223(c)(2) are the most effective way to confer such limited discretion upon the City Clerk by setting forth specific criteria the City Clerk will take into account when determining whether to waive or reduce a fine. These factors include: (1) how often the filer was late in the past; (2) the annual operating budget of the late filer; (3) whether the lobbyist lobbies on its own behalf; (4) how much activity and compensation was unreported; and (5) the significance of the impediments to timely filing. Conferring limited discretion upon the City Clerk will allow some restraint in levying fines while at the same time upholding the mandate to encourage timeliness of filings.

The last proposed amendments to the Lobbying Law include adding a provision to the penalties section to provide for an amnesty program. This amendment will be indispensable to increasing the reporting of lobbying activity because an amnesty will encourage many entities currently engaged in unreported lobbying to comply with the Lobbying Law without fear of penalty.

In conclusion, we support the adoption of the proposed amendments to the Lobbying Law. The amendments will codify the recommendations of the Lobbying Commission and improve the enforcement of the City’s Lobbying Law.



Testimony before the Committee on Governmental Operations on Int. 1172 November 7, 2013

Good morning Chairperson Brewer and members of the Committee on Governmental Operations. My name is Rick Bell, FAIA and I am the Executive Director of the New York Chapter of the American Institute of Architects and I am here to offer testimony on Intro. 1172 in relation to the regulation of lobbying. First, I want to thank the Lobbying Commission and the staff for working diligently with all stakeholders to issue a final report which made recommendations to address many of our concerns and we are glad to see those items reflected in the legislation before the committee today.

The AIA was founded in New York in 1857. And the AIA New York Chapter is the largest AIA component in the country. The Chapter's membership includes nearly 5,000 architects in small, medium sized and large firms. The AIA New York Chapter is dedicated to three goals: design excellence, public outreach, and professional development. To fulfill its mission, the Chapter sponsors programs, initiatives, competitions and exhibitions that explore topics of interest to architects, allied professionals and the general public. Our Chapter also advocates on behalf of the architectural profession on issues concerning the built environment, professional regulation, education, resiliency and energy efficiency and we are registered to lobby on both the state and city level.

The Role of Architects in the Development Process

Architects plan, design and oversee the construction of buildings, and in order to practice their trade as professionals are required to obtain professional degrees from accredited Architecture Schools, to be licensed by the state of New York and are required to fulfill continuing education requirements.

Architects are trained to take great pride in their designs, protect the integrity of the profession, comply with all of the applicable laws and codes that affect buildings, and are contractually obligated to ensure that every element in the building has been properly designed. Bad actors in the profession are sanctioned or deprived of the right to practice by the NYS Office of the Professions.

A significant aspect of the design process is the creation of visual materials such as models, site plans, blueprints and other drawings that are required by agencies such as the Department of Buildings during the normal permitting process. They are also used by developers and owners to explain the project to the community, elected officials and other government officials.

Intro. 1172 confirms the fact that though architects present to the public and government officials, much of their work is not lobbying and they are already under significant regulatory oversight from the state licensing board. Moreover, it takes into account the significant economic impact and relieves the burden a more far reaching law would have had on small firms by removing reporting requirements for items designated by the city clerk as minor projects covered by the law.

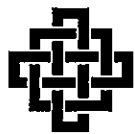
We commend the sponsors of Int. 1172, as it provides greater transparency regarding those who are attempting to influence government decisions and we particularly support the legislation on several important points including:

- architects retained by a government agency are not considered lobbyists;
- minor projects designated by the City Clerk, defined based on certain criteria including the size of the architecture firm engaged are exempted from the lobbying law;
- presentation before the Community Boards during an adjudicatory process, (e.g. BSA and LPC) are not considered lobbying;

- design work and drafting of plans created by architects pursuant to their state-issued professional licenses, and any work done by junior staff, is not considered lobbying;
- the threshold for lobbying registration is raised to \$10,000 time spent lobbying for architects and engineers and architecture and engineering firms.

We would submit that the legislation does not go far enough to recognize that all architects presenting to public commissions and regulatory agencies based on their professional license and training should be exempted from the provisions of the lobbying law. It is our position that architects are providing a public service of clarification whether in a large firm or small, for a complex project or a simple one. Today's legislation goes a long way to show that it is not our skyscrapers and buildings that define New York, but our people, working together to create resilient and sustainable communities. That coming together requires honest and open sharing of information. Architects communicate our shared vision for the future. In our estimation this legislation will impede the open sharing of ideas to the detriment of the overall process. It is a great concern to AIANY that architects will choose not to participate in the process leaving the presentation to others.

Thank you once again for the opportunity to appear today to provide testimony.



Lawyers Alliance for New York

Connecting lawyers, nonprofits, and communities

November 7, 2013

Testimony of Lawyers Alliance for New York Before the New York City Council Committee on Governmental Operations

by

Laura Abel, Senior Policy Counsel

On behalf of Lawyers Alliance for New York, I respectfully submit this testimony regarding Int. No. 1172 and Resolution 1988 of 2013, which would reform the New York City Lobbying Law.

Lawyers Alliance is the leading provider of business and transactional legal services to nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our clients are, in large part, smaller and community-based organizations working in low-income neighborhoods without the resources to afford paid counsel to assist them with legal compliance or staffing to comply with extensive lobbying regulation. Working with a network of more than 1,300 volunteers from more than 100 law firms and corporations, Lawyers Alliance annually represents more than 600 nonprofit organizations on more than 1,000 legal matters, including compliance with federal tax law and with the federal, state and city reporting requirements regarding disclosure of lobbying activity.

In its current form, the Lobbying Law has the unintended effect of penalizing and chilling advocacy and lobbying reporting by small, grassroots groups. The proposed law and resolution will ameliorate these problems by raising to \$5,000 the expenditure threshold that triggers an obligation to report, allowing the City Clerk to waive late filing fees in appropriate circumstances, providing a one-time amnesty for first-time filers, and calling on the State to eliminate the duplicate reporting requirement. Lawyers Alliance strongly urges this Committee and the Council to adopt them.

However, these reforms do not go far enough. Lawyers Alliance urges the Council to make changes to the proposed law to ensure that it meets its goals most effectively. Those changes include:

- 1) Raise the filing threshold to \$10,000 for groups that lobby only for themselves,
- 2) Encourage filing by first-time filers through an unscheduled amnesty program,
- 3) Do more to eliminate duplicate filings, and
- 4) Lift the requirement that volunteer board member activities must be reported.

We explain our specific recommendations below.

1) Raise the filing threshold to \$10k for groups that lobby only for themselves. The Lobbying Commission report states that there is “a strong basis to recommend raising the threshold to \$10,000 for all filers.”¹ The State Commission on Public Integrity also recommended such a change, for the state threshold. Members of both Commissions noted that doing so would capture at least 98% of state and city lobbying expenditures, while focusing enforcement resources on the groups whose higher lobbying expenditures pose a higher risk of violations.²

However, Int. No. 1172 raises the threshold to \$10,000 for architects and engineers, while raising the threshold only to \$5,000 for everyone else. This makes no sense. Architects and engineers may pose little risk of inappropriately influencing legislative or regulatory actions, even though they are paid by others, and often act on behalf of wealthy developers. But small nonprofits that use their own employees to lobby, with no money changing hands, pose even less of a risk of such influence.

At the same time, the threat of chilling speech by these nonprofits is real. An organization with two employees lacks the time and expertise to master the intricacies of the lobbying laws, and to file the many reports it requires. Int. No. 1172 would reduce the number of reports such organizations would have to file, but it would still require them to track their lobbying time and penalize them if they misinterpret the law. The City should do away with those reports altogether for nonprofits that spend less than \$10,000 on lobbying.

2) Encourage filing by first-time filers through an unscheduled amnesty program: Int. No. 1172 should allow first-time filers to seek amnesty at any time. The bill’s one-time six-month amnesty for first time filers is an important step towards enabling organizations that had previously been unaware of their filing obligations to begin filing. But it is not enough. Nationally, the number of nonprofits increased by 42% over the last decade.³ Organizations that are formed or begin lobbying after the end of the one-time amnesty will be learning about their obligation to report lobbying activity only after they have engaged in a substantial amount of lobbying, and as a result are subject to significant late fees. Lawyers Alliance counsels such organizations to register promptly, but many report that accumulated per diem penalties make it financially prohibitive to do so. Once a scheduled amnesty program has ended, the predicament that prompted this reform will certainly be replicated: noncompliant first-time filers will have a strong incentive to “stay outside the system” rather than register and report their lobbying activity. Allowing them to seek amnesty will encourage them to register as a lobbyist as soon as they learn about their obligation to do so.

We are aware of the concern that an unscheduled one-time amnesty program may incentivize indefinite noncompliance by some lobbying organizations, but that concern can be effectively addressed without perpetuating widespread noncompliance through a time-limited program. Penalties could remain in place even for first-time filers if they have received a notice of noncompliance from the City Clerk before they have sought amnesty. The threat of being penalized for failing to come forward will provide an even stronger incentive to file promptly instead of gaming the amnesty program by waiting to file.

3) Do more to eliminate duplicate filings: The Lobbying Commission recognized the unnecessary burden imposed by the current requirement that organizations engaged in lobbying in New York City must report that activity twice: once to the State and once to the City.⁴ Lawyers Alliance supports Resolution 1988 of 2013, which calls on the State to pass legislation allowing JCOPE to accept City filings from those lobbyists who file with the State solely by virtue of their lobbying activities in NYC.

However, it is far from certain that the state legislature will pass the necessary legislation. To ensure that the Resolution is more than a meaningless gesture, Int. No. 1172 should require the Clerk take the following steps toward eliminating the unnecessary duplicate filing regime:

- a) Request that the Joint Commission on Public Ethics (JCOPE) share filings with the City in a manner that eliminates the need for the City to require duplicate filings,
- b) stop requiring separate reporting for any lobbying activity that is reported to the State, if the State shares data in a manner that eliminates the need for the City to require duplicate filings, and
- c) report to the City Council every year on the progress of efforts to work with JCOPE to reduce duplicate reporting.

4) Lift the requirement that volunteer board member activities must be reported: Int. No. 1172 should require the Clerk to stop requiring registered organizations to report lobbying by their volunteer board members.⁵ While the Commission did not address this issue, the requirement is counterintuitive and confusing, because it requires organizations to report as lobbying “expenditures” the unpaid time spent by board members. This interpretation of the current law is inconsistent with the Clerk’s treatment of volunteers who are not board members; their lobbying activities are unreported. It is also inconsistent with the fundamental premise of the lobbying law, to limit the corrupting influence of money on the legislative process by public disclosure. The requirement to track lobbying time, and the campaign finance consequences that flow from being designated a lobbyist, impede the recruitment of volunteer board members, and Int. No. 1172 should correct this anomaly.

¹ Final Report of the NYC Lobbying Commission (2013), p. 30.

² See Final Report of the NYC Lobbying Commission (2013), p. 29 (quoting testimony of Barry Ginsberg, Commission on Public Integrity), <http://www.nyc.gov/html/lobby/downloads/pdf/033011lobbying.pdf>; Tr. of Public Meeting of the NYC Lobbying Commission (June 24, 2011), p. 5 (statement of Hon. Herbert Berman, Chair), <http://www.nyc.gov/html/lobby/downloads/pdf/062411lobbying.pdf>.

³ Amy S. Blackwood et al., The Nonprofit Sector in Brief: Public Charities, Giving and Volunteering, 2012, Urban Inst., p. 2, <http://www.urban.org/UploadedPDF/412674-The-Nonprofit-Sector-in-Brief.pdf>.

⁴ Final Report of the NYC Lobbying Commission (2013), pp. 69-70.

⁵ See NYC Clerk Advisory Opinion 2012-1, <http://www.cityclerk.nyc.gov/html/lobbying/2012-1.shtml>.



**Propose Legislation to Amend New York City
Lobbying Regulations**
Committee on Governmental Operations Public
Comment
November 7, 2013

Thank you for the opportunity to offer comments about proposed changes to the administrative code of the City of New York in relation to lobbying regulations.

My name is Michelle Jackson, General Counsel for the Human Services Council of New York. HSC is a coalition of nearly 200 nonprofits strengthening the human services sector's ability to serve New Yorkers in need. As a non-partisan intermediary between government agencies and member organizations, we passionately champion the sector. We proactively negotiate with State and City government for mutually beneficial, solutions-based budget, policy, and legislative reform that improve our constituents' work and the lives of the individuals they serve.

Like many policy makers, the nonprofit community is committed to meeting the needs and enriching the lives of New York's residents through a broad array of high quality services. Good communication between policy makers and service providers is a fundamental component of the development of sound services systems.

HSC agrees with many of the proposed changes to New York City Lobby Laws and thanks the Lobbying Commission for hearing the concerns of the nonprofit sector and the City Council for incorporating those suggested changes into this proposed legislation.

HSC supports raising the threshold for lobbying registration from \$2,000 to \$5,000 (§13(a)(1)) and in creating a limited reporting scheme for organizations who lobby on their own behalf and spend between \$5,000 and \$10,000 (§13(2)). These changes will remove many small organizations that engage in a de minimus amount of lobbying each year while still capturing the majority of lobbying activities, as well as ease burdens on many organizations who lobby less than \$10,000 each year. The State Commission on Public Integrity (now Joint Committee on Public Ethics) stated that at the State level, raising the threshold to \$10,000 would still capture 98 percent of State and City lobbying expenditures while removing many small filers from the reporting scheme. To that end, we encourage the City Council to consider raising the threshold further to \$10,000, or alternatively, to provide 501(c)(3) organizations with the same \$10,000 threshold provided to architects in §13(a)(1). Nonprofit organizations often engage with government officials to educate them on issues and present information on community needs, in partnership with the City agencies in which they contract. The same exceptions given to architects could be extended to the nonprofit sector.

HSC strongly supports giving the City Clerk discretion in applying fines (§29(2)). Most nonprofits are registered as both lobbyists and clients, and consequently are responsible for seven reports per year (fourteen if the organization is also registered under State law). These reporting requirements can place a heavy burden on nonprofits with limited staff and resources. Because penalties are so high, they can eviscerate a small nonprofit's budget. Granting the Clerk's office discretion will benefit nonprofits who are proactively complying with the law, as well as nonprofits who file late because of circumstances

beyond their control. HSC recommends including an additional factor when assessing penalty reduction and waiver of whether the lobbyist or client is a first time filer. Many nonprofits who incur fines do so as a result of confusion over whether to register for the first time, when to register, and how to file the first set of periodic reports. Including first time filers as a factor will help alleviate the burden of fines for groups who are still learning to use the system.

Additionally, HSC supports the six month amnesty period outlined in the legislation (§30) as well as having the City Clerk proactively contact groups who may be engaged in lobbying activity and doing educational outreach. We ask that the City Council extend amnesty to any group registering as lobbyists, not just for a six month period. Extensive outreach is needed and many organizations – particularly nonprofits – are confused about the application of the law. Granting amnesty for filers who fail to register and file under the City lobbying laws will encourage organizations to enter the system without fear of paying large penalties and allow nonprofits who were unaware that they needed to file or who have increased lobbying activity so that they now meet the threshold to enter the system without threat of penalty.

We support the proposed resolution to the New York State Assembly and Senate to introduce and pass legislation requiring the Joint Committee on Public Ethics (JCOPE) to accept filings from the City for lobbyists that are registered with the State solely on the basis of their City lobbying activities. We encourage the Council and the City Clerk to more proactively work with the State to reduce the burden of duplicate systems, and to call upon the City Clerk and JCOPE to come together to design and implement a single filing system. HSC suggests having the City Clerk report to the City Council each year on efforts to work with the State on a unified system.

While the Lobbying Commission was reviewing its report, the City Clerk released an Advisory Opinion (2012-1) on volunteer board members who lobby on behalf of an organization. The City Clerk has determined that volunteer board members who lobby on behalf of an organization that is a registered lobbyist must register that volunteer board member as a lobbyist with the organization. A person registered as a lobbyist must file their personal information with the City Clerk, report any political consulting or fundraising, and do not have campaign donations matched for City elections. They also have limits on the amount they can make in individual campaign donations. This is problematic for nonprofit organizations and has the potential to discourage individuals from joining nonprofit Boards; we encourage the City Council to review the advisory opinion and regulations to further clarify this matter.

Thank you again for providing me with the opportunity to testify. HSC greatly appreciates the work of the Lobbying Commission and City Council to respond to the needs of the nonprofit sector in regards to lobbying regulations. We strongly encourage and support the passage of these reforms. I can be contacted at (212) 836-1588 / jacksonm@humanservicescouncil.org if I may be of further assistance.



Testimony
of
Gene Russianoff
Senior Attorney
New York Public Interest Research Group
before the
Government Operations Committee
of the
New York City Council
Hearing on
Intro 1172/2013
(CHANGES TO NYC LOBBYING LAW)
November 7, 2013

NYPIRG supports Intro 1172/2013, which closely follows the New York City Lobbying Commission's proposals contained in its final report last March. As a whole, the proposed changes are fair and thoughtful, adopt either the letter or spirit of civic group suggestions and are part of a process that's been a model of openness and transparency.

1. NYPIRG supports Intro 1172/2013's provision that there be a new Lobbying Commission in three to four years. This review has been very useful for the City, the lobbying community and civic groups. The Lobbying Law deserves periodic study.
2. NYPIRG supports the legislation's provision to raise the threshold for triggering lobbying registration from \$2,000 to \$5,000. This conforms with the State's lobbying law. The Lobby Bureau says this would eliminate 40 of the 366 lobbyists registered in 2011. We do not object to the proposal for lesser reporting for entities that do not hire a lobbyist and spend less than \$10,000, but wonder how much benefit it will bring.
3. NYPIRG supports the provisions based on the Lobbying Commission's proposal to "ensure that lobbying on legislation does not require the existence of a formally introduced piece of legislation." This reflects the reality of lobbying, much of which occurs prior to introduction of a specific piece of legislation.
4. NYPIRG supports the legislation's mandate that "the city clerk shall develop an online training program for lobbyists. Such program shall include information and training regarding conduct that may subject lobbyists and clients to criminal and civil penalties." Training is key to compliance.

5. **The Lobbying Commission believes that the City “will be able to increase the transparency and searchability of the lobbyist data so that people can search by topic, or government entity as well as other criteria.”** On this one, NYPIRG can only hope for the best. The devil will be in the details, including the City Department of Information Technology and Telecommunications providing more categories for reporting disclosure.
6. **NYPIRG supports the Commission’s proposal to focus some of the Lobbying Bureau’s resources “on those organizations who are not registered, but whose dealings with City government may subject them to the Lobbying Laws’ requirements.”** NYPIRG had recommended amending the Lobbying Law to require certain City agencies to keep records of their contacts with paid lobbyists and submit them on a regular basis to the Lobby Bureau. This is now required for a number of State agencies under NYS Executive Law 166. Commission staff believes that this provision “covers many activities that do not constitute lobbying and are not kept uniformly.” Instead, the Commission’s preliminary report says the same goal can be accomplished by authorizing the Clerk to develop a protocol it can use to periodically check sources of information that should assist it in identifying potential unregistered lobbyist. “This protocol should include periodic review by the Clerk of: (1) all lobbying registrations of the Joint Commission on Public Ethics by organizations who are disclosing to the State Commission that they engage in lobbying at the City level to ascertain any State registrants who are not registered with the Clerk; (2) notices of appearance before the City Planning Commission and other city agencies; and (3) the City’s Doing Business Database.” This is an acceptable approach to NYPIRG and we plan to work with the City and the Council to make the list of agencies on the protocol larger. The effectiveness of this approach should be the subject of review by the next Lobbying Commission.
7. **While NYPIRG supports giving the City Clerk carefully tailored discretion to waive late penalties, we strongly concur with DOI’s recommendation that the Clerk “collect, maintain and rely on documentation sufficient to justify each waiver or penalty reduction.”**
8. **NYPIRG would make contributions bundled by lobbyists non-matchable, as are now direct contributions by lobbyist.** The Lobbying Commission is concerned about making recommendations about the City’s landmark campaign finance law while that law is currently under legal challenge. Preliminary data show this practice is a major loophole. We share DOI’s view that the next Commission should be “charged with exploring this idea.”



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council On the Lobbying Legislation & Resolution

November 7, 2013

Good afternoon Chair Brewer and members of the Governmental Operations committee. My name is Alex Camarda. I am the Director of Public Policy and Advocacy at Citizens Union. Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. Thank you for the opportunity to testify today on this bill and resolution.

As you know, the bill and resolution before the committee today is the culmination of years of work conducted by the members and staff of the City Lobbying Commission convened in February of 2011.¹ Citizens Union played a pivotal role in and was an active participant in the work of the Commission, testifying at every public hearing² held by the Commission and issuing 14 recommendations for its consideration³, seven of which were adopted⁴ in its final report⁵ the Commission issued in March of 2013.

The convening of the Commission in 2011 was itself a product of landmark lobbying laws passed in 2006, which Citizens Union helped bring about by releasing a report showing little enforcement or transparency of lobbying laws. Citizens Union was pleased to work with Council Speaker Christine Quinn and Mayor Michael Bloomberg in 2006 to craft needed legislation that banned gifts from lobbyists to public officials, prohibited the matching of lobbyists' campaign contributions with public funds, established electronic filing of lobbyist reports, made publicly available lobbying activity that previously was almost entirely unknown to the public, strengthened enforcement by raising penalties and creating more effective oversight. To be clear, lobbying City Hall is a constitutionally protected activity that often provides helpful information to public officials on a wide range of complicated subjects.

¹ NYC Lobbying Commission home page: <http://www.nyc.gov/html/lobby/html/home/home.shtml>

² NYC Lobbying Commission list of public hearings and meetings, and transcripts:
<http://www.nyc.gov/html/lobby/html/meetings/meetings.shtml>

³ Citizens Union's 2011 report and recommendations to the City Lobbying Commission:
http://www.citizensunion.org/www/cu/site/hosting/Reports/CitizensUnion_LobbyReport2011_FINAL.pdf

⁴ Citizens Union Applauds Approval of Final Report of the Lobbying Commission:
<https://app.e2ma.net/app/view/CampaignPublic/id:1407871.13033156821/rid:d6c337cc1ea08804e907b7f985d8137f>

⁵ NYC Lobbying Commission reports: http://www.nyc.gov/html/lobby/html/reports/commission_reports.shtml

Citizens Union sees lobbying as vital to the functioning of a healthy democracy so long as that activity is reported, transparent and conducted fairly and without undue influence.

We are pleased to see that many of Citizens Union's recommendations were accepted by the Commission. **Together this law and resolution will continue the goals first established in reforming the lobbying laws in 2006: creating greater public awareness of who is influencing the important decisions made by city and better enforcement of the law. Citizens Union therefore supports provisions of the legislation and the intent of the resolution for the following reasons:**

1. **Several elements in the bill provide for greater disclosure of lobbying activity.**
 - a. **Expanding lobbying disclosure to include lobbying activity before a bill or resolution or rule is introduced and given an identifying number.** Current law is not clear as to whether activity preceding introduction of a bill needs to be reported.
 - b. **Expanding lobbying activity to include attempts to influence the agenda of a board or commission.** Current law requires reporting of activity to influence the determination of a Board or Commission but current law is not clear as to whether that includes informal decisions as to which issues to focus on.
 - c. **Requiring reporting of lobbying activity to include both the agency or entity lobbied and the person representing the agency or entity.**
 - d. **A one-time six month amnesty program that enables those lobbying after 2006 but who have not reported their activity to come out of the shadows, report their past activity, and properly register as a lobbyist without penalty.**
2. **Greater disclosure of lobbying activity that is reported.** The Office of the City Clerk collects lobbying activity information in an organized and structured manner but makes very little of that reported information available on its website. This bill requires the Clerk's Office in coordination with the Department of Information Technology and Telecommunications (DoITT) develop a **database that will allow for public searches of information beyond what is currently provided.** This will shed much greater light on who is trying to influence city government by enabling groups like Citizens Union and the media to do independent analyses of such data.
3. **Mandatory training for lobbyists.** The requirement that 1-2 lobbyists from all lobbying entities be trained once every two years.
4. **Expanded reporting by the City Clerk's Office.** The bill requires the Clerk's Office go beyond its typical disclosure of lobbying activity in its annual report by also requiring

subjects and targets lobbied. The bill also requires the Clerk's Office report on operational functions like the number and types of assistance it provides to implement the lobbying law, and the response times for addressing requests for assistance.

While Citizens Union supports these improvements in the Lobbying Law, we suggest the following improvements be made to the legislation and resolution:

- 1. Include in the legislative intent of the bill, the belief of the legislature that the Clerk's Office should utilize funding in the budget to create a full-time education and outreach staffer in their office** (from the recommendations of the Commission in its final report: *"The Clerk's Lobbying Bureau should have a designated full-time staff person responsible for conducting education and outreach not just to registered lobbyists, but in venues where there are likely to be people who may be subject to the requirements of the Lobbying Laws but may not be registered."*)
- 2. Include in the bill that the Clerk's Office shall communicate, electronically or otherwise, with the Campaign Finance Board's Doing Business Database on lobbying reporting extensions so lobbyists can't circumvent doing business campaign contributions** (from the Commission's final report: *"The City should ensure that all lobbyists are listed in the Doing Business Database, even when granted a filing extension by the Clerk. If the e-Lobbyist system cannot be coordinated with the Doing Business Database, the Clerk should be required to provide information on extensions directly to the Doing Business Database to ensure that limitations on campaign contributions are observed."*)
- 3. Require the new database making lobbying activity more transparent being constructed by DoITT in coordination with the Clerk's Office be completed within 18 months.** The bill only requires the database be completed if DoITT and the Clerk's Office certify they are "capable of implementing such respective provision." Establishing a deadline is very important, as without the new database none of the new reporting requirements will mean much because the public can only access basic information on the registration form with the current database made available to the public on the City Clerk's website.⁶ The database should also be searchable by general subjects lobbied, including types of actions like bills and resolutions, but also by issue areas provided on the registration form or in periodic reports.

⁶ See Clerk's Office NYC Lobbyist Search at:

<http://www.nyc.gov/lobbyistsearch/search;jsessionid=SyTLF0bYV4LjZPPGbjGMmLkbLJ1yzv25pphpv75jklv7yJ9vg11!447289328>. The only information provided for each organization is its name, address, phone number, lobbyists, lobbying targets (annualized), lobbying subjects (annualized), and compensation for each periodic report. The lobbying subjects are presented by type of action (ex. bill introduction) rather than by issue. Information provided in periodic reports is not provided at all but for compensation. Therefore, which bills, resolutions or other determinations lobbyists advocated for or against is not available to the general public.

- 4. In the resolution, city-only filers should only be exempt from reporting to the state if the state has agreed to make their city filings available on the state's website⁷ or the city's database has been updated to allow for expanded searches of data pursuant to section 26 and 31 of the bill. City filers should also be required to report to the state their donors and business relationships with state elected and officials, as is required under state law. Under the current resolution, the lobbying activity of city-only filers may never be made known to the public because the JCOPE database as currently constructed cannot receive city forms electronically nor do the fields align with the city form to enter the information manually.**

In closing, Citizens Union commends the Commission for conducting an inclusive process involving numerous hearings and meetings with stakeholders resulting in the legislation before the Council today, and this Committee for soliciting input on the bill and resolution.

Citizens Union is pleased to see this eight year process come full circle under the leadership of Speaker Christine Quinn and Councilmember Gail Brewer and the great staff of the City Council who have worked tirelessly on this issue.

Thank you for the opportunity to testify today. I welcome any questions you may have.

⁷ The State entity overseeing lobbying activity reporting, the Joint Commission on Public Ethics (JCOPE), is not able to receive an electronic filing from the City Clerk's Office and integrate it seamlessly into its database. It also can't enter the information manually as it does for state filings submitted on paper because the fields on the city form are different..

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Appearance Card

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Name: Laura Abel

Address: 171 Madison Ave. 6th Fl. NYC

I represent: Lawyers Alliance for NY

Address: 293 Sterling Pl. Brooklyn, NY 11238

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Name: Alex Camardo

Address: _____

I represent: Citizens Union

Address: _____

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Name: Michelle Jackson

Address: 130 East 95th St, NY, NY 10022

I represent: Human Services Center?

Address: same

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Name: Denise Wagner Furman

Address: 7 Times Square #2452

I represent: New York Advocacy Association

Address: _____

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Name: Rick Bell

Address: _____

I represent: AIA New York Chapter

Address: _____

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Name: Herb Serman

Address: _____

I represent: For the Metro Lobby Comm

Address: _____

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Name: GENE RUSSIAVORT

Address: 9 MURRAY ST

I represent: NYPLC

Address: 9 MURRAY ST

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Name: Michael McSweeney

Address: 141 Worth Street, New York

I represent: City Clerk, Clerk of the Council

Address: 141 Worth Street

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Name: ~~Michael McSweeney~~ Jaime Chirichella

Address: 141 Worth Street

I represent: The Office of the City Clerk

Address: _____

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Name: PATRICK SYNMOIE

Address: ~~2437 CARLETON AVE~~ BROOKLYN NY 11225

I represent: CITY CLERK

Address: 141 WORTH ST NYC 10013

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Name: JAMES CARAS

Address: NYC COUNCIL, OFFICE OF GENERAL COUNSEL

I represent: _____

Address: _____

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