

**HOUSE . . . . . No. 3243**

By Mr. Scaccia of Boston, petition of William F. Galvin for legislation to further regulate and define lobbying by legislative agents. State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO LOBBYIST REFORM.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1.

2 CHAPTER 3. THE GENERAL COURT.

3 Chapter 3. Section 39. Definitions.

4 Section 39. As used in sections thirty-nine to fifty, inclusive, the  
5 following words shall, unless the context clearly indicates otherwise,  
6 have the following meanings:—

7 “Authority”, any public instrumentality of the Commonwealth  
8 which is not subject to the supervision and control of either the leg-  
9 islative, executive or judicial departments of state government, or of  
10 any city, town, or county within the Commonwealth, and which does  
11 not receive state appropriations either for operations or the payment  
12 of debt obligations. Notwithstanding the foregoing provisions, the  
13 following entities shall be considered to be authorities:—

14 Bay State Skills Corporation, Boston Metropolitan District, cen-  
15 ters of excellence, Community Economic Development Assistance  
16 Corporation, Community Development Finance Corporation, Gov-  
17 ernment Land Bank, Massachusetts Bay Transportation Authority,  
18 Massachusetts Convention Center Authority, Massachusetts Corpo-  
19 rations for Educational Telecommunications, Massachusetts Educa-  
20 tional Loan Authority, Massachusetts Health and Educational  
21 Facilities Authority, Massachusetts Housing Finance Agency,  
22 Massachusetts Industrial Finance Agency, Massachusetts Industrial  
23 Service Program, Massachusetts Legal Assistance Corporation,  
24 Massachusetts Municipal Wholesale Electric Company, Massachu-  
25 setts Port Authority, Massachusetts Product Development

26 Corporation, Massachusetts Technology Development Corporation,  
27 Massachusetts Technology Park Corporation, Massachusetts Turn-  
28 pike Authority, Massachusetts Water Resources Authority, Nan-  
29 tucket land bank, Pension Reserves Investment Management Board,  
30 State College Building Authority, Southeastern Massachusetts Uni-  
31 versity Building Authority, Thrift Institutions Fund for Economic  
32 Development, University of Lowell Building Authority, University  
33 of Massachusetts Building Authority, Victim and Witness Board,  
34 Woods Hole, Martha's Vineyard, and Nantucket Steamship  
35 Authority, Worcester Business Development Corporation, the sev-  
36 eral regional transit authorities, the several regional school districts,  
37 the several solid waste districts, the several water, sewer, and fire  
38 districts, the several local housing authorities, the several local rede-  
39 velopment authorities, and the several home care corporations.

40 "Client", any principal, individual or business entity that contracts  
41 with another individual or business entity to receive lobbying serv-  
42 ices.

43 "Covered executive official", the governor, lieutenant governor,  
44 state secretary, attorney general, state treasurer, state auditor, any  
45 person who holds a major policy making position, as defined in  
46 section one of chapter two hundred and sixty-eight B, and as desig-  
47 nated by the governor, lieutenant governor, state secretary, attorney  
48 general, state treasurer or state auditor in accordance with the provi-  
49 sions of said chapter two hundred and sixty-eight B, the secretary or  
50 deputy or assistant secretary of any executive office, or the executive  
51 or administrative head or deputy or assistant head of any authority,  
52 any department, board, commission, or division of the state govern-  
53 ment or subdivision of any of the foregoing, but not including the  
54 legislative and judicial departments.

55 "Executive agent", a person who for compensation or reward does  
56 any act to influence the decision of any officer or employee of the  
57 executive branch or an authority, including but not limited to  
58 statewide constitutional officers and employees thereof, where such  
59 decision concerns legislation or the adoption, defeat or postpone-  
60 ment of a standard, rate, rule or regulation pursuant thereto, or any  
61 act to communicate directly with a covered executive official to  
62 influence a decision concerning policy or procurement. The term  
63 "executive agent" shall include a person who, as part of his regular  
64 and usual business or professional activities and not simply inci-

65 dental thereto, attempts to influence any such decision, whether or  
66 not any compensation in addition to the salary for such activities is  
67 received for such services; provided, however, that for the purposes  
68 of this definition a person shall be presumed to engage in activity  
69 covered by this definition in a manner that is simply incidental to his  
70 regular and usual business or professional activities if he engages in  
71 any activity or activities covered by this definition for not more than  
72 fifty hours during any reporting period or receives less than five  
73 thousand dollars during any reporting period for any activity or  
74 activities covered by this definition.

75 “Legislation”, bills, resolutions and proposals of every kind, char-  
76 acter or description considered by the general court or any com-  
77 mittee thereof, or the governor.

78 “Legislative agent”, a person who for compensation or reward  
79 does any act to promote, oppose or influence legislation, or to pro-  
80 mote, oppose or influence the governor’s approval or veto thereof.  
81 The term “legislative agent” shall include a person who, as part of  
82 his regular and usual business or professional activities and not  
83 simply incidental thereto, attempts to promote, oppose or influence  
84 legislation, or the governor’s approval or veto thereof, whether or  
85 not any compensation in addition to the salary for such activities is  
86 received for such services; provided, however, that for purposes of  
87 this definition a person shall be presumed to engage in activity cov-  
88 ered by this definition in a manner that is simply incidental to his  
89 regular and usual business or professional activities if he engages in  
90 any activity or activities covered by this definition for not more than  
91 fifty hours during any reporting period or receives less than five  
92 thousand dollars during any reporting period for any activity or  
93 activities covered by this definition.

94 “License”, the Secretary of State shall issue a license and picture  
95 identification which entitles an agent as defined herein to practice  
96 lobbying on behalf of a client who or which has filed a registration  
97 statement pursuant to Section 41. Said license shall expire on  
98 December 31 of each year.

99 “Lobbying” means any act or effort for compensation which  
100 directly or indirectly attempts to influence legislative or administra-  
101 tive action by oral or written communication with any elective state  
102 official, agency official or legislative employee, and includes time  
103 spent in preparation for such communication and appearances at

104 public hearings or meetings or service on a committee in which such  
105 preparation or communication occurs, but shall not be deemed to  
106 include the following activities:—

107 (a) a request for a meeting, a request for the status of an action or  
108 any similar administrative request, if the request does not include an  
109 attempt to influence a covered executive official;

110 (b) an act made in the course of participation in an advisory com-  
111 mittee or task force;

112 (c) providing information in writing in response to a written  
113 request for specific information by an officer or employee of the  
114 executive branch or an authority, including, but not limited to,  
115 statewide constitutional officers and employees thereof;

116 (d) an act required by subpoena, civil investigative demand, or  
117 otherwise compelled by statute, regulation or other action of the  
118 executive branch or legislative branch, an authority, including, but  
119 not limited to, statewide constitutional offices;

120 (e) a communication made to an officer or employee of the execu-  
121 tive branch or legislative branch, an authority, including, but not lim-  
122 ited to, statewide constitutional officers and employees thereof, with  
123 regard to:—

124 (1) a judicial proceeding or a criminal or civil law enforcement  
125 inquiry, investigation or proceeding; or

126 (2) a filing or proceeding that the executive branch or legislative  
127 branch, an authority, including, but not limited to, statewide consti-  
128 tutional offices, is specifically required by statute or regulation to  
129 maintain or conduct on a confidential basis; if such executive branch  
130 or authority, including, but not limited to, statewide constitutional  
131 offices, is charged with responsibility for such proceeding, inquiry,  
132 investigation or filing;

133 (f) an act made in compliance with written agency procedures  
134 regarding an adjudicatory proceeding, as defined in section one of  
135 chapter thirty A, conducted by the agency, or similar adjudicatory or  
136 evidentiary proceedings conducted by any department, board, com-  
137 mission or official not governed by chapter thirty A;

138 (g) a petition for action by the executive branch or legislative  
139 branch, an authority, including, but not limited to, statewide consti-  
140 tutional offices made in writing and required to be a matter of public  
141 record pursuant to established procedures of such executive branch

142 or legislative branch, authority, including, but not limited to,  
143 statewide constitutional offices;

144 (h) an act made on behalf of an individual with regard to that indi-  
145 vidual's benefits, employment or other personal matters;

146 (i) a response to a request for proposals or similar invitation by an  
147 officer or employee of the executive branch or legislative branch, an  
148 authority, including, but not limited to, statewide constitutional offi-  
149 cers and employees thereof, for information relevant to a contract;

150 (j) participation in a bid conference;

151 (k) an appeal or request for review of a procurement decision.

152 "Lobbyist entity", an entity providing lobbyist services, con-  
153 sisting of at least 1 legislative or executive agent, including foreign  
154 or domestic corporation, association, sole proprietor, partnership,  
155 limited liability partnership or company, joint stock company, joint  
156 venture or any other similar business formation.

157 "Policy", a plan or course of action which is applicable to a class  
158 of persons, proceedings or other matters and which is designed to  
159 influence or determine the subsequent decisions and actions of any  
160 covered executive official, including, but not limited to, a plan or  
161 course of action which would constitute a "regulation", as defined in  
162 chapter thirty A. The term shall not include the adjudication or deter-  
163 mination of any rights, duties, or obligations of a person made on a  
164 case by case basis, including but not limited to the issuance or denial  
165 of a license, permit, or certification or a disciplinary action or inves-  
166 tigation involving a person.

167 "Procurement", the buying, purchasing, renting, leasing or other-  
168 wise acquiring or disposing, by contract or otherwise, of supplies,  
169 services or construction or the acquisition or disposition of real  
170 property or any interest therein, including, but not limited to, the  
171 purchase, lease or rental of any such real property or the granting of  
172 easements or rights of way therein; but not including any item of  
173 expenditure the value of which is twenty-five thousand dollars or  
174 less.

1 SECTION 2. Chapter 3. Section 43. Is hereby stricken, and  
2 replaced with the following:—

3 Chapter 3. Section 43. Executive and legislative agents; itemized  
4 statement of expenditures; family gifts restricted; itemized statement  
5 of lobbying activity; public inspection; penalties.

6 Section 43. Expenses by Agents.

7 On or before the fifteenth day of July, complete from January first  
8 through June thirtieth; and the fifteenth day of January, complete  
9 from July first to December thirty-first of the preceding year, every  
10 executive and legislative agent appearing on the docket shall render  
11 to the state secretary, under oath, an itemized, electronic statement of  
12 all expenditures or payments made to any person or organization  
13 within the context of providing lobbying services as defined in  
14 Section 39.

15 The itemized statement of expenditures shall include but not be  
16 limited to campaign contributions as defined in section one of  
17 chapter fifty-five; expenditures incurred or payments made by an  
18 executive or legislative agent regardless of value, paid in whole or in  
19 part to any statewide constitutional officer, officers and employees  
20 of such office, members of the general court, officers and employees  
21 of the general court, officers and employees of the executive branch  
22 and officers and employees of an authority including meals, bever-  
23 ages, recreation and entertainment, gifts, lodging, transportation,  
24 advertising, public relations, printing, mailing and telephone except  
25 that the executive or legislative agent shall not be required to report  
26 such expenditures not in the course of his employment made for or  
27 on behalf of the immediate family of such executive or legislative  
28 agent or a relative within the third degree of consanguinity of the  
29 executive or legislative agent or of his spouse or the spouse of any  
30 such relative.

31 The itemized statement shall also include the names and amount  
32 paid to each payee, the names of the candidates or political commit-  
33 tees to whom or to which a contribution was made, along with the  
34 amount of and date of each contribution, the date, place, name and  
35 position of any official receiving an expenditure for any meal, bev-  
36 erage, recreation and entertainment, lodging or transportation  
37 expense and a description of the benefit.

38 No such expenditure shall be split or divided for the purpose of  
39 evading any provision of this section.

40 Notwithstanding the provisions of any general or special law to  
41 the contrary, no executive or legislative agent shall knowingly offer  
42 or knowingly give to any public official or public employee, any gift  
43 in violation of section six of chapter two hundred and sixty-eight B.

44 Section 43(A). Activities.

45 On or before the fifteenth day of July, complete from January first  
46 through June thirtieth; and the fifteenth day of January, complete  
47 from July first to December thirty-first of the preceding year, every  
48 executive and legislative agent appearing on the docket shall render  
49 to the state secretary, under oath, an itemized, electronic statement of  
50 all activities performed in conjunction with lobbying services as  
51 defined in Section 39.

52 Said statement shall contain the number of hours each month  
53 within the reporting period said agent engaged in\or provided lob-  
54 byist services including a complete and detailed description of the  
55 subject, subjects or issues, the name and title of the person or per-  
56 sons to whom the lobbying services were provided, the legislative  
57 numbers of any bills, rules, regulations, ratemaking, or proposed  
58 rules, regulations or rates, the titles and any other identifying num-  
59 bers of any procurement contracts; the names of the persons, organi-  
60 zations, legislative bodies, or committees before which he\she has  
61 lobbied and the client on behalf of whom the lobbyist services were  
62 performed.

63 Section 43(B). Enforcement.

64 Any executive or legislative agent who fails to timely file said  
65 statement of expenditures or activity within the time required by this  
66 chapter shall be subject to the immediate administrative revocation  
67 of the agent's license to lobby on behalf of a client for a period not  
68 to exceed 3 years.

69 No lobbyist whose license has been revoked may engage in lob-  
70 bying as a lobbyist for any client until such person has been rein-  
71 stated to the practice of lobbying and duly licensed.

72 The license of any lobbyist to lobby on behalf of the client shall  
73 be restored immediately upon filing the delinquent statement. All  
74 notices to be sent in accordance with this chapter shall be sent by  
75 certified mail to the last-known addresses of the lobbyist.

76 Any lobbyist who is aggrieved by a suspension of lobbying privi-  
77 leges under this subsection may request a hearing regarding the  
78 revocation. The Secretary of State may refer any matter to the office  
79 of the attorney general for further enforcement action for which a  
80 criminal penalty is applicable.

1 SECTION 3. Chapter 3. Section 44. Reporting by organizations  
2 attempting to influence legislation but not employing an agent; state-  
3 ment of expenditures; public inspection; penalty.

4 Section 44. On or before the fifteenth day of July, complete from  
5 January first through June thirtieth; and the fifteenth day of January,  
6 complete from July first to December thirty-first of the preceding  
7 year, any group or organization, however constituted, not employing  
8 an executive or legislative agent which as part of an organized effort,  
9 expends in excess of two hundred and fifty dollars during any cal-  
10 endar year to promote, oppose, or influence legislation, or the gover-  
11 nor's veto or approval thereof, or to influence the decision of any  
12 officer or employee of the executive branch or an authority,  
13 including, but not limited to, statewide constitutional officers and  
14 employees thereof, where such decision concerns legislation or the  
15 adoption, defeat or postponement of a standard, rate, rule or regula-  
16 tion pursuant thereto, or to do any act to communicate directly with  
17 a covered executive official to influence a decision concerning  
18 policy or procurement shall register with the state secretary by ren-  
19 dering a statement, under oath, containing the names and addresses  
20 of the principals of such group or organization, the purposes of the  
21 organization, such aforesaid decisions of such employees of the  
22 executive branch or an authority or legislation which affects those  
23 purposes, the total amount of expenditures, incurred or paid during  
24 the reporting period in furtherance of the foregoing objectives and an  
25 itemized statement containing all expenditures made for or on behalf  
26 of statewide constitutional officers, officers and employees of such  
27 offices, members of the general court, officers and employees of the  
28 general court, officers and employees of the executive branch and  
29 officers and employees of an authority. Such itemized accounting  
30 shall include, but shall not be limited to, specific expenditures for  
31 meals, transportation, entertainment, advertising, public relations,  
32 printing, mailing and telephone and the names of the payees and the  
33 amount paid to each payee. Where such expenditure is for meals,  
34 entertainment or transportation, said expenditure shall be identified  
35 by date, place, amount, and the names of all persons in the group  
36 partaking in, or of, such meal, entertainment or transportation. The  
37 itemized accounting shall also include a list of all campaign contri-  
38 butions, as defined in section one of chapter fifty-five, made by the  
39 group to a political candidate or committee, the name of each candi-

40 date or committee, the amount contributed and the date of the contri-  
41 bution. The statement of the group or organization shall also include  
42 a listing of the names and addresses of every person, group or orga-  
43 nization from whom fifteen dollars or more was contributed during  
44 the year for the objectives hereinabove stated. No expenditure or  
45 contribution shall be split or divided for the purpose of evading any  
46 provision of this section. The state secretary shall prescribe and  
47 make available the appropriate statement forms which after being  
48 completed and filed with the secretary shall be organized alphabeti-  
49 cally according to the name of the group and such files shall be open  
50 and accessible for public inspection during normal business hours.

51 The state secretary shall assess a penalty for any statement which  
52 is filed by such a group or organization later than the prescribed  
53 date; or, if such statement has been filed by mailing, where the post-  
54 mark on such mailing is later than the prescribed date. Said penalty  
55 shall be in the amount of one hundred dollars when such statement  
56 has been filed ten days late or less, and in the amount of two hun-  
57 dred and fifty dollars when such statement is more than ten days  
58 late; provided, however, that the state secretary may waive said  
59 penalty for good cause. A waiver for good cause shall not be granted  
60 for statements filed more than sixty days late by executive or legisla-  
61 tive agents, or groups and organizations employing executive or leg-  
62 islative agents, which have never filed or have never been required  
63 to file such statements. In all other instances no waiver for good  
64 cause shall be granted when a statement has been filed more than  
65 thirty days late.

66 This section shall not apply to any group or organization that (i)  
67 does not employ an executive or legislative agent; (ii) does not  
68 realize a profit; (iii) does not make a contribution, as defined in  
69 section one of chapter fifty-five, to a political candidate or com-  
70 mittee; (iv) does not pay a salary or fee to any member for any activ-  
71 ities performed for the benefit of the group or organization; and (v)  
72 expends two thousand dollars or less during any calendar year to  
73 promote, oppose, or influence legislation, or the governor's veto or  
74 approval thereof, or to influence the decision of any officer or  
75 employee of the executive branch or an authority, including, but not  
76 limited to, statewide constitutional officers and employees thereof,  
77 where such decision concerns legislation or the adoption, defeat or  
78 postponement of a standard, rate, rule or regulation pursuant thereto,

79 or to do any act to communicate directly with a covered executive  
80 official to influence a decision concerning policy or procurement.

1 SECTION 4. Chapter 3. Section 45. Enforcement authority,  
2 license revocation, suspension, hearing; effect.

3 (a) Upon receipt of a sworn complaint signed under pains and  
4 penalties of perjury, or upon receipt of evidence which is deemed  
5 sufficient by the Secretary, the Secretary shall initiate a preliminary  
6 inquiry into any alleged violation of this chapter. All proceedings  
7 and records relating to a preliminary inquiry or initial staff review to  
8 determine whether to initiate an inquiry shall be confidential, except  
9 that the Secretary may turn over to the attorney general, the United  
10 States Attorney or a district attorney of competent jurisdiction evi-  
11 dence which may be used in a criminal proceeding. The Secretary  
12 shall notify any person who is the subject of the preliminary inquiry  
13 of the existence of such inquiry and the general nature of the alleged  
14 violation within thirty days of the commencement of the inquiry.

15 (b) If a preliminary inquiry fails to indicate reasonable cause for  
16 belief that this chapter has been violated, the Secretary shall immedi-  
17 ately terminate the inquiry and so notify, in writing, the complainant,  
18 if any, and the person who had been the subject of the inquiry.

19 (c) If a preliminary inquiry indicates reasonable cause for belief  
20 that this chapter has been violated, the Secretary may initiate an  
21 adjudicatory proceeding to determine whether there has been such a  
22 violation.

23 (d) The Secretary may require by summons the attendance and  
24 testimony of witnesses and the production of books, papers and  
25 other records relating to any matter being investigated by it pursuant  
26 to this chapter. Such summons may be issued by the Secretary and  
27 shall be served in the same manner as summonses for witnesses in  
28 civil cases, and all provisions of law relative to summonses issued in  
29 such cases, including the compensation of witnesses, shall apply to  
30 summonses issued by the Secretary. Any justice of the superior court  
31 may, upon application by the Secretary, in his discretion issue an  
32 order requiring the attendance of witnesses summoned as aforesaid  
33 and the giving of testimony or the production of books, papers and  
34 other records before the Secretary in furtherance of any investigation  
35 pursuant to the provisions of this chapter.

36 (e) The Secretary or his designee may administer oaths and may  
37 hear testimony or receive other evidence in any proceeding. All tes-  
38 timony in an adjudicatory proceeding shall be under oath. All parties  
39 shall have the right to call and examine witnesses, to introduce  
40 exhibits, to cross-examine witnesses who testify, to submit evidence,  
41 and to be represented by counsel. Before testifying, all witnesses  
42 shall be given a copy of the regulations governing adjudicatory pro-  
43 ceedings. All witnesses shall be entitled to be represented by  
44 counsel.

45 (f) Any person whose name is mentioned during an adjudicatory  
46 proceeding of the Secretary and who may be adversely affected  
47 thereby may appear personally before the Secretary on his own  
48 behalf, with or without an attorney, to give a statement in opposition  
49 to such adverse mention or file a written statement of such opposi-  
50 tion for incorporation into the record of the proceeding. Within thirty  
51 days after completion of deliberations, the Secretary shall publish a  
52 written report of its findings and conclusions.

53 (g) The Secretary, upon a finding pursuant to an adjudicatory pro-  
54 ceeding that there has been a violation of this may issue an order:—

55 (1) demanding that the violator cease and desist such violation of  
56 said chapter; and/or

57 (2) suspending the license and registration of said violator; and/or

58 (3) demanding a full written accounting and reporting of all  
59 expenditures associated with lobbying activities; and/or

60 (4) any other remedy the Secretary deems appropriate to ensure  
61 compliance with the registration and reporting requirements of this  
62 chapter.

1 SECTION 5. Chapter 3. Section 47. Clients of executive or leg-  
2 islative agents; statement of expenditures; filing; penalty.

3 Section 47. On or before the fifteenth day of July, complete from  
4 January first through June thirtieth; and the fifteenth day of January,  
5 complete from July first to December thirty-first of the preceding  
6 year, every client of an executive or legislative agent whose name  
7 appears upon the docket shall render to the state secretary a com-  
8 plete and detailed electronic itemized statement, under oath, listing  
9 all expenditures incurred or paid by such client during the reporting  
10 period in connection with lobbying.

11 Such itemized accounting shall include, but shall not be limited  
12 to, specific expenditures for meals, gifts, transportation, entertain-  
13 ment, advertising, public relations, printing, mailing, and telephone;  
14 and the names of the payees and the amount paid to each payee.

15 Where such expenditure is for meals, entertainment or transporta-  
16 tion, said expenditure shall be identified by the date, place, amount,  
17 and names of all persons in the group partaking in, or of, such meal,  
18 entertainment, or transportation.

19 When such compensation is included as part of a regular salary or  
20 retainer, the statement shall specify the amount of the agent's salary  
21 or retainer allocable to his legislative duties. If no such appor-  
22 tionment is possible, the statement shall indicate such impossibility and  
23 disclose the full salary or retainer.

24 No expenditure shall be split or divided for the purpose of  
25 evading any provision of this section.

26 The state secretary shall assess a penalty for any statement which  
27 is filed by such client later than the prescribed date. Said penalty  
28 shall be in the amount of two hundred and fifty dollars when such  
29 statement has been filed ten days late or less, and in the amount of  
30 five hundred dollars when such statement is more than ten days late;  
31 provided, however that the state secretary may waive said penalty  
32 for good cause. No waiver shall be granted when a statement has  
33 been filed more than thirty days late.

34 Upon failure of a client to file the required expense statement, the  
35 Secretary shall mail written notices to the client and to any lobbyist  
36 of said client, informing them that unless the client files the delin-  
37 quent statement within 10 business days after the date of mailing of  
38 the notices, no lobbyist may lobby on behalf of the client.