

# SENATE . . . . . No. 2169

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Michael D. Brady***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the establishment of a Massachusetts municipal lobbying policy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/19/2016</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/19/2016</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>2/22/2016</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/22/2016</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>3/7/2016</i>

# SENATE . . . . . No. 2169

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By Mr. Brady, a petition (accompanied by bill, Senate, No. 2169) (subject to Joint Rule 12) of Michael D. Brady, Chris Walsh, James B. Eldridge, Linda Dean Campbell and others for legislation relative to the establishment of a Massachusetts municipal lobbying policy. State Administration and Regulatory Oversight.

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

An Act relative to the establishment of a Massachusetts municipal lobbying policy.

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

1           Notwithstanding the provisions of any general or special law to the contrary, Chapter 3 of  
2   the General Laws as appearing in the 2014 Official Edition is hereby amended as follows:

3           In Section 39, Definitions, the following definitions are added:

4           Covered Municipal Official:

5           A mayor, city councilor, selectman, school committee member or municipal department  
6   head

7           Municipal Agent

8           A person who for compensation or reward engages in municipal lobbying which includes  
9   at least 1 lobbying communication with a government employee made by said person. The term  
10   “municipal agent” shall include a person who, as part of his regular and usual business or

professional activities and not simply incidental thereto, engages in legislative municipal lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to be engaged in municipal lobbying that is simply incidental to his regular and usual business or professional activities if he or she: (i) engages in municipal lobbying for not more than 25 hours during any reporting period; and (ii) receives less than \$2,500 during any reporting period for legislative lobbying.

#### Municipal lobbying

Any act to promote, oppose, influence, or attempt to influence the decision of any covered municipal official, where such decision concerns any ordinance proposed or change to an adopted ordinance, action or vote of a covered municipal official or the adoption, repeal, amendment or postponement of a standard, rate, rule, regulation or appointment within a covered municipal official's direct jurisdiction or the approval, modification or disapproval of any formal action by a covered municipal

#### Municipal Lobbying Local Option Acceptance

Any City or Town in the Commonwealth which by vote of the City Council and approval of the Mayor or vote of Town Meeting and approval of the Board of Selectmen accepts the provisions of Chapter 3 section 39-50 inclusive only insofar as said Chapter 3, sections 39-50 explicitly include municipal activities. Nothing in said Chapter 3, sections 39-50, inclusive shall be deemed applicable to any municipality that has not accepted this option.

#### Section 41A

32           The City or Town Clerk in any municipality that has accepted the Municipal Lobbying  
33 Local Option as defined in section 39 shall keep a docket which may be in the form of an  
34 electronic database. All information required to be filed under this section shall be organized into  
35 the docket and shall be open and accessible for public inspection during normal business hours.

36           Each municipal agent shall file an annual registration statement with the City or Town  
37 Clerk on forms prescribed and provided by said clerk. The annual registration shall be completed  
38 not later than December 15 of this year preceding the registration year.

39           A municipal agent who has been hired or retained by any entity after January 1 of the  
40 registration year shall, within 10 days after such hiring or retention register with said Clerk.  
41 Notice of termination of such employment shall also be filed promptly with said Clerk. The  
42 Clerk shall assess each Municipal Lobbyist a fee of \$100 made payable to the municipality upon  
43 registering said lobbyist on the docket.

44           The state secretary shall, upon written request from a person who is or may be subject to  
45 the provisions of this section shall render advisory opinions on the requirements of this section.  
46 An opinion rendered by the state secretary, unless amended or revoked, shall be a defense in a  
47 criminal action brought pursuant to sections 39 to 50, inclusive, and shall be binding on the state  
48 secretary, the attorney general or the district attorney in any subsequent proceedings concerning  
49 the person who requested the opinion and who acted in good faith, unless material facts were  
50 omitted or misstated by the person in the request for an opinion. Such requests shall be  
51 confidential; provided, however, that the state secretary may publish such opinions if the name of  
52 the requesting person and any other identifying information is not included in such publication  
53 unless the requesting person consents to such inclusion.

Section 42 is amended by adding the words “or Municipal lobbying” after the words “Executive lobbying” in the first sentence of the first paragraph..

Section 42 is amended by adding the words “Municipal lobbying” after the words legislative lobbying in the second sentence of the first paragraph and adding the words “ or Municipal lobbying” after the words “definition of “legislative lobbying” also in said second sentence of said first paragraph.

Section 42 is amended in the second paragraph the words “or a municipality” after the word “commonwealth.”

#### Section 43A

On or before the fifteenth day of January, complete from January first through December 31 every municipal agent shall render to said City or Town clerk an itemized statement, under oath, listing all campaign contributions made to the Committees of the mayor, a city councilor, a selectman or a school committee member as defined in section one of chapter fifty-five.

Every Municipal agent shall also include in the statement required by this section for the relevant reporting period: (1) the identification of each client for whom the municipal agent provided lobbying services; (2) a list of all matters, votes, actions, appointments, approvals, rejections or modifications said agent acted upon (3) a statement of the municipal agent’s position, if any, on each such matter, vote, action, appointment, approval, rejection or modification;(4) the identification of the client or clients on whose behalf the executive or municipal agent was acting with respect to each such matter, bill or governmental action; (5) the amount of compensation received for executive or legislative lobbying from each client with respect to such lobbying services; and (6) all direct business associations with public officials..

76           Said clerk shall assess a penalty for any statement which is filed by a municipal agent  
77 later than the prescribed date; or, if such statement has been filed by mailing, where the postmark  
78 on such mailing is later than the prescribed date. Said penalty shall be in the amount of \$50 per  
79 day up to the twentieth day and an additional \$100 per day for every day after the twentieth day  
80 until the statement is filed. Said Clerk may waive these penalties for good cause except that a  
81 waiver for good cause shall not be granted for statements filed more than thirty days late.

82           Said Clerk shall prescribe and make available the appropriate statement forms which  
83 shall be open and accessible for public inspection during normal working hours.

84           Notwithstanding the provisions of any general or special law to the contrary, no  
85 municipal agent shall knowingly offer or knowingly give to any public official or public  
86 employee, as defined in section one of chapter two hundred and sixty-eight B, or to a member of  
87 such person's immediate family any gift, as defined in said section one of said chapter two  
88 hundred and sixty-eight B, of any kind or nature, nor knowingly pay for any meal, beverage, or  
89 other item to be consumed; by such public official or employee, whether or not such gift or meal,  
90 beverage or other item to be consumed is offered, given or paid for in the course of such agent's  
91 business or in connection with a personal or social event; provided, however, that a municipal  
92 agent shall not be prohibited from offering or giving to a public official or public employee who  
93 is a member of his immediate family or a relative within the third degree of consanguinity or of  
94 such agent's spouse or the spouse of any such relative any such gift or meal, beverage or other  
95 item to be consumed; provided, however, that regulations promulgated by the state ethics  
96 commission under section 6 of chapter 268B, shall apply to this provision.

97           Section 45 A. Disqualification of Municipal Agent; hearing; effect

Section 45A. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by said Clerk, said Clerk shall initiate a preliminary inquiry into any alleged violation of sections 39A to 50A, inclusive. At the commencement of a preliminary inquiry into any such alleged violation, said Clerk shall notify the District Attorney. All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential, except that said Clerk may provide to the district attorney, attorney general, the United States Attorney evidence which may be used in a criminal proceeding. Any information provided by said Clerk pursuant to this section shall be confidential pursuant to this section and section 4 of chapter 268B, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings. Said Clerk notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

(b) If a preliminary inquiry fails to indicate reasonable cause for belief that there has been a violation of sections 39A to 50A, inclusive, said Clerk shall immediately terminate the inquiry and shall within 10 days so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry.

(c) If a preliminary inquiry indicates reasonable cause for belief that there has been a violation of sections 39A to 50A, inclusive, said Clerk shall refer such matter to the state secretary who may initiate an adjudicatory proceeding to determine whether there has been such a violation. (d) The state secretary may require by summons the attendance and testimony of witnesses and the production of books, papers or other financial documents directly relating to any matter being investigated pursuant to sections 39A to 50A, inclusive, provided that the state

secretary's subpoena power shall be limited to obtaining employment contracts and other contracts or agreements related to services rendered, work performed or compensation received in connection with municipal lobbying. Any justice of the supreme judicial court or the superior court may, upon application by the state secretary, issue a summons to be served in the same manner as summonses for witnesses in criminal cases, issued on behalf of the commonwealth and all the provisions of law relative to summonses shall apply to summonses issued under this section so far as applicable. Any justice of the supreme judicial court or the superior court may upon application by the state secretary compel the attendance of witnesses summoned as aforesaid and the giving of testimony under oath before the state secretary in furtherance of any investigation in the same manner and to the same extent as before said courts. (e) The state secretary, or his designee, may administer oaths and may hear testimony or receive other evidence in any proceeding. (f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing adjudicatory proceedings.

(g) Any person whose name is mentioned during an adjudicatory proceeding of the state secretary and who may be adversely affected thereby may appear personally before the state secretary on his own behalf, with or without counsel, to give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding. (h) All adjudicatory proceedings of the state secretary pursuant to this section shall be public and shall be subject to chapter 30A. (i) Within 30 days after completion of deliberations, the state secretary shall publish a written report of his findings and conclusions.

(j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation, the state secretary may issue an order: (1) requiring the violator to cease and desist such violation; (2) requiring the violator to file any report, statement or other information as required by sections 39A to 50A, inclusive; (3) suspending for a specified period or revoking the license and registration of the violator; or (4) requiring the violator to pay a civil penalty of not more than \$2,500 for each violation. The state secretary may file a civil action in superior court to enforce this order. (k) Final action by the state secretary under this section shall be subject to review in superior court upon petition of any party in interest filed within 30 days after the action for which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside the order of the state secretary, or it may remand the proceedings to the state secretary for such further action as the court may direct. If the court modifies or sets aside the state secretary's order or remands the proceedings to the state secretary, the court shall determine whether such modification, set aside, or remand is substantial. If the court does find such modification, set aside, or remand to be substantial, the petitioner shall be entitled to be reimbursed from the treasury of the commonwealth for reasonable attorneys' fees and all court costs incurred by him in the defense of the charges contained in the proceedings. The amount of such reimbursement shall be awarded by the court but shall not exceed \$20,000 per person, per case. (l) Any person who violates the confidentiality of an inquiry under this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both. (m) The state secretary shall automatically disqualify any person convicted of a felony in violation of chapter 3, chapter 55, or chapter 268A from acting or registering as an executive, legislative or municipal agent for a period of 10 years from the date of conviction.

Section 46A Docket of municipal agents; maintenance; calendar year

167           Section 46A. The docket of municipal agents shall be maintained for each calendar year,  
168 beginning on the first of January.

169           Section 50A Sections inapplicable to public employees or agents or other persons  
170 requested to appear before municipal official, board, council, committee or commission

171           Section 50A. Sections thirty-nine to forty-nine, inclusive, shall not apply to employees or  
172 agents of the commonwealth or of a city, town, district or regional school district who are acting  
173 in their capacity as such employees or agents or to any person requested to appear before any  
174 municipal official or board, council, committee or commission, provided, that such person  
175 performs no other act of Municipal Lobbying as so defined by this Chapter.