

2018 Bill 11

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Fourth Session, 29th Legislature, 67 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 11**

**LOBBYISTS AMENDMENT ACT, 2018**

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THE MINISTER OF DEMOCRATIC RENEWAL

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 11

2018

### LOBBYISTS AMENDMENT ACT, 2018

(Assented to \_\_\_\_\_, 2018)

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

**Amends SA 2007 cL-20.5**

**1 The *Lobbyists Act* is amended by this Act.**

**2 Section 1 is amended**

**(a) in subsection (1)**

**(i) by adding the following after clause (d):**

(d.1) “former public office holder” means

- (i) a former member of the Executive Council,
- (ii) a former member of the Premier’s and Ministers’ staff as defined in the *Conflicts of Interest Act*,
- (iii) any individual who formerly occupied a prescribed position with a prescribed Provincial entity within the meaning of sections 3.1 and 3.2,
- (iv) a former designated office holder as defined in Part 2 of the *Public Service Act*,
- (v) a former designated senior official within the meaning of Part 4.3 of the *Conflicts of Interest Act*, and
- (vi) any individual who

## **Explanatory Notes**

- 1** Amends chapter L-20.5 of the Statutes of Alberta, 2007.
- 2** Changes and adds interpretive provisions.

- (A) formerly occupied a senior executive position in a department, whether by the title of chief executive officer or some other title, or
  - (B) formerly occupied the position of assistant deputy minister or a position of comparable rank in a department;
- (ii) **in clause (e) by adding “**, but does not include communication between an organization and its members, officers or employees or between a person or partnership and its shareholders, partners, officers or employees” **after “endorse a particular opinion”;**
  - (iii) **in clause (f)(i) by adding “**, directly or through grassroots communication,” **after “communicate with a public office holder”;**
  - (iv) **in clause (h)(i) and (ii) by striking out “100 hours” and substituting “50 hours”;**
  - (v) **in clause (i) by striking out “section 6” and substituting “sections 6 and 6.1”;**
  - (vi) **by repealing clause (j) and substituting the following:**
    - (j) “prescribed Provincial entity” means an entity that is identified as a prescribed Provincial entity under section 3.1;
  - (vii) **by repealing clause (j.1) and substituting the following:**
    - (j.1) “Provincial entity” means
      - (i) a public agency within the meaning of Part 4.3 of the *Conflicts of Interest Act*, and
      - (ii) any entity not already included in subclause (i) that is a Provincial agency as defined in section 1 of the *Financial Administration Act*, including any body or entity referred to in the List of



Government Entities set out in the most recent Government Estimates and any body or entity set out in the most recent Government of Alberta Annual Report;

**(viii) by repealing clause (k) and substituting the following:**

- (k) “public office holder” means
  - (i) a Member of the Legislative Assembly and any individual on a Member’s staff,
  - (ii) a member of the Executive Council,
  - (iii) a member of the Premier’s and Ministers’ staff as defined in the *Conflicts of Interest Act*,
  - (iv) an individual appointed to a board, committee or council established under section 7 of the *Government Organization Act*, and
  - (v) an employee, officer, director or member, as the case may be, of a department or prescribed Provincial entity;

**(b) by repealing subsection (2)(a) and substituting the following:**

- (a) Members of the Legislative Assembly and any individuals on their staff;
  - (a.1) members of the Executive Council;
  - (a.2) a member of the Premier’s and Minister’s staff as defined in the *Conflicts of Interest Act*;

**(c) by adding the following after subsection (3):**

**(3.1)** For the purposes of determining whether lobbying amounts to at least 50 hours annually under subsection (1)(h), time spent lobbying includes time spent preparing for communication and communicating with a public office holder.



### **3 Section 3 is amended**

#### **(a) in subsection (1)**

##### **(i) by adding the following after clause (g):**

(g.1) individuals who are recognized as elders by their aboriginal community;

##### **(ii) by repealing clause (m) and substituting the following:**

(m) any other individuals or categories of individuals identified under section 3.2(2).

#### **(b) by repealing subsection (2)(c) and substituting the following:**

(c) to a public office holder by an individual on behalf of a person or organization if the individual is participating on a board, commission, council or other similar body established by a public office holder, the Government or a prescribed Provincial entity on any matter referred to in section 1(1)(f)(i);

### **4 The following is added after section 3:**

#### **Identifying prescribed Provincial entities**

**3.1(1)** In this section and section 3.2, “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act.

**(2)** Subject to subsection (3)(b), a public agency within the meaning of Part 4.3 of the *Conflicts of Interest Act* is a prescribed Provincial entity for the purposes of this Act.

**(3)** The Minister may by order

(a) identify any Provincial entity referred to in section 1(1)(j.1)(ii) as a prescribed Provincial entity for the purposes of any provision of this Act in which the term “prescribed Provincial entity” is used, and



**3** Section 3 presently reads in part:

*3(1) This Act does not apply to any of the following when acting in their official capacity:*

*(g) members of the council of a band as defined in subsection 2(1) of the Indian Act (Canada) or of the council of an Indian band established by an Act of the Parliament of Canada, individuals on the staff of any of those members, or employees of any of those councils;*

*(m) any other individuals or categories of individuals prescribed in the regulations.*

*(2) This Act does not apply in respect of a submission made in any manner as follows:*

*(c) to a public office holder by an individual on behalf of a person or organization in response to a request initiated by a public office holder for advice or comment on any matter referred to in section 1(1)(f)(i);*

**4** Identifying prescribed Provincial entities; prescribed positions and excluded individuals; publication of orders.

- (b) indicate that any Provincial entity referred to in section 1(1)(j.1) is not a prescribed Provincial entity for the purposes of this Act.

**Prescribed positions and excluded individuals**

**3.2(1)** The Minister may by order identify any position with a prescribed Provincial entity as a prescribed position for the purposes of any provision of this Act in which the term “prescribed position” is used.

**(2)** For the purposes of section 3(1)(m), the Minister may by order identify individuals or categories of individuals to whom the Act does not apply when they are acting in their official capacity.

**Publication of orders**

**3.3(1)** The *Regulations Act* does not apply to an order under section 3.1 or 3.2.

**(2)** Orders made under sections 3.1 and 3.2 must be published in Part 1 of *The Alberta Gazette*.

**5 Section 4(3) is repealed.**

**6 Section 5(3) is repealed.**

**7 Section 6(8) is repealed.**

**5** Section 4(3) presently reads:

*(3) If, on the coming into force of this section, a consultant lobbyist is performing an undertaking, the designated filer shall file a return with the Registrar in accordance with subsection (1) not later than 30 days after the day on which this section comes into force.*

**6** Section 5(3) presently reads:

*(3) If, on the coming into force of this section, an organization has an organization lobbyist, the designated filer of the organization shall file a return with the Registrar in accordance with subsection (1) within 2 months after the day on which this section comes into force and after that in accordance with subsection (1)(b).*

**7** Section 6(8) presently reads:

*(8) If on the coming into force of this subsection a person lobbies and holds a contract for providing paid advice, the person must, within 60 days of the coming into force of this subsection,*

**8 The following is added after section 6:**

**Contingent payment to consultant lobbyist prohibited**

**6.1(1)** A consultant lobbyist shall not receive any payment that is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying.

**(2)** A client of a consultant lobbyist shall not make any payment to a consultant lobbyist that is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying.

**(3)** Despite subsections (1) and (2), where a consultant lobbyist, before the coming into force of this section, has entered into an agreement that provides for payment that is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying, such payment is permitted until the earlier of

- (a) the date on which the agreement that provides for the payment expires, and
- (b) 24 months after this section comes into force.

**(4)** The portion of an agreement referred to in subsection (3) that provides for payment that is, in whole or in part, contingent on the consultant lobbyist's success in lobbying may not be renewed or extended.

**Prohibited gifts**

**6.2** A consultant lobbyist or organizational lobbyist shall not, in the course of lobbying activities, give or promise any gift, favour or other benefit to the public office holder being or intended to be lobbied that the public office holder is not allowed to accept or that, if given, would place the public office holder in a conflict of interest.

*(a) cease to hold the contract, or*

*(b) cease to lobby.*

**8** Contingent payment to consultant lobbyist prohibited;  
prohibited gifts.

**9 Section 11 is amended**

**(a) by repealing subsection (6)(c) and substituting the following:**

- (c) subject to subsections (9), (10) and (11), remove a return from the registry if the designated filer who filed the return does not comply with
  - (i) section 5(1)(b),
  - (ii) section 10, or
  - (iii) the extension of time allowed for the filing of a return under subsection (7)(b).

**(b) by repealing subsection (9) and substituting the following:**

**(9)** If the Registrar proposes to remove a return from the registry under subsection (6)(c),

- (a) the Registrar shall first provide a notice to the designated filer who filed the return of its proposed removal and the reason for the proposed removal, and
- (b) within 30 days after the provision of a notice under clause (a), the designated filer may file a response including the returns and information necessary to bring the return into compliance with section 5(1)(b) or 10 or with an extension of time under subsection (7)(b), as applicable.

**(10)** Following the expiry of the 30 days referred to in subsection (9)(b), if the Registrar is not satisfied that section 5(1)(b) or 10 or an extension of time under subsection (7)(b), as applicable, have been complied with, the return may be removed from the registry under subsection (6)(c).

**(11)** If a return is removed from the registry under subsection (6)(c),

- (a) the Registrar shall inform the designated filer who filed the return of its removal and the reason for the removal,

**9** Section 11 presently reads in part:

*11(1) There shall be a Registrar for the purposes of this Act.*

*(6) The Registrar may*

- (a) verify the information contained in any return filed or other document submitted under this Act,*
- (b) subject to subsection (7), refuse to accept a return or other document that does not comply with the requirements of this Act or the regulations or that contains information not required to be provided or disclosed under this Act, and*
- (c) remove a return from the registry if the designated filer who filed the return does not comply with section 10(1)(c).*

*(9) If a return is removed from the registry under subsection (6)(c),*

- (a) the Registrar shall inform the designated filer who filed the return of its removal and the reason for the removal, and*
- (b) that designated filer is deemed, for the purposes of his or her existing and future obligations under this Act, not to have filed the return.*

- (b) that designated filer is deemed, for the purposes of his or her existing and future obligations under this Act, not to have filed the return, and
- (c) the Registrar shall publish a notice of the removal of the return from the registry in any form and manner that the Registrar considers appropriate.

**10 Section 18 is amended**

- (a) by repealing subsection (1) and substituting the following:**

**Administrative penalties**

**18(1)** Where the Registrar is of the opinion that a person has contravened one or more of sections 4, 5, 6, 6.1, 6.2 and 10, the Registrar may, by notice in writing served on the person personally or by mail, require that person to pay to the Crown an administrative penalty in the amount set out in the notice for each contravention.

- (b) by adding the following after subsection (1):**

**(1.1)** A notice of administrative penalty must be given in writing and must contain the following information:

- (a) the name of the person required to pay the administrative penalty;
- (b) the particulars of the contravention;
- (c) the amount of the administrative penalty and the date by which it must be paid;
- (d) a statement of the right to appeal to the Court of Queen's Bench.

- (c) by adding the following after subsection (2):**

**(2.1)** The amount of an administrative penalty shall be determined by the Registrar, who shall take into account the following factors:



**10** Section 18 presently reads in part:

*18(1) Where the Registrar is of the opinion that a person has contravened a provision of this Act or the regulations, the Registrar may, subject to the regulations under subsection (9), by notice in writing served on the person personally or by mail, require that person to pay to the Crown an administrative penalty in the amount set out in the notice for each contravention.*

*(2) The maximum amount of an administrative penalty that may be imposed under subsection (1) is \$25 000.*

*(9) The Lieutenant Governor in Council may make regulations*

- (a) respecting the form and contents of notices of administrative penalties for the purposes of subsection (1);*
- (b) prescribing contraventions in respect of which an administrative penalty may be imposed and, subject to subsection (2), prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed;*
- (c) respecting appeals from notices of administrative penalties issued under this section;*
- (d) respecting any other matter necessary for the administration of the system of administrative penalties.*

- (a) the severity of the contravention;
- (b) the degree of wilfulness or negligence in the contravention;
- (c) whether or not there was any mitigation relating to the contravention;
- (d) whether or not steps have been taken to prevent reoccurrence of the contravention;
- (e) whether or not the person who received the notice of administrative penalty has a history of non-compliance;
- (f) whether or not the person who received the notice of administrative penalty reported himself or herself on discovery of the contravention;
- (g) whether or not the person who received the notice of administrative penalty has received an economic benefit as a result of the contravention;
- (h) any other factors that, in the opinion of the Registrar, are relevant.

**(d) in subsection (9)**

- (i) by repealing clause (a);**
- (ii) in clause (b) by striking out “prescribing contraventions” and substituting “prescribing additional contraventions”;**
- (iii) by repealing clause (c).**

**11 The following is added after section 18:**

**Appeal of administrative penalty**

**18.1(1)** A person who is served with a notice of administrative penalty may appeal the Registrar’s decision to impose an administrative penalty by filing an application with the Court of Queen’s Bench within 30 days from the date the notice of administrative penalty was served.

**11** Appeal of administrative penalty.

(2) The application shall describe the notice of administrative penalty and state the reasons for the appeal.

(3) A copy of the application shall be served on the Registrar not less than 30 days before the appeal is to be heard.

(4) The Court may, on application either before or after the time referred to in subsection (1), extend that time if the Court considers it appropriate to do so.

(5) On hearing the appeal, the Court of Queen's Bench may confirm, rescind or vary the amount of the administrative penalty.

**12 Section 20 is amended by repealing clauses (a), (a.2) and (f).**

**13 Schedule 1 is amended**

**(a) by repealing section 1(3);**

**(b) in section 2**

**(i) in clause (e) by adding** “and, if known, the completion or termination date of the undertaking” **after** “entered into”;

**(ii) by repealing clause (k) and substituting the following:**

(k) during the 24 months following the coming into force of section 6.1 of this Act, in the case of an

**12** Section 20 presently reads in part:

*20 The Lieutenant Governor in Council may make regulations*

- (a) prescribing Provincial entities for the purpose of any provision of this Act in which the term “prescribed Provincial entity” is used;*
- (a.2) prescribing individuals or categories of individuals to whom this Act does not apply when they are acting in their official capacity;*
- (f) respecting the determination of what constitutes time spent lobbying for the purpose of section 1(1)(h);*

**13** Schedule 1 presently reads in part:

*Schedule 1*

*Consultant Lobbyist Return*

*1(3) For the purpose of section 2 of this Schedule, “former public office holder” means*

- (a) a former member of the Executive Council,*
- (b) a former member of the Premier’s and Ministers’ staff as defined in the Conflicts of Interest Act,*

agreement entered into before the coming into force of section 6.1 of this Act, whether the payment to the consultant lobbyist is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying as described in section 1(1)(f) of this Act;

**(iii) by repealing clause (m) and substituting the following:**

(m) the name of any government, government agency or prescribed Provincial entity that funded the client, in whole or in part, within the last 12 months and the amount of the funding;

(m.1) the name of any government, government agency or prescribed Provincial entity from which the client requested funding within the last 12 months and the amount of the funding requested;

**(iv) in clause (r)(ii) by adding “, 6.1 or 6.2” after “section 6”.**

- (c) *any individual who formerly occupied a prescribed position with a prescribed Provincial entity,*
- (d) *a former designated office holder as defined in Part 2 of the Public Service Act,*
- (e) *a former designated senior official within the meaning of Part 4.3 of the Conflicts of Interest Act, and*
- (f) *any individual who*
  - (i) *formerly occupied a senior executive position in a department, whether by the title of chief executive officer or some other title, or*
  - (ii) *formerly occupied the position of assistant deputy minister or occupied a position of comparable rank in a department.*

*2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:*

- (e) *the date the undertaking was entered into;*
- (k) *if applicable, whether the payment to the consultant lobbyist is, in whole or in part, contingent on the degree of success in lobbying as described in section 1(1)(f) of this Act;*
- (m) *the name of any government or government agency that funds the client, in whole or in part, and the amount of the funding;*
- (r) *a declaration stating that*
  - (i) *no consultant lobbyist named in the return holds a contract for providing paid advice to a department or prescribed Provincial entity, or that each consultant lobbyist named in the return who holds a contract has an exemption from the Ethics Commissioner for the contract, and*
  - (ii) *the following are not in contravention of section 6 of this Act:*
    - (A) *every consultant lobbyist named in the return;*

**14 Schedule 2 is amended**

**(a) in section 1 by renumbering section 1(1) as section 1 and by repealing subsection (2);**

**(b) in section 2**

**(i) by repealing clause (l) and substituting the following:**

(l) the name of any government, government agency or prescribed Provincial entity that funded the organization, in whole or in part, within the last 12 months and the amount of the funding;

(l.1) the name of any government, government agency or prescribed Provincial entity from which the organization requested funding within the last 12 months and the amount of the funding requested;

**(ii) in clause (q)(ii) by adding “or 6.2” after “section 6”.**

**15 The following sections come into force on Proclamation:**

section 2(a)(i), (vi) and (vii);  
section 3(a)(ii);  
section 12;  
section 13(a);  
section 14(a).



*(B) to the knowledge of the designated filer after reasonable inquiry, every person associated with those consultant lobbyists;*

**14** Schedule 2 presently reads in part:

*Schedule 2*

*Organization Lobbyist Return*

*1(1) Words and expressions used in this Schedule have the same meaning as in sections 1 and 6 of this Act.*

*2 The designated filer shall set out in the return for the purpose of section 5 the following information:*

*(l) the name of any government or government agency that funds the organization, in whole or in part, and the amount of the funding;*

*(q) a declaration stating that*

*(ii) the following are not in contravention of section 6 of this Act:*

*(A) every organization lobbyist named in the return;*

*(B) to the knowledge of the designated filer after reasonable inquiry, every person associated with those organization lobbyists;*

**15** Coming into force.





