

LOCAL GOVERNMENT UNITS AND THE ANTI-NEPOTISM LAWS

Introduction

On March 19, 2012, Governor Mitch Daniels signed into law House Enrolled Act 1005 ("HEA 1005"). HEA 1005 introduces new statutes that require the implementation of anti-nepotism policies by local units of government and makes approval of the budgets of certain entities contingent on local government adoption of such policies. The laws took effect July 1, 2012.

Anti-Nepotism Policy Regarding Employment of Relatives (IC 36-1-20.2)

Section 7 of HEA 1005 created a new statute at IC 36-1-20.2 that establishes minimum requirements for the employment of relatives by a local unit of government. This statute also requires the legislative body of a unit to adopt an anti-nepotism policy and the unit's executive to file an annual certified statement with State Board of Accounts ("SBOA") stating that the unit's legislative body adopted such a policy. Failure to implement such a policy will prevent the Department of Local Government Finance ("Department") from approving the unit's budget or additional appropriations for the ensuing year.

Below are guidelines prescribed by IC 36-1-20.2 for the content and adoption of an anti-nepotism policy regarding the employment of relatives by counties, municipalities, and townships:

Exclusions

An individual who is employed by a unit on July 1, 2012 is not subject to these policies unless the individual has a break in employment with the unit. Breaks in employment do not include the following:

- (1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation.
- (2) The individual's employment with the unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.

These policies do not apply to performance of duties as a

- (1) precinct election officer as defined in IC 3-5-2-40.1; or
- (2) volunteer firefighter.

This statute does not abrogate or affect an employment contract with a unit that:

- (1) an individual is a party to; and
- (2) is in effect on the date the individual's relative begins serving a term of an elected office of the unit.

Definitions

“Direct line of supervision” means an elected officer or employee who is in a position to affect the terms and conditions of another individual’s employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

“Employed” means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

“Member of the fire department” means the fire chief or a firefighter appointed to the department.

“Member of the police department” means the police chief or a police officer appointed to the department.

“Relative” means any of the following:

- (1) A spouse;
- (2) A parent or stepparent;
- (3) A child or stepchild;
- (4) A brother, sister, stepbrother, or stepsister;
- (5) A niece or nephew;
- (6) An aunt or uncle; or
- (7) A daughter-in-law or son-in-law.

An adopted child of an individual is treated as a natural child of the individual. The terms “brother” and “sister” include a brother or sister by the half blood.

Employment of Relatives

Indiana Code 36-1-20.2 establishes the requirements regarding the employment of relatives. The legislative body of a unit must adopt a policy that includes, at a minimum, the requirements set forth below. However, the policy may include requirements that are more stringent or detailed than any provision below and apply to individuals who are exempted or excluded from the application of this statute. For example, a unit may prohibit the employment of a relative that is not otherwise prohibited by this statute.

The annual report filed by a unit with SBOA under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented an anti-nepotism policy.

Employment Practices

Individuals who are relatives may not be employed by a unit in a position that results in one relative being in the direct line of supervision of the other relative.

With regard to an individual who:

(1) is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit; and

(2) is not exempt from the application of this statute,

unless the policy adopted by a unit provides otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate the prohibition against one relative being in the direct line of supervision of the other relative.

Unless the unit's policy provides otherwise, the individual described above may not:

(1) be promoted to a position or

(2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department

if the new position would violate the prohibition against one relative being in the direct line of supervision of the other relative.

Unless a unit's policy provides otherwise, a sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.

Unless a unit's policy provides otherwise, an individual:

(1) who served as coroner;

(2) who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana;

(3) who, as coroner, received certification under IC 36-2-14-22.3; and

(4) whose successor in the office of coroner is a relative of the individual;

may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

If a township trustee's office is located in the township trustee's personal residence, unless a unit's policy provides otherwise, the township trustee may hire only one employee who is a relative. The employee:

(1) may be hired to work only in the township trustee's office;

(2) may be in the township trustee's direct line of supervision; and

(3) may not receive total salary, benefits, and compensation that exceed \$5,000 per year.

Certification Requirement

Each elected officer of a unit must annually certify in writing, subject to the penalties for perjury, that the officer has not violated this statute. Each officer must submit the certification to the executive of the unit not later than December 31 of each year.

Failure to Comply

If SBOA finds that a unit has not implemented an anti-nepotism policy in compliance with IC 36-1-20.2, it must forward the information to the Department.

If a unit has not implemented such a policy, the Department may not approve:

- (1) the unit's budget; or
- (2) any additional appropriations for the unit;
- (3) for the ensuing calendar year until SBOA certifies to the Department that the unit is in compliance with IC 36-1-20.2.

Anti-Nepotism Policy Regarding Contracting with Relatives (IC 36-1-21)

Section 8 of HEA 1005 creates a new statute at IC 36-1-21 that establishes minimum requirements regarding contracting with relatives of elected officials of a unit. This new statute also requires that the legislative body of a unit adopt an anti-nepotism policy and that the unit's executive file an annual certified statement with SBOA stating that the unit's legislative body adopted such a policy. Failure to implement a policy will prevent the Department from approving the unit's budget or additional appropriations for the ensuing year.

Below are guidelines prescribed by IC 36-1-21 for the content and adoption of an anti-nepotism policy regarding contracting with relatives of elected officials of a unit:

Definitions

"Elected official" means:

- (1) the executive or a member of the executive body of the unit;
- (2) a member of the legislative body of the unit; or
- (3) a member of the fiscal body of the unit.

"Relative" means any of the following:

- (1) A spouse;
- (2) A parent or stepparent;
- (3) A child or stepchild;
- (4) A brother, sister, stepbrother, or stepsister;
- (5) A niece or nephew;
- (6) An aunt or uncle; or
- (7) A daughter-in-law or son-in-law.

An adopted child of an individual is treated as a natural child of the individual. The terms "brother" and "sister" include a brother or sister by the half blood.

Contracting with a Unit

Indiana Code 36-1-21 establishes minimum requirements regarding contracting with a unit. The legislative body of a unit must adopt a policy that includes, at a minimum, the requirements set forth below. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision below; and
- (2) apply to individuals who are exempted or excluded from the application of this statute.

A unit may prohibit or restrict an individual from entering into a contract with the unit that is not otherwise prohibited or restricted by this statute.

The annual report filed by a unit with SBOA under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this statute.

Contracting Practices

A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

- (1) an individual who is a relative of an elected official; or
 - (2) a business entity that is wholly or partially owned by a relative of an elected official;
- only if the requirements below are satisfied and the elected official does not violate IC 35-44-1-3.

A unit may enter into a contract or renew a contract with an individual or business entity described above if:

- (1) the elected official files with the unit a full disclosure, which must:
 - a. be in writing;
 - b. describe the contract or purchase to be made by the unit;
 - c. describe the relationship that the elected official has to the individual or business entity that contracts or purchases;
 - d. be affirmed under penalty of perjury;
 - e. be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and
 - f. be filed, not later than 15 days after final action on the contract or purchase, with:
 - i. SBOA; and
 - ii. the clerk of the circuit court in the county where the unit takes final action on the contract or purchase;
- (2) the appropriate agency of the unit:
 - a. makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or
 - b. makes a certified statement of the reasons why the vendor or contractor was selected; and
- (3) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

An elected official must also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

These provisions do not affect the initial term of a contract in existence at the time the term of office of the elected official of the unit begins.

Certification Requirement

Each elected officer of a unit must annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this statute. An officer must submit the certification to the executive of the unit not later than December 31 of each year.

Failure to Comply with IC 36-1-21

If SBOA finds that a unit has not implemented an anti-nepotism policy in compliance with IC 36-1-21, it must forward the information to the Department.

If a unit has not implemented a policy under this statute, the Department may not approve:

- (1) the unit's budget; or
- (2) any additional appropriations for the unit;

for the ensuing calendar year until SBOA certifies to the Department that the unit has adopted a policy under this statute.

Department Approval Contingent on Adoption of Policy (IC 5-11-13-1.1)

Section 2 of HEA 1005 introduces a new statute at IC 5-11-13-1.1. Accordingly, a unit's personnel report, as defined by IC 5-11-13-1, submitted after December 31, 2012 must include a statement by the unit's executive that the unit implemented an anti-nepotism policy under IC 36-1-20.2 and IC 36-1-21.

The Department may not approve the unit's budget or any additional appropriations for the unit for the ensuing calendar year if the unit does not implement such a policy.