

Proposed Rule
LSA Document #07-231

DIGEST

Amends [25 IAC 6-1-1](#), [25 IAC 6-2-1](#), [25 IAC 6-2-2](#), [25 IAC 6-3-1](#), and [25 IAC 6-4-1](#), relating to rules governing executive branch lobbying, to establish an initial \$50 registration fee, add a \$50 annual report filing fee, a late fee for filing, and an annual registration requirement and add an explicit exception for licenses and permits; expand the exception relating to gathering bid and procurement information; add "date of contact" as reportable information; further define "compensation"; and accurately reflect ethics rules for classes of persons prohibited from lobbying. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[25 IAC 6-1-1](#); [25 IAC 6-2-1](#); [25 IAC 6-2-2](#); [25 IAC 6-3-1](#); [25 IAC 6-4-1](#)

SECTION 1. [25 IAC 6-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[25 IAC 6-1-1](#) Definitions

Authority: [IC 4-2-8-7](#)

Affected: [IC 4-2-6-1](#); [IC 4-2-6-11.5](#); [IC 4-21.5-2-4](#); [IC 4-21.5-2-6](#); [IC 4-22-2-3](#); [IC 5-14-1.5](#); [IC 5-16](#); [IC 5-22](#); [IC 5-23](#); [IC 8-23](#); [IC 36-1-2-13](#); **Article 1, Section 31 of the Constitution of the State of Indiana**

Sec. 1. The following definitions apply throughout this article:

- (1) "Agency" has the meaning set forth in [IC 4-2-6-1](#).
- (2) "Communication" means the exchange of any thoughts, messages, or information by:
 - (A) contact in person;
 - (B) telephone;
 - (C) letter;
 - (D) telegraph;
 - (E) facsimile;
 - (F) electronic mail;
 - (G) text messaging; or
 - (H) any other form of electronic transmission of information.
- (3) "Department" means the Indiana department of administration.
- (4) "Employer" means the person that principally employs the executive branch lobbyist. The term does not include a person that:
 - (A) only retains or contracts with an executive branch lobbyist as an independent contractor; and
 - (B) does not directly employ that executive branch lobbyist.
- (5) "Engage" or "engagement" means any arrangement whereby a person receives financial consideration, in the form of salary, retainer, compensation, or other fee, for or on behalf of any employer or real party in interest to:
 - (A) influence an executive branch action; or
 - (B) conduct any executive branch lobbying activity.
- (6) "Executive branch action" means a decision of an agency regarding either of the following:
 - (A) The expenditure of state funds with respect to the award of:
 - (i) a contract;
 - (ii) a lease; or
 - (iii) any other financial arrangement;under which ~~such~~ **the** funds are distributed or allocated.
 - (B) The:
 - (i) proposal;
 - (ii) drafting;
 - (iii) development;
 - (iv) consideration;
 - (v) promulgation;
 - (vi) amendment;

(vii) repeal; or

(viii) rejection;

by any agency of a rule as defined by [IC 4-22-2-3\(b\)](#).

(7) "Executive branch lobbying activity" means action or communication made to delay, oppose, promote, or otherwise influence the outcome of an executive branch action. The term does not include any of the following:

(A) The application or negotiation of an award for any state or federal grant.

(B) The resolution of any outstanding tax matter, including:

(i) audits;

(ii) administrative appeals;

(iii) claims for refund; or

(iv) collection activity;

with the department of state revenue or the department of local government finance.

(C) Communication regarding the award of incentives related to an economic development project negotiated by the Indiana economic development corporation.

(D) Paid advertising communications that are disseminated to the public by any of the following:

(i) Radio.

(ii) Television.

(iii) A newspaper or periodical of general circulation.

(E) Any communications, including testimony submitted during public hearing or submitted in writing, at a meeting conducted pursuant to [under IC 5-14-1.5](#).

(F) A response to a request for proposal, a bid, a request for quote, or other solicitation made by an agency in conformance with applicable public works or procurement statutes or rules promulgated thereunder.

(G) Other public or private testimony or communications solicited by an agency. The agency soliciting testimony or communications must keep written documentation for a period of four (4) years detailing with particularity the public policy purpose for extending each such invitation.

(H) As provided by [IC 4-2-6-11.5](#), any action or communication made as a member of a board, commission, committee, council, taskforce, workgroup or other advisory body of the executive department that is authorized only to make nonbinding recommendations.

(I) The application or negotiation of an award for any state or federal license or permit.

(8) "Executive branch lobbyist" means any individual who is employed and receives payment, or who contracts for financial consideration, exceeding one thousand dollars (\$1,000) in any registration year, for the purpose of engaging in executive branch lobbying activity. The term does not include any of the following:

(A) An elected or appointed officer, employee, or special state appointee of a federal or state agency, the judicial department of state government, the legislative department of state government, a state educational institution, (as defined in [IC 20-12-0.5-1](#)); or a political subdivision (as defined in [IC 36-1-2-13](#)) who attempts to influence an executive branch action that is within the scope of the individual's employment or official duties.

(B) An attorney or any other individual who represents a client in any proceeding conducted under [IC 4-21.5](#), in a comparable proceeding conducted by an agency exempted by [IC 4-21.5-2-4](#), or in a proceeding described in [IC 4-21.5-2-6](#).

(C) A person who represents a religious organization for the purpose of protecting the organization's constitutional rights.

(D) Any newspaper or other periodical of general circulation, book publisher, news wire service, or radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical or radio or television station) that in the ordinary course of business publishes news items, editorials, or other comments or paid advertisement that directly or indirectly urge executive branch action if such:

(i) newspaper;

(ii) periodical;

(iii) book publisher;

(iv) radio or television station; or

(v) individual;

engages in no additional activities in connection with executive branch actions.

(E) A person whose communication with an agency is for the sole purpose of gathering information relating to a bid, procurement, or public work that is produced in a public record done under and in full compliance with:

(i) [IC 5-16](#) (state public works);

(ii) [IC 5-22](#) (public procurement); or

(iii) [IC 5-23](#) (public-private agreements);

(iv) [IC 5-30](#) (design-build public works projects); or

(v) [IC 8-23](#) (Indiana department of transportation highway contracts).

(F) An individual acting:

(i) on his or her own behalf; or

(ii) under Article 1, Section 31 of the Constitution of the State of Indiana;

who assembles together with other individuals for the common good or petitions an agency for redress of grievances.

(9) "Financial arrangement" means the purchase or acquisition of any:

(A) property;

(B) interest in property;

(C) service; or

(D) other asset;

of an agency valued in excess of ten thousand dollars (\$10,000).

(10) "Person" means any:

(A) individual;

(B) proprietorship;

(C) partnership;

(D) unincorporated association;

(E) trust;

(F) business trust;

(G) group;

(H) limited liability company; or

(I) corporation;

whether or not operated for profit.

(11) "Real party in interest" means the person on whose behalf the executive branch lobbyist is acting, if that person is not the employer.

(Indiana Department of Administration; [25 IAC 6-1-1](#); filed Dec 2, 2005, 2:00 p.m.: 29 IR 1202)

SECTION 2. [25 IAC 6-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[25 IAC 6-2-1](#) Initial registration statement

Authority: [IC 4-2-8-7](#)

Affected: [IC 4-2-6](#); [IC 4-2-7](#)

Sec. 1. ~~Within fifteen (15) business days of making any contact with an agency regarding an executive branch action, An executive branch lobbyist shall file with the department a signed~~ **an initial registration statement on a form approved by the commissioner which within fifteen (15) business days of making an executive branch lobbying contact with an agency. An executive branch lobbyist must reregister in each subsequent calendar year within fifteen (15) days of making an executive branch lobbying contact with an agency.** The registration statement shall include the following information:

(1) The:

(A) name;

(B) business address;

(C) telephone number;

(D) electronic mail address; and

(E) occupation;

of the executive branch lobbyist.

(2) The name, business address, telephone number, and electronic mail address of the **following**:

(A) **The** executive branch lobbyist's employer. ~~and~~

(B) Any real party in interest on whose behalf the executive branch lobbyist is acting, if it is different from the employer.

(3) A brief description of the subject matter to which the engagement or engagements relate.

(4) The identity of the agency or agencies to which the engagement or engagements relate.

(5) The date of the initial executive branch lobbying contact for each engagement or engagements.

~~(5) (6)~~ **(6)** A verified statement certifying that in the course of engaging in any executive branch lobbying activity, the executive branch lobbyist has read and will comply with the following:

(A) The state statutes governing ethics and conflicts of interest set forth in [IC 4-2-6](#) and rules promulgated thereunder. ~~and~~

(B) The state statutes governing the office of the inspector general **as set forth in** [IC 4-2-7](#) and rules promulgated thereunder.

(7) Statements and reports filed under this section must be filed under oath.

(8) The department shall charge each executive branch lobbyist an initial registration fee of fifty dollars (\$50) per calendar year.

(Indiana Department of Administration; [25 IAC 6-2-1](#); filed Dec 2, 2005, 2:00 p.m.: 29 IR 1203)

SECTION 3. [25 IAC 6-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[25 IAC 6-2-2](#) Annual reports

Authority: [IC 4-2-8-7](#)

Affected: [IC 4-2-6](#); [IC 4-2-8-3](#); [IC 4-2-8-4](#)

Sec. 2. (a) In addition to filing an initial registration statement under section 1 of this rule, starting in 2007, an executive branch lobbyist shall file with the department, not later than January 15, a signed annual report on a form approved by the commissioner, which shall include the following information:

(1) The:

- (A) name;
- (B) business address;
- (C) telephone number;
- (D) electronic mail address; and
- (E) occupation;

of the executive branch lobbyist.

(2) The:

- (A) name;
- (B) business address;
- (C) telephone number; and
- (D) electronic mail address;

of the executive branch lobbyist's principal employer.

(3) The:

- (A) name;
- (B) business address; and
- (C) electronic mail address;

of each real party in interest represented by the executive branch lobbyist that has a continuing engagement described in the initial registration statement filed by the executive branch lobbyist.

(4) The total amount of payments received for each engagement during the past year **as follows:**

(A) In the case of a fee or retainer paid to an organization or entity that employs the lobbyist, the full amount of the fee or retainer paid to the organization or employer shall be reported by the executive branch lobbyist.

(B) In the case of an executive branch lobbyist who is paid a salary by an employer who is also the executive branch lobbyist's real party in interest, the executive branch lobbyist shall prorate the salary amount by the amount of time spent on executive branch lobbying activity.

(5) A brief description of the subject matter for the executive branch lobbying activities in which the executive branch lobbyist was engaged during the past year.

(6) The identity of the agency or agencies to which the executive branch lobbying activities during the past year were directed.

(7) The date of the initial executive branch lobbying contact for each engagement or engagements.

(8) Statements and reports filed under this section must be filed under oath.

(9) The department shall charge each executive branch lobbyist an annual report filing fee of fifty dollars (\$50) per calendar year.

(b) With each annual report, an executive branch lobbyist must file a verified statement certifying that in the course of engaging in any executive branch lobbying activity, the executive branch lobbyist has read and complied with the following:

- (1) The state statutes governing ethics and conflicts of interest set forth in [IC 4-2-6](#) and rules promulgated thereunder. ~~and~~
- (2) The state statutes governing the office of the inspector general as set forth in [IC 4-2-7](#) and rules promulgated thereunder.

(Indiana Department of Administration; [25 IAC 6-2-2](#); filed Dec 2, 2005, 2:00 p.m.: 29 IR 1203)

SECTION 4. [25 IAC 6-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[25 IAC 6-3-1](#) Duties of the commissioner

Authority: [IC 4-2-8-7](#)

Affected: [IC 4-2-8-5](#); [IC 4-2-8-6](#); [IC 4-21.5-3](#); [IC 5-14-3](#)

Sec. 1. (a) The commissioner shall:

(1) prescribe forms for the:

- (A) initial registration statements;
- (B) annual reports;
- (C) amendments;
- (D) termination reports; and
- (E) other documents;

required to be filed under this article; and

(2) make the forms available to persons required to file those forms.

(b) In cooperation with the inspector general, the commissioner shall:

(1) adopt a form for the statement to be filed under [25 IAC 6-2-2\(b\)](#); and

(2) include such form in materials made available to persons required to file a registration statement.

(c) The commissioner shall:

(1) prepare and publish instructions setting forth recommended, uniform methods of reporting for use by persons required to file statements and reports under this article;

(2) make such instructions available on the department's website; and

(3) implement a process for:

(A) answering any questions; and

(B) providing any necessary guidance;

regarding the application of the instructions to these rules.

(d) The commissioner shall be responsible for notifying executive branch lobbyists of deficiencies, inadequacies, and delinquencies in registration statements, reports, and other documents filed or to be filed with the department pursuant to **under** this article.

(e) The commissioner shall compile and maintain an index of all reports and statements filed with the department under this article to facilitate public access to these reports and statements.

(f) The commissioner may audit the accuracy of registration statements or other documents filed under this article by requiring the executive branch lobbyist to submit verified statements and other supporting documentation. Disclosure of such documents shall be subject to [IC 5-14-3](#) and the exceptions and exemptions contained therein.

(g) The commissioner shall notify an executive branch lobbyist of any violations or errors discovered during an audit. The executive branch lobbyist shall within thirty (30) days from receipt of the notification file an amended statement meeting all requirements set forth in this article. If no amended statement is filed within thirty (30) days of receipt of the notification, or if an amended statement does not adequately address the deficiencies discovered during the audit, the commissioner may:

(1) refer the file to the office of the inspector general; and

(2) deem the executive branch lobbyist unregistered until an appropriate amendment is filed.

(h) The department shall preserve statements and reports filed under this article for a period of four (4) years from the date of receipt.

(i) If the department finds that:

(1) a statement or report required to be filed under this article was materially incorrect;

(2) the person filing the statement or report was requested to file a corrected statement or report; and

(3) a corrected statement or report has not been filed;
the department may refer the matter to the inspector general or, after a hearing conducted under [IC 4-21.5-3](#), take action under subsection (j).

(j) If the department makes a finding under subsection (i), the department may do either or both of the following:

- (1) Revoke the registration of the person who has failed to file a corrected statement or report.
- (2) For a finding made after June 30, 2007, assess a civil penalty on the person who has failed to file a corrected statement or report of not more than five hundred dollars (\$500).

(k) The department may impose either or both of the following sanctions if, after a hearing under [IC 4-21.5-3](#), the department finds that a person has failed to file a registration statement or a report required by this article:

- (1) Revoke the person's registration.
- (2) For a finding made after June 30, 2007, assess a civil penalty on the person of not more than five hundred dollars (\$500).

(l) In imposing sanctions under this section, the department shall consider the following:

- (1) Whether the failure to file the statement or report was willful or negligent.
- (2) Any mitigating circumstances.

(Indiana Department of Administration; [25 IAC 6-3-1](#); filed Dec 2, 2005, 2:00 p.m.: 29 IR 1204)

SECTION 5. [25 IAC 6-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[25 IAC 6-4-1](#) Persons barred from executive branch lobbying

Authority: [IC 4-2-8-7](#)

Affected: [IC 4-2-6-11.5](#)

Sec. 1. (a) The following persons may not be registered as an executive branch lobbyist and are prohibited from engaging in executive agency lobbying under this article:

- (1) Any individual convicted of a felony for violating any law while the individual was an officer or employee of any agency or political subdivision.
- (2) Any person convicted of a felony relating to executive branch lobbying.
- (3) Any person convicted of a felony who:
 - (A) is in prison;
 - (B) is on probation; or
 - (C) has been in prison or on probation within the past twelve (12) months.
- (4) Any person:
 - (A) whose statement or report required to be filed under this article was found to be materially incorrect; and
 - (B) who has not filed an amended statement or report within thirty (30) days after having been notified to do so by the department.

(b) This section applies only to a special state appointee appointed after January 10, 2005.

(c) Except as provided in subsection (d), a registered executive branch lobbyist may not serve as a special state appointee.

(d) A registered executive branch lobbyist may serve as a member of an advisory body.

(Indiana Department of Administration; [25 IAC 6-4-1](#); filed Dec 2, 2005, 2:00 p.m.: 29 IR 1205)

[Notice of Public Hearing](#)

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