



## INSPECTOR GENERAL REPORT

2008-06-0165

December 30, 2013

### UNIFORM GOVERNMENT CODE UPDATE

*Inspector General David O. Thomas reports as follows:*

This report documents 2013 activity regarding the Uniform Government Code (UGC) project by the Office of the Inspector General (OIG) with the Indiana General Assembly. The OIG is charged by the General Assembly to recommend legislative changes on public integrity laws. IC 4-2-7-3.

The UGC project involves the re-codification of Titles 4 and 5 of the Indiana Code. These titles define, along with other resources, the business operation of the Executive Branch of state government and other government entities. In summary, the proposition of the UGC project is that these many rules, with nearly 50 years of amendments, could be more user-friendly and accessible if a re-codification organized the rules by topic. The policy reasons in support of this proposition are outlined in two previous Office of Inspector General (OIG) published reports. *See Exhibits A and B attached.*

Phase one of the project was completed in the 2012 Legislative Session. All criminal offenses within Titles 4 and 5 were codified in the Criminal Code

(Title 35) in Articles 44.1 and 44.2 (IC 35-44.1 and IC 35-44.2). No substantive changes to these offenses were made.

This second and final phase involves the re-codification of all other operating rules within Titles 4 and 5. A substantial step forward was made in 2013 with the Code Revision Commission (CRC). At the CRC's October 15, 2013 meeting, the OIG presented a proposed and complete re-codification of Titles 4 and 5. *See Exhibit C, attached (attachments to the minutes).*

The proposal was assigned to the Legislative Services Agency for its review and expertise, with instructions to proceed and report back in the next legislative interim. *Id* (minutes).

The OIG continues to be available to provide further research and information upon request.

/s/ David O. Thomas, Inspector General



## INSPECTOR GENERAL REPORT

2012-06-0165

September 17, 2012

### RECOMMENDATIONS FOR 2012-2013 LEGISLATIVE SESSION

*Inspector General David O. Thomas reports as follows:*

This report addresses the jurisdiction and activity of the Office of the Inspector General (OIG) with regard to its duty to make recommendations to the Indiana Legislature with regard to public integrity laws. IC 4-2-7-3(9).

The OIG now makes the following recommendations with regard to the upcoming Legislative Session.

1

#### Uniform Government Code (Complete Recodification of Titles 4 and 5)

The first phase of clarifying Titles 4 and 5 has been accomplished by codifying the offenses within those titles. *Public Laws 126-2012 and 114-2012, supra, codifying the offenses within IC 35-44.1 and 44.2.*

1

Exh. A

The OIG now respectfully submits that a second phase of legislative codification within Titles 4 and 5 would benefit both the definition of the agencies and their operating rules.

We addressed this issue in our previously published Inspector General Report entitled "Uniform Government Code Proposal."<sup>1</sup>

Beyond merely codifying the offenses within Titles 4 and 5, the OIG now respectfully recommends a complete recodification of all sections within Titles 4 and 5 into two categories, namely (1) agency categorizations, and (2) operating rules, which would further clarify the rules for greater compliance. As addressed in more detail in the Uniform Government Code report, *supra*, currently these two areas are intermixed within both titles.

Our research indicates that such a codification has not occurred since the "Financial Reorganization Act of 1947." *See*: IC 4-13-2.

Following the same directive of not changing any substantive law when previously codifying the offenses, likewise a codification of the remaining language in Titles 4 and 5 without changing any of the substantive laws might also help ensure the success of the project.

Believing the benefit in clarity would be immense by categorizing the governmental agencies and the operating rules into a systematic codification similar to other states and jurisdictions, we have taken the liberty of doing so in a draft for Legislative consideration. *See Exhibit A, attached.*

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<sup>1</sup> 2008-06-0165, published on-line at <http://www.in.gov/ig/files/2008.06.0165.UGCProposal.pdf>.

II

Post-Employment Considerations

Another consideration for the upcoming Legislative Session involves an examination of the Post-Employment Rule (PER) in 42 IAC 1-5-14 and IC 4-2-6-11.<sup>2</sup> The PER restricts in two ways certain employment by state workers who

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<sup>2</sup> IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions

(a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
  - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
  - (B) in a position to make a discretionary decision affecting the:
    - (i) outcome of the negotiation; or
    - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;  
before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or

leave the Executive Branch. First, there is a “365-day cooling off period” for qualifying employees before going to work for certain employers. Second, and even if the cooling-off period does not apply, there may be “particular matter” restrictions which apply for the life-time of the particular matters.

There has been debate as to whether the PER should be amended. Some have advanced that the PER should be more restrictive, and many state workers have expressed concern that the PER is too restrictive.

An example of both contentions occurred in 2010-09-0233,<sup>3</sup> where an administrative law judge (ALJ) at the Indiana Utility Regulatory Commission (IURC) was determined not to be in violation of the PER, but was found by the SEC to be in violation of the related Conflict of Interest Rule in 42 IAC 1-5-6 and IC 4-2-6-9. The application of the PER turned upon whether the IURC ALJ made the actual “decision” within the prohibitions of IC 4-2-6-11(b)(3), which states in

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compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to a special state appointee who serves only as a member of an advisory body.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

<sup>3</sup> 2010-09-0233, published on-line at: [http://www.in.gov/ig/files/2010-09-0233\(Storms-Ethics\).pdf](http://www.in.gov/ig/files/2010-09-0233(Storms-Ethics).pdf).

relevant part:

A former . . . employee . . . may not accept employment or receive compensation . . . from an employer if the former state . . . employee . . . made a regulatory or licensing decision that directly applied to the employer . . . . (*emphasis added*).

IC 4-2-6-11(b)(3).

The SEC correctly found that under the PER, the IURC Commission, rather than the IURC ALJ, made the “decision” in that case, and that although the Conflict of Interest Rule had been violated by the ALJ while seeking post-employment, the PER had not been violated.

Even if this interpretation of the PER in this context is considered to be ambiguous, which we believe it is not, the rule of lenity supports the SEC’s strict interpretation of the PER in this manner. *Mask v. State*, 829 N.E.2d 932 (Ind. 2005)(when a penal statute is ambiguous and may be interpreted in more than one way, the interpretation which does not subject the person to the penalty must be followed); *City of Fort Wayne v. Bishop*, 228 Ind. 304, 92 N.E.2d 544 (1950)(penal statutes include civil actions if a penalty may be issued).

For these reasons, the OIG respectfully submits that if an expansion of the PER is desired, a legislative change must occur.

Pursuant to our charge to make recommendations to the Legislature regarding public integrity laws, IC 4-2-7-3(9), the OIG respectfully recommends that the PER not be amended to be either more or less restrictive for the following reasons.

A

The 2005 PER may be the strictest in Indiana history. It increased post-

employment restrictions in at least four ways.

First, prior to its adoption in 2005, there was *nothing* to stop a state employee from going to work for a company that did business with his or her state agency. The only restriction was in communicating back with the agency, not the actual post-employment. *See: IC 4-2-6-11 (2004)<sup>4</sup> and Exhibit B,*

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<sup>4</sup> IC 4-2-6-11 pre-2005 stated:

- (a) This section applies only:
  - (1) to a former state officer or former employee; and
  - (2) during the period that is twelve (12) months after the date the former state officer or former employee had responsibility for the particular matter.
- (b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2.1-3-1.
- (c) As used in this section, "particular matter" means:
  - (1) an application;
  - (2) a business transaction;
  - (3) a claim;
  - (4) a contract;
  - (5) a determination;
  - (6) an enforcement proceeding;
  - (7) an investigation;
  - (8) a judicial proceeding;
  - (9) a lawsuit;
  - (10) a license;
  - (11) an economic development project; or
  - (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(d) A former state officer or former employee may not represent or assist a person regarding a particular matter involving a specific party or parties:

- (1) that was under consideration by the agency that was served by the state officer or employee; and
- (2) in which the officer or employee participated personally and substantially through:
  - (A) a decision;
  - (B) an approval;
  - (C) a disapproval;
  - (D) a recommendation;
  - (E) giving advice;
  - (F) an investigation; or
  - (G) the substantial exercise of administrative discretion.

(e) An appointing authority or state officer of the agency that was served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency.

attached (Executive Order 04-10).

In contrast, the 2005 PER restricts for the first time the actual employment for one year if qualifying conduct occurs. See: PER (42 IAC 1-5-14 and IC 4-2-6-11), footnote 2, *supra*.

Second, this earlier and narrower prohibition for particular matters was for only 365 days, not the current life-time ban for particular matters. *Id.*

Third, and perhaps the most impactful difference, the 2005 PER restrictions were made applicable to all state employees, special state appointees, members of the quasi-agencies (bodies corporate and politic), and the elected state officers. This is in contrast to the earlier application which applied not only lesser restrictions, but also to a very limited group of state workers, namely only the Governor's and Lieutenant Governor's immediate staffs and agency leaders. Accordingly, there were no post-employment restrictions of any kind for the majority of the state workforce, including the elected officials. See: *Executive Order 04-10, supra*.

Fourth and finally, in contrast to the Executive Branch lobbying restrictions imposed in 2005 through IC 4-2-8, lobbying restrictions, if any, were minimal prior to 2005. See *Exhibit C, attached (Executive Order 04-11)*.

Restriction	Pre-2005	Post-2005
1-year employment restriction	No	Yes
Life-time ban on particular matters	No	Yes
Applicable to all state workers	No	Yes
Lobbying restrictions	No	Yes

7  
Exh: A

B

Another consideration when determining whether to change the current PER should include the constitutional limits in how strict a PER may be. The federal courts have recently determined that an Ohio post-employment law violated the government workers' constitutional rights and issued a permanent injunction against the statute's enforcement, something we would like to avoid in Indiana. *See: Brinkman v. Budish, 692 F.Supp.2d 855 (2010), attached hereto as Exhibit D.*

C

A third reason to observe caution in restricting post-employment further may be seen in the Indiana appellate scrutiny of employment restrictions in the civil jurisdictions. Although contractual covenants-not-to-compete may have differences to those in governmental post-employment restrictions, the appellate scrutiny may be instructive. Specifically, the Indiana Supreme Court has said that "it is to the best interest of the public that persons should not be unnecessarily restricted in their freedom of contract...." *Raymundo v. Hammond Clinic Ass'n, 449 N.E.2d 276, 279 (Ind.1983) (quoting Hodnick v. Fid. Trust Co., 96 Ind.App. 342, 350, 183 N.E. 488, 491 (1932))*. The court has more recently stated that "noncompetition covenants in employment contracts are in restraint of trade and disfavored by law" and will be construed strictly against the employer. *Central Indiana Podiatry, P.C. v. Krueger, 882 N.E.2d 723, 728-29 (Ind.2008)*.

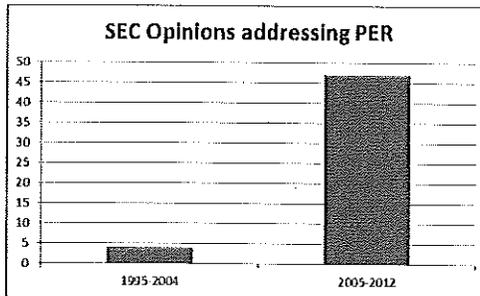
D

A fourth consideration in whether to make the PER more restrictive might include an examination of the results of the SEC in enforcing these newer standards.

1

Since the 2005 PER, the SEC to date has issued 47 Formal Advisory Opinions interpreting and enforcing the PER.<sup>5</sup>

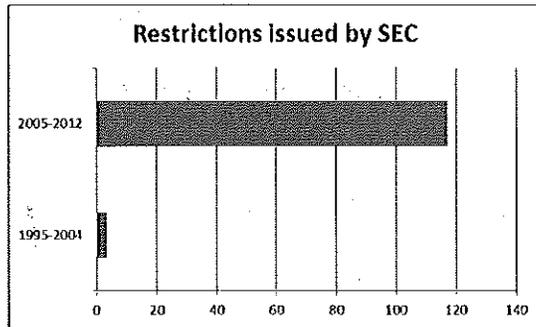
Those forty-seven (47) SEC opinions interpreting the PER within the past eight years are in contrast in volume to the four (4) SEC opinions interpreting the less restrictive post-employment rule in the eight years prior to 2005.



2

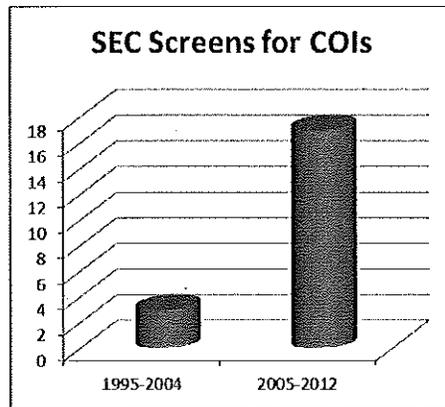
In these 47 post-2005 advisory opinions by the SEC on the PER, each of the applicants was restricted in post-employment, for a total of 117 restrictions issued against the applicants. Prior to 2005, three (3) restrictions were issued by the SEC.

<sup>5</sup> See opinions published on-line: <http://www.in.gov/ig/2338.htm#postemp>.



3

Since 2005, the SEC has also issued at least seventeen (17) screens to employees to prevent conflicts of interests which are often related to PER issues.<sup>6</sup> In the eight years prior to 2005, three (3) screens were issued by the SEC.



4

In addition to these SEC restrictions and screens, the OIG legal staff has

<sup>6</sup> See SEC Formal Advisory Opinions interpreting 42 IAC 1-5-6, itemized on-line at: <http://www.in.gov/ig/2338.htm#coidecvote>.

issued to state employees 480 Informal Advisory Opinions interpreting the PER since 2005, showing a further awareness of the PER by state employees.

In summary, we believe that statistics, alone, may not be conclusive in evaluating the effectiveness of a penal statute. Yet we do believe that this information provides relevant evidence that the 2005 PER has had a dramatic effect both on increased SEC activity, effectiveness, and employee awareness.

For all the above reasons, the OIG reports the above information and stands ready to provide more information and research to the Legislature upon request.

Dated this 17<sup>th</sup> day of September, 2012.

/s/ David O. Thomas, Inspector General

# Proposed organization of Title 4: State Government Structure

## Part 1. Elected State Officers

	Current citation	
State Officers Generally	IC 4-2	
Officers' Bonds and Oaths	IC 5-4	<i>Applies also to local govt.</i>
Officers' Deputies	IC 5-6	<i>Applies also to local govt.</i>
Officers' Impeachment, Removal, Resignation, and Disqualification	IC 5-8	<i>Applies also to local govt.</i>
Officers' Leaves of Absence and Appt Preferences for Military Svc.	IC 5-9	
Governor	IC 4-3	
Lieutenant Governor	IC 4-4	
Secretary of State	IC 4-5	
Attorney General	IC 4-6 and IC 5-26.5	
Auditor of State	IC 4-7	
Treasurer of State	IC 4-8.1	

## Part 2. Administration

Office of Management and Budget	IC 4-3-22	<i>In Governor statute</i>
State Budget Agency	IC 4-12	
Department of Administration	IC 4-13	
State Personnel Department	IC 4-15-2.2	<i>Revised in 2011</i>
Office of Technology	IC 4-13.1 and IC 4-34	<i>Technology Fund Is INSPIRE \$</i>
Office of the Inspector General	IC 4-2-7	
State Ethics Commission	IC 4-2-6	
Governor's Comm. on Minority and Women's Business Enterprises	IC 4-13-16.5	<i>Staffed by IDOA</i>
State Employees Appeals Commission	IC 4-15-1.5	
Indiana Arts Commission	IC 4-23-2 and 2.5	
Indiana Recycling Market Development Board	IC 4-23-5.5	
Commission on Forensic Sciences	IC 4-23-6	
Coroners Training Board	IC 4-23-6.5	
Indiana Library and Historical Department	IC 4-23-7, 7.2, 7.3, 8, 9 and 10	
State GIS Officer	IC 4-23-7.3	
Indiana Commission for Arts and Humanities In Education	IC 4-23-12	<i>Superintendent is member</i>
Governor's Residence Commission	IC 4-23-15	
Dr. Martin Luther King Jr. Indiana Holiday Commission	IC 4-23-24.1	
Indiana Advisory Commission on Intergovernmental Relations	IC 4-23-24.2	<i>Staffed by IU Center for Urban Policy and the Environment</i>
Indiana Commission for Women	IC 4-23-25	<i>Staffed by DWD</i>
Advisory Committee for Children With Special Health Needs	IC 4-23-26	
Children's Health Policy Board	IC 4-23-27	
Commission on Hispanic/Latino Affairs	IC 4-23-28	
Governor's Council For People with Disabilities	IC 4-23-29	
Mortgage Lending and Fraud Prevention Task Force	IC 4-23-30	
Board for the Coordination of Programs Serving Vulnerable Individuals	IC 4-23-30.2	
Indiana Lottery Commission	IC 4-30	
Indiana Horse Racing Commission	IC 4-31	

EXH. A  
EX A-1

Indiana Gaming Commission	IC 4-32.2, 33, 35-36	
Law Enforcement Training Board	IC 5-2-1-3	<i>IC 5-2 ("law enforcement") should be in IC 4 (and grouped with ISP et al in IC 10 "Public Safety")</i>
State Board of Accounts	IC 5-11-1-1	
Interstate Jobs Protection Commission	IC 5-25	<i>All of IC 5-25 should be kept together</i>
Integrated Public Safety Commission	IC 5-26	<i>Should be with law enforcement - IC 5-36 should be all together</i>
Office of Tourism and Indiana Tourism Council	IC 5-29	
<u>Other entities:</u>		
Department of Correction Ombudsman Bureau	IC 4-13-1,2	<i>Within IDOA - Ombd. 1</i>
State Library and Historical Building	IC 4-13-12	<i>Just the building</i>
Indiana Historical Society Building	IC 4-13-12.1	<i>Contract with IDOA</i>
Department of Child Services Ombudsman	IC 4-13-19	<i>Within IDOA - Ombd. 2</i>
Indiana Affirmative Action Office	IC 4-15-12-3	<i>Within SPD</i>
Criminal Justice Institute	IC 5-2-6, 6.1 - 6.9	
Indiana Housing and Community Development Authority	IC 5-20	<i>All of IC 5-20 should go here</i>
<u>Public Corporations:</u>		
Indiana Finance Authority	IC 4-4-10.9 and 11	
State Museum and Historic Sites Corporation	IC 4-37	
Indiana Stadium and Convention Building Authority	IC 5-1-17	<i>Within "Bonds and other obligations"</i>
Indiana Bond Bank	IC 5-1-1.5	
Law Enforcement Academy Building Commission	IC 5-2-2-1	<i>IC 5-2 ("law enforcement") should be in IC 4 (and grouped with ISP et al in IC 10 "Public Safety")</i>
Indiana Economic Development Corporation	IC 5-28	
Indiana Health Informatics Corporation	IC 5-31	<i>All IC 5-31 moved here</i>
<u>Local entities</u>		
Local Public Improvement Bond Banks	IC 5-1-1.4	<i>A local "quasi agency"</i>
Local Coordinating Council	IC 5-2-11-1.6	

Exh. A  
Ex A-2

## Proposed organization of Title 5: Uniform Government Code

Part 1. General Employee Rules, Rights, & Benefits	Current citation	
Code of Ethics	IC 4-2-6	
State Employees' Bill of Rights	IC 4-15-10-4	
Public Employee Benefits	IC 5-10	
Social Security Coverage for Public Employees	IC 5-10.1	
Public Retirement and Disability Benefits	IC 5-10.2	
Public Employee's Retirement Fund	IC 5-10.3	
State Teachers' Retirement Fund	IC 5-10.4	
Indiana Public Pension Modernization Act	IC 5-10.5	
<b>Part 2. Purchasing/Finance</b>		
State Purchasing	IC 4-13-1.3	<i>See also IC 4-10 from 1897</i>
Development of Recycled Materials Market	IC 4-13-1.4	
Federal Surplus Property	IC 4-13-1.7	
Financial Reorganization Act of 1947	IC 4-13-2	
Internet Purchasing Sites	IC 4-13-17	
State Lands Acquisition	IC 4-17	<i>Repealed</i>
State Real Property	IC 4-20.5	<i>Acquisition rules</i>
Institutions General Provisions	IC 4-23	<i>Spending in prisons</i>
Bonds And Other Obligations	IC 5-1	
Officers' Fees and Salaries	IC 5-7	<i>Local govt too - 1800's</i>
Accounting for Public Funds	IC 5-11	<i>SNOA here - local govt, too</i>
Investment of Public Funds	IC 5-13	
Public Works	IC 5-16	
Public Purchases	IC 5-17	
Federal Aid	IC 5-19	
Public Purchasing	IC 5-22	
Public-Private Agreements	IC 5-23	
Electronic Digital Signature Act	IC 5-24	
Electronic Payments to Governmental Bodies	IC 5-27	
Loans of State Funds and Mortgages to State	IC 4-11	<i>From 1855, 1919, 2006</i>
<b>Part 3. Contracting</b>		
Contracts > \$10M	IC 4-12-13	
Statewide Price Contracts for Certain School Corporation Purchases of Major Equipment Items	IC 4-13-1.6	
Drug Testing of employees of Public Works Contractors	IC 4-13-18	
Design-Build Public Works Projects	IC 5-30	
<b>Part 4. Meetings and Records</b>		
Publication of Notices	IC 5-3	
Public Records and Public Meetings	IC 5-14	<i>APRA - local govt, too</i>
Preservation of Public Records	IC 5-15	
<b>Part 5. Adjudication</b>		
Administrative Orders and Procedures	IC 4-21.5	
<b>Part 6. Rule Promulgation</b>		
Administrative Rules and Procedures	IC 4-22	
<b>Part 7. Misc.</b>		
Miscellaneous Provisions	IC 4-1	

EXH. A  
EX A-3

STATE OF INDIANA  
EXECUTIVE DEPARTMENT  
INDIANAPOLIS

EXECUTIVE ORDER 04-10

FOR: SENIOR-LEVEL, EXECUTIVE BRANCH EMPLOYEES LEAVING STATE GOVERNMENT

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS

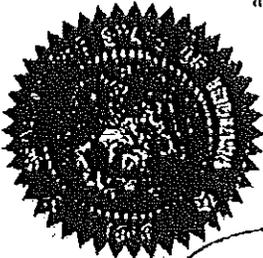
WHEREAS, Executive Branch policymakers collaborate closely with other members of their office or agency to fulfill their public responsibilities;

WHEREAS, Executive Branch policymakers sometimes leave state government to work in the private sector for parties who are affected by the policymaking decisions of state government; and

WHEREAS, the public should be confident that adequate protections are in place to ensure Executive Branch policymakers who accept employment with private parties do not have greater access to their counterparts in state government;

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. Within twelve months after retirement or termination of employment, the Governor's and Lieutenant Governor's Chief of Staff; Counsel; Press Secretary; Deputy Chiefs of Staff; and Policy Directors shall not knowingly make, with the intent to influence, any communication to or appearance before any employee of the Governor's Office or Lieutenant Governor's Office, or any agency appointing authority, if that communication or appearance is made on behalf of any other person (other than the state, an agency, a political subdivision, or other public institution), in connection with any matter concerning which he or she seeks official action by that employee.
2. Within twelve months after retirement or termination of employment, agency appointing authorities shall not knowingly make, with the intent to influence, any communication to or appearance before any employee of the Governor's Office or Lieutenant Governor's Office, any other agency appointing authority, or any employee of the agency in which the appointing authority served if that communication or appearance is made on behalf of any other person (other than the state, an agency, a political subdivision, or other public institution), in connection with any matter concerning which he or she seeks official action by that employee.



IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 27th day of April, 2004.

  
ATTEST: Todd Rokita  
Secretary of State

  
Joseph E. Kernan  
Governor of Indiana

EX B  
EXH. A

STATE OF INDIANA  
EXECUTIVE DEPARTMENT  
INDIANAPOLIS

EXECUTIVE ORDER 04-11

FOR: REGISTRATION OF EXECUTIVE BRANCH LOBBYISTS

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, many individuals and businesses seek to influence the decisions of the Executive Branch of government relating to policies, procurement, and other business;

WHEREAS, the Executive Branch decisions that these individuals and businesses seek to influence involve the expenditure of billions of taxpayers' dollars and the operations of all aspects of government;

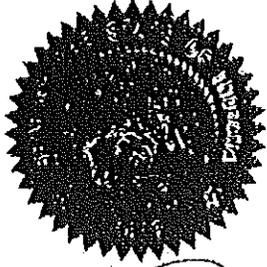
WHEREAS, it is important that Executive Branch business be conducted in the most transparent manner possible, so that citizens have full information about efforts directed at influencing Executive Branch policies and procurement, including funds expended by private individuals and businesses in an effort to influence these matters; and

WHEREAS, the General Assembly already has undertaken a similar process to register persons who lobby the General Assembly by establishing the Lobby Registration Commission and procedures for lobbyists to register and report their activities and expenditures.

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Commissioner of the Indiana Department of Administration (the "Commissioner") shall promulgate rules requiring registration for individuals who lobby the Executive Branch in order to influence Executive Branch action (the "Executive Branch Lobbying Rules").
2. For purposes of the Executive Branch Lobbying Rules, "lobby" means contacts made to promote, support, influence, modify, oppose, or delay the outcome of an Executive Branch action by direct communication with designated Executive Branch officials and employees.
3. The Executive Branch Lobbying Rules shall require such lobbyists to report their lobbying activities to the Commissioner on at least a semi-annual basis.
4. The Commissioner shall be authorized to create enforcement mechanisms for the Executive Branch Lobbying Rules to the extent permitted under applicable law.
5. The Commissioner shall submit proposed Executive Branch Lobbying Rules for inclusion in the Indiana Register no later than July 5, 2004.
6. Nothing herein shall restrict the Commissioner's authority, through the rulemaking process, to promulgate the Executive Branch Lobbying Rules with such definitions, standards, and requirements as the Commissioner deems to be in the best interests of public policy.

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EX C-1



IN TESTIMONY WHEREOF, I, Joseph E. Kernan,  
have herewith set my hand and caused to be affixed the  
Great Seal of the State of Indiana on this 27th day of April,  
2004.

*Joseph E. Kernan*  
Joseph E. Kernan  
Governor of Indiana

*Todd Rokita*

ATTEST: Todd Rokita  
Secretary of State

Exh. A  
Ex C-2

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(Cite as: 692 F.Supp.2d 855)

C

United States District Court,  
S.D. Ohio,  
Western Division.  
Thomas E. BRINKMAN, Jr., et al., Plaintiffs,

v.

Armond D. BUDISH, Speaker of the Ohio House of  
Representatives and Chairman of the Joint Legislative  
Ethics Committee of the Ohio General Assembly, et  
al., Defendants.

Case No. 1:09-cv-326.

Feb. 17, 2010.

**Background:** Advocacy organization and its members filed action against committee of Ohio General Assembly with responsibility for governing former members of General Assembly with respect to state ethics laws, alleging that "revolving door" statute violated First Amendment and Equal Protection Clause. Plaintiffs moved for summary judgment.

**Holdings:** The District Court, Susan J. Dlott, Chief Judge, held that:

- (1) strict scrutiny applied to analysis of whether Ohio revolving door statute violated First Amendment free speech clause;
- (2) compelling interests existed for State of Ohio to enact revolving door statute, as applied to compensated lobbying, but not as to uncompensated lobbying;
- (3) preventing former general assembly members from having special access to legislative process did not constitute compelling interest for State of Ohio to enact revolving door statute;
- (4) revolving door statute had not been narrowly tailored to achieve objectives of avoiding corruption or appearance of corruption; and
- (5) permanent injunction was warranted to enjoin enforcement of Ohio revolving door statute.

Motion granted.

West Headnotes

[1] Constitutional Law 92 ↪1440

92 Constitutional Law

92XVI Freedom of Association

92k1440 k. In general. Most Cited Cases

Constitutional Law 92 ↪1460

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1460 k. In general. Most Cited Cases

Implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. U.S.C.A. Const. Amend. 1.

[2] Constitutional Law 92 ↪1481

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1481 k. Lobbying. Most Cited Cases

Lobbying the government falls within the gambit of protected First Amendment activity. U.S.C.A. Const. Amend. 1.

[3] Constitutional Law 92 ↪1721

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92k1721 k. Lobbying. Most Cited Cases

Strict scrutiny applied to analysis of whether Ohio revolving door statute, that prohibited any member or employee of general assembly after leaving such employment or service from representing clients on any matter before general assembly for one year, violated First Amendment free speech clause, since statute severely burdened First Amendment rights of advocacy group by prohibiting it from using former general assembly member as its advocate before general assembly. U.S.C.A. Const. Amend. 1; Ohio R.C. § 102.03(A)(1).

[4] Constitutional Law 92 ↪1681

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and

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Press

92XVIII(F) Politics and Elections

92k1681 k. Political speech, beliefs, or activity in general. Most Cited Cases  
First Amendment protection is at its zenith for core political speech which involves interactive communication concerning political change. U.S.C.A. Const.Amend. 1.

151 Constitutional Law 92 ↻1460

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1460 k. In general. Most Cited Cases

When a state places a severe or significant burden on a core political right, the provision must be narrowly tailored and advance a compelling state interest. U.S.C.A. Const.Amend. 1.

161 Constitutional Law 92 ↻1440

92 Constitutional Law

92XVI Freedom of Association

92k1440 k. In general. Most Cited Cases

Constitutional Law 92 ↻1500

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1500 k. Advocacy. Most Cited Cases

The right to choose a spokesperson to advocate a group's collective views lies implicit in the speech and association rights guaranteed by the First Amendment. U.S.C.A. Const.Amend. 1.

171 Constitutional Law 92 ↻1721

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press.

92XVIII(F) Politics and Elections

92k1721 k. Lobbying. Most Cited Cases

Statutes 361 ↻24

361 Statutes

3611 Enactment, Requisites, and Validity in General

361k24 k. Lobbying or misconduct. Most Cited Cases

Avoiding corruption, i.e., prevention of unethical practices, and appearance of corruption, i.e., bolstering public's confidence in integrity of government, were compelling interests for State of Ohio to enact revolving door statute, that prohibited any member or employee of general assembly after leaving such employment or service from representing clients on any matter before general assembly for one year, as applied to compensated lobbying, but not as to uncompensated lobbying, on claim that statute violated First Amendment free speech clause, since governmental interest in preventing corruption or appearance of corruption was limited to quid pro quo corruption. U.S.C.A. Const.Amend. 1; Ohio R.C. § 102. 03(A)(4).

181 Constitutional Law 92 ↻1721

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(F) Politics and Elections

92k1721 k. Lobbying. Most Cited Cases

Statutes 361 ↻24

361 Statutes

3611 Enactment, Requisites, and Validity in General

361k24 k. Lobbying or misconduct. Most Cited Cases

Preventing former general assembly members from having special access to legislative process did not constitute compelling interest for State of Ohio to enact revolving door statute, that prohibited any member or employee of general assembly after leaving such employment or service from representing clients on any matter before general assembly for one year, on claim that statute violated First Amendment free speech clause, since political corruption did not necessarily follow from special access to elected officials or favoring speaker and appearance of influence or access would not cause electorate to lose faith in democracy. U.S.C.A. Const.Amend. 1; Ohio R.C. § 102. 03(A)(4).

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121 Constitutional Law 92 ↻ 1721

92 Constitutional Law  
92XVIII Freedom of Speech, Expression, and Press  
92XVIII(F) Politics and Elections  
92k1721 k. Lobbying. Most Cited Cases

Statutes 361 ↻ 24

361 Statutes  
361I Enactment, Requisites, and Validity in General

361k24 k. Lobbying or misconduct. Most Cited Cases  
Ohio revolving door statute, that prohibited any member or employee of general assembly after leaving such employment or service from representing clients on any matter before general assembly for one year, had not been narrowly tailored to achieve objectives of avoiding corruption or appearance of corruption, on claim that statute violated First Amendment free speech clause, since temporally limited restriction did not address concern against quid pro quo corruption, statute restricted both compensated and uncompensated lobbying, and it did not restrict other behaviors or activities that might have given rise to actual or perceived corruption. U.S.C.A. Const.Amend. 1; Ohio R.C. § 102.03(A)(4).

1101 Constitutional Law 92 ↻ 1506

92 Constitutional Law  
92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General  
92XVIII(A)1 In General  
92k1506 k. Strict or exacting scrutiny; compelling interest test. Most Cited Cases  
On a claim that a statute violates First Amendment free speech rights, the quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised. U.S.C.A. Const.Amend. 1.

1111 Constitutional Law 92 ↻ 1505

92 Constitutional Law  
92XVIII Freedom of Speech, Expression, and

Press

92XVIII(A) In General  
92XVIII(A)1 In General  
92k1505 k. Narrow tailoring. Most Cited Cases

Constitutional Law 92 ↻ 1506

92 Constitutional Law  
92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General  
92XVIII(A)1 In General  
92k1506 k. Strict or exacting scrutiny; compelling interest test. Most Cited Cases  
Courts do not accept mere conjecture as adequate to carry a First Amendment free speech burden, when analyzing whether a statute is narrowly tailored to achieve compelling governmental interests. U.S.C.A. Const.Amend. 1.

1121 Injunction 212 ↻ 9

212 Injunction

2121 Nature and Grounds in General  
2121(B) Grounds of Relief  
212k9 k. Nature and existence of right requiring protection. Most Cited Cases  
Before granting a permanent injunction, the party seeking relief must demonstrate that: (1) it has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction.

1131 Injunction 212 ↻ 9

212 Injunction

2121 Nature and Grounds in General  
2121(B) Grounds of Relief  
212k9 k. Nature and existence of right requiring protection. Most Cited Cases  
The party seeking a permanent injunction must establish success on the merits rather than a probability of success on the merits.

1141 Civil Rights 78 ↻ 1456

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78 Civil Rights

78111 Federal Remedies in General

78k1449 Injunction

78k1456 k. Other particular cases and contexts. Most Cited Cases

Permanent injunction was warranted to enjoin enforcement of Ohio revolving door statute, that prohibited any member or employee of general assembly after leaving such employment or service from representing clients on any matter before general assembly for one year, on claim that statute violated First Amendment free speech clause, since statute violated First Amendment, even minimal infringement upon First Amendment rights resulted in irreparable harm, there were no available remedies at law that were adequate to compensate for loss of First Amendment rights, and it always was in public interest to prevent violation of constitutional rights. U.S.C.A. Const.Amend. 1; Ohio R.C. § 102.03(A)(4).

1151 Civil Rights 78 ↪ 1450

78 Civil Rights

78111 Federal Remedies in General

78k1449 Injunction

78k1450 k. In general. Most Cited Cases

Even a minimal infringement upon First Amendment free speech rights results in irreparable harm, as required for a permanent injunction to issue. U.S.C.A. Const.Amend. 1.

1161 Civil Rights 78 ↪ 1450

78 Civil Rights

78111 Federal Remedies in General

78k1449 Injunction

78k1450 k. In general. Most Cited Cases

There are no available remedies at law, as required for a permanent injunction to issue, that are adequate to compensate for a loss of First Amendment free speech rights. U.S.C.A. Const.Amend. 1.

1171 Civil Rights 78 ↪ 1450

78 Civil Rights

78111 Federal Remedies in General

78k1449 Injunction

78k1450 k. In general. Most Cited Cases

Prevention of the violation of a party's constitutional

rights is always in the public interest, as required for a permanent injunction to issue.

West Codenotes

Held Unconstitutional Ohio R.C. § 102.03(A)(4) \*858 Christopher R. Finney, Joshua Braden Bolinger, Finney, Stagnaro, Saba & Patterson Co., L.P.A., Cincinnati, OH, Curt Carl Hartman, Amelia, OH, for Plaintiffs.

Kent M. Shimeall, Jeannine R. Lesperance, Ohio Attorney General's Office Constitutional Offices Section, Nick A. Soulas, Jr., Columbus, OH, Peter J. Stackpole, City of Cincinnati, David Todd Stevenson, Cincinnati, OH, for Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND ISSUANCE OF A PERMANENT INJUNCTION AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

SUSAN J. DLOTT, Chief Judge.

This matter is before the Court on Plaintiffs' Motion For Summary Judgment and the Issuance of a Permanent Injunction (doc. 29) and Defendants' Amended Motion for Summary Judgment (doc. 34). Plaintiffs in this case challenge the constitutionality of Ohio Revised Code ("O.R.C.") § 102.03(A)(4), a statute which prohibits former members of the General Assembly from representing another person or organization before the Ohio General Assembly for a period of one year subsequent to their departure from office. The Court previously issued an Order Granting Motion for Preliminary Injunction ("Injunction Order") temporarily enjoining enforcement of § 102.03(A)(4). For the reasons that follow, the Court GRANTS Plaintiffs' motion, DENIES Defendants' motion, and PERMANENTLY ENJOINS enforcement of § 102.03(A)(4).

I. BACKGROUND

A. Factual Background

Plaintiffs are Thomas E. Brinkman, Jr., the Coalition Opposed to Additional Spending and Taxes ("COAST"), and Mark W. Miller. COAST is an organization which advocates for the restraint of gov-

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ernment taxing and spending in Ohio on the local, state, and national level. (Doc. 29-1 ¶¶ 2, 8-9.)<sup>FN1</sup> COAST conducts advocacy activities in numerous ways, including operating a blog, publishing an email newsletter, sending press releases, and direct lobbying. (*Id.* ¶ 3.) COAST has directly lobbied legislators through its leadership and by testimony before legislative bodies. (*Id.* ¶ 4.) Presently, COAST seeks to advocate on a number of budgetary issues before the Ohio General Assembly, including advocating against proposed operating subsidies for the Underground Railroad Freedom Center. (*Id.* at ¶ 5.)

<sup>FN1</sup>. References to Plaintiffs' Proposed Undisputed Facts (doc. 29-1) are limited to those facts Defendants admitted to be true in Defendants' Response (doc. 38).

\*859 Both Brinkman and Miller are members and supporters of COAST, and Miller serves as the treasurer of COAST. (*Id.* ¶¶ 8-10.) Brinkman served in the Ohio General Assembly from January 2001 until December 2008. (Doc. 31-2 ¶ 1.)<sup>FN2</sup> Brinkman has sought to represent COAST before the Ohio General Assembly on an uncompensated basis.<sup>FN3</sup> (Doc. 31-2 ¶¶ 2, 6.) However, O.R.C. § 102.03(A)(4), as written, prohibited Brinkman from representing COAST before the Ohio General Assembly or any of its committees from the date he left the General Assembly through January 1, 2010. (*Id.* ¶¶ 4, 5; Doc. 29-1 ¶ 10.)<sup>FN4</sup>

<sup>FN2</sup>. References to Defendants' Proposed Undisputed Facts (doc. 32-1) are limited to those facts Plaintiffs admitted to be true in Plaintiffs' Response (doc. 37-1).

<sup>FN3</sup>. The parties have stipulated that COAST paid Curry Printing Company—which is owned by Kathy Brinkman, the wife of Plaintiff Brinkman—approximately \$13,195.00 for printing services performed on its behalf between January 1, 2001 and January 1, 2009. (Doc. 31-2 ¶ 7.)

<sup>FN4</sup>. The Court recognizes that Defendants were prohibited from enforcing O.R.C. § 102.03(A)(4) against Brinkman or any former member of the Ohio General Assembly from the August 4, 2009, the date this Court granted a preliminary injunction against

Defendants, through the present date.

Additionally, in his Affidavit, Brinkman states that he declined to join the Ohio League of Conservation Voters and the Right to Life of Greater Cincinnati because O.R.C. § 102.03(A)(4) would have prevented him from representing the groups before the Ohio General Assembly in 2009.

Defendants are the Joint Legislative Ethics Committee ("JLEC"), a twelve-member committee of the Ohio General Assembly with responsibility for governing former members of the General Assembly with respect to state ethics laws; Armond D. Budish, a member of the Ohio House of Representatives and a member and chairman of JLEC; eleven other members of JLEC;<sup>FN5</sup> Tony W. Bledsoe, the executive director of JLEC; Joseph T. Deters, the Hamilton County Prosecuting Attorney; Ron O'Brien, the Franklin County Prosecuting Attorney; Richard C. Pfeiffer, Jr., the City Attorney for the City of Columbus; and John P. Culp, the City Solicitor for the City of Cincinnati. Defendants Deters, O'Brien, Pfeiffer, and Culp are sued in their official capacities only. (Doc. 4 ¶ 20.)

<sup>FN5</sup>. Bill Harris, William Batchelder, Capri Cafaro, Louis Blessing, John Carey, Jennifer Garrison, Matt Huffman, Dale Miller, Sue Morano, Tom Niehaus, and Matthew Szollosi.

JLEC is responsible for enforcement of O.R.C. § 102.03(A)(4) and would be the body to receive or initiate complaints against Brinkman for violations of the statute. (Doc. 29-1 ¶ 33.) JLEC also is empowered to investigate complaints or charges for violations of the statute. (*Id.* ¶ 34.) If JLEC determines by a preponderance of the evidence that § 102.03(A)(4) has been violated, it must report the violation to the appropriate prosecuting authority. (*Id.* ¶ 35.)

#### B. Procedural Background

Plaintiffs filed their initial Verified Complaint and a Motion for Temporary Restraining Order and Preliminary Injunction on May 11, 2009. They filed an Amended Complaint on May 12, 2009.<sup>FN6</sup> Defendants opposed the issuance of a temporary restraining order and preliminary injunction. On August 4, 2009, the

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Court issued the Injunction Order preliminarily enjoining the enforcement of O.R.C. § 102.03(A)(4). The parties thereafter engaged in discovery and filed the pending summary judgment motions. Plaintiffs \*860 now seek and Defendants oppose the issuance of a permanent injunction enjoining the enforcement of O.R.C. § 102.03(A)(4). Plaintiffs contend that the statute violates the First Amendment and the Equal Protection Clause both facially and as applied.

FN6. Plaintiffs filed Notice of Verification of Amended Complaint on May 29, 2009. (Doc. 11.)

## II. THE STATUTE

Ohio's revolving door statute provides in relevant part:

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board.... As used in division (A)(4) of this section "person" does not include any state agency or political subdivision of the state.

O.R.C. § 102.03(A)(4).

"Matter" is defined in the statute to mean "the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments." O.R.C. § 102.03(A)(5). To "represent" includes "any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person." *Id.* Under the Ohio Revised Code generally, a "person" is defined as "an individual, corporation, business trust, estate, trust, partnership, and association," O.R.C. § 1.59(C), but the specific statute clarifies that "person" does not include "any state agency or political subdivision of the state" for purposes of O.R.C. § 102.03(A)(4). Violation of the statute is considered a misdemeanor offense of the first degree. *See* O.R.C. § 102.99(B).

JLEC has issued a memorandum interpreting O.R.C. § 102.03(A)(4) to apply to both compensated and uncompensated lobbying by former members of General

Assembly on behalf of another person. (Doc. 29-1 ¶¶ 40-42.)

## III. STANDARDS GOVERNING MOTIONS FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary judgment is appropriate if "there is no genuine issue as to any material fact" and "the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c)(2). On a motion for summary judgment, the movant has the burden of showing that no genuine issues of material fact are in dispute, and the evidence, together with all inferences that can permissibly be drawn therefrom, must be read in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

The movant may support a motion for summary judgment with affidavits or other proof or by exposing the lack of evidence on an issue for which the non-moving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In responding to a summary judgment motion, the nonmoving party may not rest upon the pleadings but must go beyond the pleadings and "present affirmative evidence in order to defeat a properly supported motion for summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The nonmoving party must "set out specific facts showing a genuine issue for trial." Fed.R.Civ.P. 56(c)(2). The Court's task is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Liberty Lobby, 477 U.S. at 249, 106 S.Ct. 2505. A genuine issue for \*861 trial exists when there is sufficient "evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252, 106 S.Ct. 2505.

## IV. ANALYSIS

### A. First Amendment

[1][2] The First Amendment to the United States Constitution provides that "Congress shall make no law ... abridging the freedom of speech, ... or the right of the people peaceably to assemble, and to petition the government for redress of grievances." U.S. Const.

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amend 1. "The Fourteenth Amendment extends these prohibitions against the States." Citizens for Tax Reform v. Deters, 518 F.3d 375, 379 (6th Cir.2008), cert. denied, Ohio v. Citizens for Tax Reform, --- U.S. ---, 129 S.Ct. 596, 172 L.Ed.2d 455 (2008). "[I]mplicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." Roberts v. U.S. Jaycees, 468 U.S. 609, 622, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984). Lobbying the government falls within the gambit of protected First Amendment activity. See F.T.C. v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411, 426, 110 S.Ct. 768, 107 L.Ed.2d 851 (1990) ("It is, of course, clear that the association's efforts ... to lobby District officials to enact favorable legislation ... were activities that were fully protected by the First Amendment."); Roberts, 468 U.S. at 627, 104 S.Ct. 3244 (characterizing lobbying as being "worthy of constitutional protection under the First Amendment"). However, that right is not unfettered and can be the subject of appropriate regulation. See, e.g., McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 356 n.20, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption."); United States v. Hurviss, 347 U.S. 612, 625, 74 S.Ct. 808, 98 L.Ed. 989 (1954) (upholding registration and reporting requirements for Congressional lobbyists).

[3][4][5] Plaintiffs contend that O.R.C. § 102.03(A)(4) violates the First Amendment both facially and as applied. The statute prohibits former members of the Ohio General Assembly from representing another person or entity (except for a state political subdivision) on matters before the Ohio General Assembly for a period of one year after they leave office.<sup>FN7</sup> The Court found in the Injunction Order that the constitutionality of § 102.03(A)(4) should be examined under a strict scrutiny analysis and Defendants now appear to concede this issue. (Doc. 16 at 8-10; Doc. 34 at 6-7.) As stated above, lobbying "is fully protected by the First Amendment." Superior Court Trial Lawyers Ass'n, 493 U.S. at 426, 110 S.Ct. 768. First Amendment protection is "at its zenith" for "core political speech" which involves "interactive communication concerning political change." Buckley v. Amer. Const. Law Found., 525 U.S. 182, 186-87, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999); see also Hughes v. Region VII Area Agency on

Aging, 542 F.3d 169, 185 (6th Cir.2008) ("Speech advocating a campaign to affect government policy is the essence of protected, political speech."). "When a State places a severe or significant burden on a core political right ... the provision must be narrowly tailored and advance a compelling state interest." Citizens for Tax Reform, 518 F.3d at 387 (citing \*862 Meyer v. Grant, 486 U.S. 414, 425, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988); Tinnum v. Twin Cities Area New Party, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997)).

FN7. The statute prohibits former members from acting on matters before the Ohio General Assembly, its committees, or a controlling board. O.R.C. § 102.03(A)(4). For simplicity, the Court will refer to all three types as matters before the Ohio General Assembly.

[6] The statute operated in this instance to prohibit Brinkman from representing COAST on matters before the Ohio General Assembly. "The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." Meyer, 486 U.S. at 424, 108 S.Ct. 1886; see also Nat'l Ass'n of Social Workers v. Harwood, 874 F.Supp. 530, 537 n.8 (D.R.I.1995) ("[I]ncorporated within the First Amendment protection of lobbying are the practical concerns of effectiveness and economic constraints."), rev'd on other grounds, 69 F.3d 622. Likewise, "the right to choose a spokesperson to advocate a group's collective views lies implicit in the speech and association rights guaranteed by the First Amendment." Fraternal Order of Police v. Mayor and City Council of Ocean City, Md., 916 F.2d 919, 923 (4th Cir.1990); cf. O'Brien v. Leidinger, 452 F.Supp. 720, 725 (E.D.Va.1978) ("The right to advocate would be hollow indeed if the state, rather than the association's members, could select the group's advocate.") The statute severely burdened Plaintiffs' First Amendment rights by prohibiting COAST from using Brinkman as its advocate before the General Assembly.

#### 1. Compelling Government Interest

[7] Given that the statute is subject to strict scrutiny, the Court next must determine whether O.R.C. § 102.03(A)(4) furthers a compelling government interest and is narrowly tailored to achieve that end. See

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*Citizens for Tax Reform*, 518 F.3d at 387. Defendants proffer the Affidavit of Defendant Tony Bledsoe, the executive director of Defendant JLEC, to establish the State of Ohio's compelling interests. Bledsoe states that the General Assembly enacted § 102.03(A)(4) to effectuate three compelling interests: (1) to prevent unethical practices of public employees and public officials; (2) to promote, maintain, and bolster the public's confidence in the integrity of state government; and (3) to prevent unequal access to the General Assembly by outside organizations by virtue of any significant relationships with current and former public officials who may be in a position to influence government policy. (Bledsoe Aff. ¶ 4.)

Plaintiffs attack these purported justifications on multiple grounds. To begin, Plaintiffs assert that the Court need not accept Bledsoe's statements as true because he offers mere post-hoc justifications which are not based on his personal knowledge of the General Assembly's intent in enacting § 102.03(A)(4). However, Plaintiffs' argument discounts Bledsoe's experience as the executive director of JLEC, the body entrusted to enforce § 102.03(A)(4). Moreover, this Court in the Injunction Order implicitly recognized that substantially similar justifications could be gleaned from the text of the statute. (Doc. 16 at 11.)

Plaintiffs also attack the merits of each proposed justification. The Court will examine each of Defendants' purported compelling interests more closely. As to the first justification, Bledsoe states that Ohio "has a compelling interest in preventing legislators from taking official acts in exchange for employment as a lobbyist immediately upon leaving the legislature." (*Id.* ¶ 5.) Similarly, as to the second justification, Bledsoe states that Ohio has an interest in bolstering the public's confidence in the integrity of state government—regardless of any actual corrupt or unethical practices—because of past instances of government corruption. (Bledsoe Aff. ¶ 6.) Federal courts have found that the analogous interests of preventing corruption or the appearance of corruption are compelling governmental interests. *See, e.g., Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 388-89, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (recognizing as compelling interests the restricting of *quid pro quo* corruption, the appearance of corruption, the appearance of improper influence, and opportunities for abuse); *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 715-16 (4th Cir.1999) (identifying as

compelling state interests in the lobbying context prohibiting corruption and the appearance of corruption); *Ohio v. Nipps*, 66 Ohio App.2d 17, 21, 419 N.E.2d 1128 (1979) (analyzing a more restrictive predecessor statute and holding that Ohio had compelling interest to restrict unethical practices of employees and public officials).

Importantly, the Supreme Court recently has emphasized that the "governmental interest in preventing corruption or the appearance of corruption, [is] limited to *quid pro quo* corruption." *Citizens United v. Federal Election*, --- U.S. ---, 130 S.Ct. 876, 909, --- L.Ed.2d --- (2010). Defendants concede that their first two justifications "depend upon the payment of compensation to the former-legislators." (Bledsoe Aff. ¶ 8.) Accordingly, the Court finds that Defendants' first two purported justifications are compelling interests for restricting compensated lobbying by former members of the General Assembly.

[8] The first two justifications, however, cannot constitute a compelling interest to prohibit uncompensated lobbying by former members of the General Assembly, such as the lobbying Brinkman sought to perform on behalf of COAST. Defendants respond that the third justification constitutes a compelling interest supporting O.R.C. § 102.03(A)(4) regardless of whether the former legislators are lobbying on a compensated or uncompensated basis. Bledsoe states that the third justification "reflects the State of Ohio's interest in preventing former legislators from using their close relationships with former colleagues and special knowledge of the legislative process to gain access as lobbyists in ways that provide them unequal access to public officials [in comparison] to that of others petitioning the government, and thereby allow them to play an undue role in crafting and passage of legislation." (Bledsoe Aff. ¶ 7.) Plaintiffs attack this justification as an unlawful attempt to "level the playing field."

The Supreme Court recently spoke against attempts to favor or disfavor certain speakers or viewpoints:

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. As instruments to censor, these categories are in-

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terrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

*Citizens United*, 130 S.Ct. at 398-99. The Supreme Court concluded that "[w]e find \*864 no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers." *Id.* at 899. Moreover, the Supreme Court rejected the suggestion that political corruption necessarily follows from the fact that a speaker may be favored by or have special access to elected officials. *Id.* at 910-11. "The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy." *Id.* Though the Supreme Court spoke in the specific context of corporate expenditures to advocate for the election or defeat of a candidate, *id.* at 886, the Supreme Court's reasoning refutes the premise that O.R.C. § 102.03(A)(4) is necessary to prevent former General Assembly members from having special access to the legislative process.

The Court concludes that Plaintiffs' third purported justification does not constitute a compelling interest. As such, Defendants have failed to establish any compelling governmental interest justifying § 102.03(A)(4) as applied to uncompensated lobbying. The Court holds that § 102.03(A)(4) is unconstitutional as applied to prohibit Brinkman from representing COAST on an uncompensated basis.

Narrowly tailored  
this could be the reason why the [C]repol  
should seek definitions

[9] Because Plaintiffs have challenged O.R.C. §

102.03(A)(4) both facially and as applied, and because the Court found above that Defendants have established compelling interests justifying O.R.C. § 102.03(A)(4) as applied to compensated lobbying, the Court next must examine whether the statute is narrowly tailored to achieve those ends. The statute must be narrowly tailored to achieve the objectives of avoiding corruption (*i.e.*, the prevention of unethical practices) or the appearance of corruption (*i.e.*, bolstering the public's confidence in the integrity of government). Defendants make two arguments that the statute is narrowly tailored: (1) the restriction in § 102.03(A)(4) lasts for only twelve months and (2) an Ohio appellate court in *Nipps* upheld a prior version of § 102.03(A)(4).

[10][11] As to the twelve-month limit, Defendants have not articulated or presented evidence to establish that the temporally limited restriction adequately addresses the concern against *quid pro quo* corruption. "The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Nixon*, 528 U.S. at 391, 120 S.Ct. 897. Courts do not "accept mere conjecture as adequate to carry a First Amendment burden." *Id.* at 392, 120 S.Ct. 897; see also *Citizens for Tax Reform*, 518 F.3d at 387 (striking down statute where there was "no evidence in the record" to support a showing that the statute was narrowly drawn to meet the compelling state interest). Defendants have not established that the danger of *quid pro quo* corruption or the appearance of corruption is significantly lessened if the former legislator is permitted to lobby the General Assembly one year and one day after leaving the legislature.

As to the *Nipps* precedent, the prior statute only prohibited advocacy on behalf of a client on matters about which the former public official had personally participated when he or she was in office. 66 Ohio App.2d at 20, 419 N.E.2d 1128.<sup>FNS</sup> The \*865 statute's stated purpose to ensure that "no public official or employee will engage in a conflict of interest or realize personal gain at public expense from the use of 'inside' information"-was closely tied to its narrow restriction against advocacy on matters on which the official had personally participated. *Id.* at 20-21, 419 N.E.2d 1128.<sup>FN9</sup> Conversely, under the current version of the statute, former General Assembly members are prohibited from representing clients on any matter

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before the General Assembly, regardless of whether it is a matter in which they personally participated while in office and on which they had the opportunity to gain "inside" information. The *Nippy* decision, therefore, does not support a finding that the current statute is narrowly tailored. Rather, it provides an example of how the current statute could be narrowed.

FN8. The former statute provided as follows:

No public official or employee shall represent a client or act in a representative capacity for any person before the public agency by which he is or within the preceding twelve months was employed or on which he serves or within the preceding twelve months had served on any matter with which the person is or was directly concerned and in which he personally participated during his employment or service by a substantial and material exercise of administrative discretion.

*Nippy*, 66 Ohio App.2d at 18-19, 419 N.E.2d 1128 (quoting O.R.C. § 102.03(A)).

FN9. Additionally, in the current statute, a different subsection similarly prohibits former public officials from representing clients or other persons "on any matter in which the public official ... personally participated as a public official ... through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion." O.R.C. § 102.03(A)(1).

Additionally, the current § 102.03(A)(4) is over-inclusive because it does not restrict only compensated lobbying, but rather restricts both compensated and uncompensated lobbying. Several other states, by way of contrast, have more narrowly tailored revolving door statutes that restrict only compensated lobbying activities. See, e.g., Ala.Code § 36-25-13(a); Haw.Rev.Stat. § 84-18(b); Md.Code Ann., State Gov't § 15-504(d)(1). Finally, § 102.03.04(A)(4) is under-inclusive because it does not restrict other behaviors or activities of former members of the General Assembly that might give rise to actual or perceived corruption, such as the acceptance of gifts or offers for

employment unrelated to lobbying.

For all these reasons, the Court finds that the statute is not narrowly tailored. Therefore, O.R.C. § 102.03(A)(4) does not withstand strict scrutiny analysis. The statute violates the First Amendment facially and as applied to Plaintiffs.

### 3. Remedy

[12][13] The Court next must determine whether a permanent injunction in the appropriate remedy. The standard for granting permanent injunctions is similar to the familiar standard for the issuance of a preliminary injunction. The party seeking relief must demonstrate the following:

- (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

*U.S. v. Matusoff Rental Co.*, 494 F.Supp.2d 740, 756 (S.D. Ohio 2007) (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-13, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982), and *Amoco Production Co. v. Village of Gambell, AK*, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)); see also *Becker v. Olszewski*, 415 F.Supp.2d 734, 754 (E.D. Mich. 2006) (similar statement of law). The party seeking a permanent injunction must establish success on the merits rather than a probability of success on the merits. See \*866 *Becker*, 415 F.Supp.2d at 754; *State of Ohio E.P.A. v. U.S. Dept. of Labor*, 121 F.Supp.2d 1155, 1168 (S.D. Ohio 2000).

[14][15][16][17] These factors support the issuance of a permanent injunction here. Plaintiffs have established a violation of the First Amendment here. Even a minimal infringement upon First Amendment rights results in irreparable harm. *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson Cty.*, 274 F.3d 377, 400 (6th Cir. 2001). Further, "[t]here are no available remedies at law that are adequate to compensate for a loss of First Amendment rights." *Am. Booksellers Found. for Free Expression v. Strickland*, 512 F.Supp.2d 1082, 1106 (S.D. Ohio 2007), question certified to the Ohio Supreme Court, 560 F.3d 443

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(6th Cir.2009). Finally, "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & I Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir.1994). The Court will permanently enjoin the enforcement of O.R.C. § 102.03(A)(4).

#### B. Equal Protection

The Court need not and will not address the parties' equal protection arguments because the Court has found that O.R.C. § 102.03(A)(4) must be struck down on the basis that it violates the First Amendment.

#### V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion For Summary Judgment and the Issuance of a permanent Injunction (doc. 29) is GRANTED and Defendants' Amended Motion for Summary Judgment (doc. 34) is DENIED. It is hereby ORDERED that Defendants, together with their officers, agents, servants, employees, and attorneys, as well as all other persons who are in active concert or participation with any of the foregoing individuals, are hereby PERMANENTLY ENJOINED from enforcing Ohio Revised Code § 102.03(A)(4) and rules promulgated thereto against Plaintiffs and any others similarly situated.

IT IS SO ORDERED.

S.D. Ohio, 2010.  
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Exh. A  
Ex D-11



## INSPECTOR GENERAL REPORT

2008-06-0165

December 30, 2010

### UNIFORM GOVERNMENT CODE PROPOSAL

*Inspector General David O. Thomas, Director of Finance and Governmental Affairs Dhiann Kinsworthy, State Ethics Director Cynthia Carrasco and Legal Intern Rachel C. Ehlich, report as follows:*

#### *Summary*

*A recommendation to the Indiana Legislature to establish a Summer Study Commission to address the re-codification of Titles 4 and 5 and other authorities regarding the operation of the Executive Branch of Indiana Government.*

#### Introduction

This report addresses a recommendation to the Indiana Legislature regarding Titles 4 and 5 of the Indiana Code and other Indiana authorities.

It is based upon the experiences of the Office of the Inspector General (OIG) in its investigations, advisory opinions, educational efforts, and recommendations since its inception in 2005.

The jurisdiction of the OIG includes the duties to: address “fraud, waste, abuse, and wrongdoing in agencies.”<sup>1</sup> The OIG is also charged to “recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government,”<sup>2</sup> to “provide advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency,”<sup>3</sup> and to “recommend legislation to the Governor and General Assembly to strengthen public integrity laws.”<sup>4</sup> The OIG is further authorized to “prepare interpretive and educational materials and programs” to effectuate the above.<sup>5</sup>

Based upon the above experiences and authority, the OIG respectfully makes the following findings and recommendation.

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<sup>1</sup> IC 4-2-7-2(b).

<sup>2</sup> IC 4-2-7-3(2).

<sup>3</sup> IC 4-2-7-3(8).

<sup>4</sup> IC 4-2-7-3(9).

<sup>5</sup> IC 4-2-7-3(16).

## Findings

The OIG respectfully makes the following findings in support of its concluding recommendation that a newly codified body of law would benefit state government.

1

Titles 4 and 5 of the Indiana Code address the basic operations of the Executive Branch of Indiana Government. As addressed below, other authorities address these same issues.

2

A complete codification of these duties has not occurred since the passage of the "Financial Reorganization Act of 1947." *See:* IC 4-13-2.

3

Our experience and research reveal statutory provisions with duplications of topics and matters no longer in practice.

As one example, Indiana law currently contains two, conflicting depository rules. The depository rule is a tool of great importance in preventing theft or mismanagement within governmental operations.<sup>6</sup>

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<sup>6</sup> The first of the two depository rules currently in existence was announced in the Indiana Financial Reorganization Act of 1947 which states:

All receipts from any source coming into the possession of any state agency shall be deposited with the state treasurer each day or as soon as practicable after the same is received, unless otherwise provided by law, and at the end of each calendar month each

A second example of duplication involves statutes addressing confidential information. A person who reveals "confidential information," a term often undefined, is subject to various statutory provisions. *See e.g.*: IC 5-14-3-10, IC 5-28-15-7(b), IC 4-2-7-8(d).

A third example of a statutory provision in need of evaluation is the "Career Bipartisan Personnel System." *See*: IC 4-15-2.5. This procedure was established in 1971, and condones and mandates the firing of state workers for political reasons to obtain political parity within state agencies. IC 4-15-2.5.

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agency shall file a report of all receipts deposited since the last previous report, which report shall show the disposition thereof. Said report shall be submitted to the director of auditing by the depositing agency. All moneys so received by the treasurer during any month shall be credited by him and by the director of auditing to the proper funds not later than the fifth day of the following month.

IC 4-13-2-21 (1947).

Absent from this rule is (1) a mandatory 24-hour deposit requirement and (2) a criminal penalty for non-compliance found in the subsequent version of the rule.

The second depository rule, also currently in existence, was implemented forty years later in 1987 through Public Law 19-1987. Here, the Legislature created a new rule on this same topic, which states in relevant part:

A [1] public officer or state officer who [2] receives and has control of public funds paid into the treasury of the state or the treasuries of the respective political subdivisions and who [3] later than the business day following the receipt of the public funds fails to deposit the public funds in one or more depositories in the name of the state or political subdivision, commits a violation of the depository rule, a class B felony, and is liable upon the officer's official bond for any loss or damage that may accrue.

However, state employees from the Department of Natural Resources and Department of Revenue are exempted from this rule if the daily receipt is less than \$100.

IC 5-13-6-1 (rule); IC 5-13-14-3 (penalty classified as class B felony); IC 5-13-4-19 (political subdivision defined); IC 5-13-4-211 (public officer defined); IC 5-13-4-20 (public funds defined); IC 5-13-8-1 and IC 5-13-9.5 (designation of depositories). *See also*: SBOA State and Quasi Manual, Chapter 3.

Unlike the original depository rule in 1947, this 1987 rule (1) mandates the 24-hour deposit requirement and (2) imposes a criminal penalty for non-compliance. A class B felony in Indiana includes potential penalties ranging from 6 to 20 years of imprisonment and a fine not to exceed \$10,000. IC 35-50-2-5. By being classified as a class B felony, this depository rule carries the same penalties as rape in Indiana. IC 35-42-4-1.2.

The OIG recognizes that it is simplistic to merely criticize certain provisions within a large body of law. Instead, the OIG cites these examples as illustrations of the many statutory provisions which might be improved with a re-examination and codification as addressed below.

4

At least forty-one (41) individual criminal offenses are embedded within Titles 4 and 5, outside the codified criminal offenses against public administration in IC 35-44. *See attached Exhibits A (felonies) and B (misdemeanors)*. Many of these offenses are rarely charged.<sup>7</sup>

5

Many of these criminal offenses omit: (1) corresponding definitions of terms, (2) elements of the criminal offense, or (3) the level of *mens rea*<sup>8</sup> required

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<sup>7</sup> No current system available to the public within Indiana government accurately measures the frequency of the charging of criminal offenses in a comprehensive state-wide system. However, a review of the reported annotated cases in various legal research systems which reveal the litigation of criminal actions in the Indiana appellate courts reveal that these offenses within Titles 4 and 5 are rarely litigated.

<sup>8</sup> Absent from many of these offenses are determinations as to which of the following levels of intent are required for violation:

IC 35-41-2-2

Culpability

Sec. 2. (a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.

(b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

(c) A person engages in conduct "recklessly" if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

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for proof.

Often these criminal offenses, which subject persons to arrest, use general language such as: "A person who knowingly violates this chapter commits a Class A misdemeanor." *See e.g.*: IC 4-15-2-42. In this particular criminal offense (IC 4-15-2-42), there are 41 sections within the chapter that subject the worker to the crime. IC 4-15-2-1 through 41.

These circumstances could invade one of the fundamental tenets of Fourteenth Amendment Due Process or the Due Course of Law required in Article 1, Section 12 of the Indiana Constitution. In both constitutional provisions, citizens are to be put on notice as to what specific conduct is in violation of the laws. *See e.g.*: *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 2298-2299, 33 L.Ed.2d 222 (1972)(*the void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement*).

6

It is respectfully submitted that some public offense crimes might benefit from an evaluation and simplification in language.

As one example, the criminal conflict of interest statute, with its several

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(d) Unless the statute defining the offense provides otherwise, if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct.

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amendments through the years, has grown in complexity to read:

- (a) A public servant who knowingly or intentionally:
  - (1) has a pecuniary interest in; or
  - (2) derives a profit from;a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.
- (b) This section does not prohibit a public servant from receiving compensation for:
  - (1) services provided as a public servant; or
  - (2) expenses incurred by the public servant as provided by law.
- (c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:
  - (1) If the:
    - (A) public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;
    - (B) functions and duties performed by the public servant for the governmental entity are unrelated to the contract or purchase; and
    - (C) public servant makes a disclosure under subsection (d)(1) through (d)(6).
  - (2) If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
  - (3) If the public servant:
    - (A) is an elected public servant or a member of the board of trustees of a state supported college or university; and
    - (B) makes a disclosure under subsection (d)(1) through (d)(6).
  - (4) If the public servant:
    - (A) was appointed by an elected public servant or the board of trustees of a state supported college or university; and
    - (B) makes a disclosure under subsection (d)(1) through (d)(7).
  - (5) If the public servant:
    - (A) acts in only an advisory capacity for a state supported college or university; and
    - (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
  - (6) If the public servant:
    - (A) is employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent; and
    - (B) makes a disclosure under subsection (d)(1) through (d)(6).
  - (7) If the public servant is under the jurisdiction of the state ethics commission as provided in IC 4-2-6-2.5 and obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:
    - (A) granted to the public servant before action is taken in connection with

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Exh. B

the contract or purchase by the governmental entity served; or

(B) sought by the public servant as soon after the contract or purchase as the public servant becomes aware of the facts that give rise to a question of conflict of interest.

(d) A disclosure required by this section must:

(1) be in writing;

(2) describe the contract or purchase to be made by the governmental entity;

(3) describe the pecuniary interest that the public servant has in the contract or purchase;

(4) be affirmed under penalty of perjury;

(5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase;

(6) be filed within fifteen (15) days after final action on the contract or purchase with:

(A) the state board of accounts; and

(B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

(7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant.

(e) The state board of accounts shall forward to the state ethics commission a copy of all disclosures filed with the board under IC 16-22-2 through IC 16-22-5, IC 16-23-1, or this section.

(f) The state ethics commission shall maintain an index of all disclosures received by the commission. The index must contain a listing of each public servant, setting forth the disclosures received by the commission made by that public servant.

(g) A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

(1) the public servant; or

(2) a dependent of the public servant who:

(A) is under the direct or indirect administrative control of the public servant; or

(B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(h) It is a defense in a prosecution under this section that the public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.

(i) Notwithstanding subsection (d), a member of the board of trustees of a state supported college or university, or a person appointed by such a board of trustees, complies with the disclosure requirements of this chapter with respect to the member's or person's pecuniary interest in a particular type of contract or purchase which is made on a regular basis from a particular vendor if the member or person files with the state board of accounts and the board of trustees a statement of pecuniary interest in that particular type of contract or purchase

made with that particular vendor. The statement required by this subsection must be made on an annual basis.

(j) This section does not apply to members of the governing board of a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1.

(k) As used in this section, "dependent" means any of the following:

(1) The spouse of a public servant.

(2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is:

(A) unemancipated; and

(B) less than eighteen (18) years of age.

(3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

*As added by Acts 1978, P.L.144, SEC.7. Amended by Acts 1981, P.L.304, SEC.1; P.L.329-1983, SEC.1; P.L.66-1987, SEC.28; P.L.13-1987, SEC.16; P.L.183-1988, SEC.1; P.L.109-1988, SEC.3; P.L.197-1989, SEC.3; P.L.2-1993, SEC.185; P.L.22-1995, SEC.3; P.L.1-1997, SEC.149.*

IC 35-44-1-3.

In a separate report issued by this office, a possible restructuring of the language in this specific offense was examined. *See Case Number 2010-08-0196, published September 7, 2010, at [www.in.gov/ig/files/2010.08.0196.COILanguage.pdf](http://www.in.gov/ig/files/2010.08.0196.COILanguage.pdf).*

7

Indiana rules on the operation of state government are often interspersed in various locations. We summarize these (some of which are helpful codification microcosms) only for illustration purposes to show that multiple sources often need to be reviewed for compliance.

- Indiana Code, Title 4
- Indiana Code, Title 5
- Financial Management Circulars ("Circulars") by the Indiana State Budget Agency (on-line at: <http://www.in.gov/sba/2512.htm>)
- Accounting and Uniform Compliance Guidelines Manuals ("Manuals") by the Indiana State Board of Accounts (on-line at: [www.in.gov/sboa/2725.htm](http://www.in.gov/sboa/2725.htm))
- Attorney General and Department of Administration Professional Services Contract Manual (on-line at: [http://www.state.in.us/idoa/files/2008\\_Contract\\_Manual.pdf](http://www.state.in.us/idoa/files/2008_Contract_Manual.pdf))
- Indiana Code of Ethics (42 IAC 1-5)

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Exh. B

- Promulgated Rules of State Procurement (25 IAC 1.1)
- Promulgated Rules of the State Personnel Department (31 IAC 1)

In summary, it would seem beneficial to have a single resource, in codified form for state workers to access when seeking full compliance with the rules pertaining to relevant: criminal, ethical, purchasing, contracting, open records and meetings, and promulgation rules.

It is also our experience that these topics often overlap when addressing a single act by a state worker or contractor, thereby reinforcing the benefit in unifying the rules into a single resource.

8

Other states and jurisdictions have addressed these same concerns and launched codifications of operating rules.

A

For example, the United States Government through the Federal Acquisition Regulation (FAR) [on-line at: <https://www.acquisition.gov/Far/>] has responded to similar concerns.<sup>9</sup> The FAR codifies the many federal rules which

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<sup>9</sup> The FAR is codified in Title 48 of the United States Code of Federal Regulations. It is issued pursuant to the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400 and Title 41 of the United States Code), Chapter 7. Statutory authority to issue and maintain the FAR resides with the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, 41 U.S.C. § 421(c)(1), subject to the approval of the Administrator of Federal Procurement Policy, 41 U.S.C. § 405.

The FAR and its agency supplements are said by the Federal courts to have "the force and effect of law," see *Davies Precision Machining, Inc. v. U.S.*, 35 Fed. Cl. 651 (1995). Nearly all government agencies are required to comply with the FAR. However, some agencies are exempt (e.g., the United States Postal Service, the Tennessee Valley Authority, the Federal

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Exh. B

address the process of purchasing within the federal government.

## B

As another example of federal codification, Title 5 of the United States Code codifies and unifies federal agencies in the following manner:

### PART I—THE AGENCIES GENERALLY

#### CHAPTER 1—ORGANIZATION (§§ 101—105)

- § 101. Executive departments
- § 102. Military departments
- § 103. Government corporation
- § 104. Independent establishment
- § 105. Executive agency

#### CHAPTER 3—POWERS (§§ 301—306)

#### CHAPTER 5—ADMINISTRATIVE PROCEDURE (§§ 500—596)

#### CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS (§§ 601—612)

#### CHAPTER 7—JUDICIAL REVIEW (§§ 701—706)

#### CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING (§§ 801—808)

#### CHAPTER 9—EXECUTIVE REORGANIZATION (§§ 901—913)

5 USC 1.

## C

The State of Texas has adopted a “Government Code.” It likewise addresses these topics in a centralized location. *See Exhibit D, attached.*

In summary, we cite these other sovereigns only to illustrate potential models.<sup>10</sup>

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Aviation Administration, and the Bonneville Power Administration); in those cases, the agency promulgates its own specific procurement rules.

The FAR is divided into 53 parts, organized into eight Subchapters designated A through H. Each part is then divided into subparts, sections, and subsections, with further divisions below the subsection level. [Citation from Wikipedia].

See Exhibit C, attached, for topical divisions of the FAR.

<sup>10</sup> Although having interstate application, the following uniform laws (cited at [http://en.wikipedia.org/wiki/List\\_of\\_Uniform\\_Acts\\_\(United\\_States\)](http://en.wikipedia.org/wiki/List_of_Uniform_Acts_(United_States))) reveal a national trend to continually re-codify complicated rules for the benefit of the public:

A re-codified and unified government code may reduce wrongdoing and avoid civil litigation.

We have found in our investigations and advisory functions that clarity in the law often reduces wrongdoing. We have observed that workers who do not have access to simple, practical operating rules, tend to perform in a variety of ways. We further believe that government operates worst when well-intentioned workers find themselves in a trap of violating complex rules they did not understand or knew existed.

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Uniform Residential Landlord and Tenant Act (1972)  
 Uniform Rights of the Terminally Ill Act (1989)  
 Uniform Rules of Criminal Procedure (1974) (1987)  
 Uniform Rules of Evidence Act (2005)  
 Uniform Securities Act (1956) (1985) (amended 1988) (2002)  
 Uniform Simultaneous Death Act (1940) (1993)  
 Uniform State Administrative Procedure Act (1981)  
 Uniform Status of Children of Assisted Conception Act (1988)  
 Uniform Statute and Rule Construction Act (1995)  
 Uniform Statutory Form Power of Attorney Act (1988)  
 Uniform Statutory Rule Against Perpetuities (1986) (1990)  
 Uniform Supervision of Trustees for Charitable Purposes Act (1954)  
 Uniform Surface Use and Mineral Development Accommodation Act (1990)  
 Uniform Tod Security Registration Act (1989)  
 Uniform Testamentary Additions to Trusts Act (1960) (1991)  
 Uniform Trade Secrets Act (1979) (1985)  
 Uniform Transboundary Pollution Reciprocal Access Act (1982)  
 Uniform Transfer of Litigation Act (1991)  
 Uniform Transfers to Minors Act (1983) (1986)  
 Uniform Transfers Under Nontestamentary Instruments Act (1978)  
 Uniform Trust Code (2000)  
 Uniform Trustees' Powers Act (1964)  
 Uniform Unclaimed Property Act (1995)  
 Uniform Unincorporated Nonprofit Association Act (1992) (1996)  
 Uniform Victims of Crime Act (1992).

In an attempt to address and reduce these concerns, the OIG has developed and published the Uniform Government Code (UGC). *See Exhibit E, attached, and published on-line at: <http://www.in.gov/ig/2332.htm>.*

This is only an initial attempt to codify the many rules above, and we respectfully submit that a legislative codification in a manner it sees fit merits consideration.

Concluding Recommendation

For the above reasons, and stressing that these findings and recommendation are expressed with the recognition that these circumstances inevitably develop over time in any large body of law, we respectfully recommend the consideration of a "Blue Ribbon" or Summer Study Commission to address these issues. The OIG remains committed to provide further participation, research and assistance.

Dated this 30th day of December, 2010.



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David O. Thomas, Inspector General

Exhibit A

FELONY CRIMES IN TITLES 4 & 5	STATUTE
knowingly, intentionally, or recklessly discloses a Social Security number	4-1-10-8
knowingly, intentionally, or recklessly makes a false representation to a state agency to obtain a Social Security number from the state agency	4-1-10-9
commissioner of the department of administration or an employce of his department knowingly, falsely certifies any bill on account of the public printing, lithographing, binding, stationery, printing material, or office supplies	4-13-4.1-4 (b)
Contracts for vendor and auditing services	4-30-3-19
Contributions to candidates or committees; state offices	4-30-3-19.5
Contributions to candidates or committees; legislative or local offices	4-30-3-19.7
A person who: (1) knowingly presents a counterfeit or altered lottery ticket; (2) knowingly transfers a counterfeit or altered lottery ticket to another to present for payment; or (3) with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a lottery ticket	4-30-14-3
Disclosure of confidential information relating to the lottery	4-30-14-4
Conducting, aiding, or abetting pari-mutuel wagering without a permit; violation	4-31-13-3
Permit holders or persons with an interest in a permit holder	4-31-13-3.5
Gift by permit holder to induce precinct committee member on local public question	4-31-13-9
An individual, a corporation, a partnership, a limited liability company, or other association that recklessly, knowingly, or intentionally enters into a contract or other agreement with a qualified organization in violation of IC 4-32.2-5-2 commits a Class D felony.	4-32.2-8-4(b)
Riverboat Gambling: Chapter 10. Crimes and Penalties - Class D felonies	4-33-10-2
Licensees or persons who have an interest in a licensee	4-33-10-2.1
Gift by licensee to induce precinct committee member on local public question	4-33-10-2.5
Gambling Games at Racetracks: Chapter 9. Penalties - Class D felonies	4-35-9-5

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Exh. B

Exhibit A

Law Enforcement Academy Building Commission - Conflict of interest	5-2-2-11
Violations of 5-11-10-1 <ul style="list-style-type: none"> <li>o (Accounting for Public Funds - Certification of Claims; Forms - Disbursements for claims; certification; liability)</li> </ul>	5-11-10-3
A public officer who knowingly fails to deposit public funds, or knowingly deposits or draws any check or negotiable order of withdrawal against the funds except in the manner prescribed in this article, commits a Class B felony	5-13-14-3
A public official or other person who recklessly, knowingly, or intentionally destroys or damages any public record commits a Class D felony unless:  (1) the commission shall have given its approval in writing that the public records may be destroyed; (2) the commission shall have entered its approval for destruction of the public records on its own minutes; or (3) authority for destruction of the records is granted by an approved retention schedule established under this chapter	5-15-6-8
A person making any such bid, offer, proposal, estimate or contract to sell or lease, who knowingly violates this chapter commits a Class D felony	5-17-1-5
Purchases and Leases of Personal Property by State Agencies	5-17-1-6

Exhibit B

MISDEMEANOR CRIMES IN TITLES 4 & 5	STATUTE
Retaliation against employee, former employee, special state appointee or former special state appointee for filing complaint or furnishing information or testimony	4-2-6-13
<p>(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation conducted by the inspector general to do any of the following:</p> <ul style="list-style-type: none"> <li>(A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.</li> <li>(B) Avoid legal process summoning the person to testify or supply evidence.</li> <li>(C) Fail to appear at a proceeding or investigation to which the person has been summoned.</li> <li>(D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.</li> </ul> <p>(2) Alter, damage, or remove a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation conducted by the inspector general.</p> <p>(3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.</p>	4-2-6-14
<p>(d) Except as provided in subsection (c), a person who knowingly or intentionally discloses:</p> <ul style="list-style-type: none"> <li>(1) confidential information or records; or</li> <li>(2) the identity of a person whose identity is confidential under subsection (a)</li> </ul>	4-2-7-8(d)
<p>A person who recklessly uses equipment:</p> <ul style="list-style-type: none"> <li>(1) to ascertain the moisture and the foreign material and dockage content of grain in the process of commercial buying or selling of grain; and</li> <li>(2) that does not bear the seal required by <u>section 2</u> of this chapter</li> </ul>	4-4-27-8
<p>Collection of costs, licenses, monies, fines, penalties or forfeitures; escheats; reports of officers of money due state</p> <p>(b) The officers having the custody of the money shall report to the attorney general, upon oath or affirmation, all facts pertaining to it, upon the attorney</p>	4-6-2-6

Exhibit B

general's demand, in person, by deputy or assistants, or in writing.	
A trustee who violates <u>section 1</u> of this chapter commits a Class C infraction and forfeits his office.	4-10-14-2
An officer who recklessly lends to any person a greater amount of funds than he is authorized by law to lend commits a Class B misdemeanor.	4-11-1-6
DOC Ombudsman violations	4-13-1.2-11
Dept. of Child Services Ombudsman violations	4-13-19-11
Qualification for State Public Works Projects - Violations; reports of convictions; disqualification of convicted persons	4-13.6-4-14
A person who knowingly violates <u>section 10</u> or <u>section 12</u> of this chapter commits a Class C misdemeanor	
State Merit Employment - Violations; offense; ineligibility	4-15-2-42
Protection of employees reporting violations of state or federal laws, etc.	4-15-10-4
An individual who: (1) is serving alone or with others as an administrative law judge or as a person presiding in a proceeding under <u>sections 28</u> through 31 of this chapter; and (2) knowingly or intentionally violates <u>section 11, 12, or 13</u> of this chapter; commits a Class A misdemeanor.	4-21.5-3-36
Aiding in violation 4-21.5-3 § 11,12,13	4-21.5-3-37
Unlawful purchase of lottery tickets	4-30-12-5
A retailer who extends credit or lends money to a person for the purchase of a lottery ticket commits a Class C misdemeanor.	4-30-14-1
A person who: (1) induces another person to assign or transfer a right to claim a prize; (2) offers for sale the right to claim a prize; or (3) offers for compensation to claim the prize of another person; commits a Class A misdemeanor	4-30-14-2
A person who uses point-of-sale material issued by the commission or otherwise represents that the person is a retailer without being under contract with the commission to act as a retailer commits a Class A misdemeanor.	4-30-14-5

Exhibit B

A person who, without being authorized by the commission in writing, uses the term "Indiana lottery", "state lottery", or "Indiana state lottery" or a similar term in reference to an enterprise other than a lottery conducted under this article commits a Class A misdemeanor.	4-30-14-6
Charity gaming penalties	4-32.2-8-4
Riverboat gambling Class A misdemeanors	4-33-10-1
(d) A person who knowingly, recklessly, or intentionally conducts a boxing, sparring, or unarmed combat match or exhibition without first obtaining a license or permit commits a Class B misdemeanor	4-33-22-14(d)
Riverboat Gambling Boxing and Mixed Martial Arts violations	4-33-22-40
A person who: (1) is not an employee of a licensee; (2) is less than twenty-one (21) years of age; and (3) knowingly or intentionally enters the licensee's slot machine facility; commits a Class A misdemeanor.	4-35-9-3
A person who knowingly or intentionally: (1) makes a false statement on an application submitted under this article; (2) conducts a gambling game in a manner other than the manner required under this article; or (3) wagers or accepts a wager at a location other than a licensee's slot machine facility; commits a Class A misdemeanor.	4-35-9-4
A person who knowingly or intentionally: (1) makes a false statement on an application submitted under this article; (2) operates a type II gambling operation in which wagering is conducted or is to be conducted in a manner other than the manner required under this article; (3) permits a person less than twenty-one (21) years of age to play a type II gambling game; or (4) wagers or accepts a wager on a type II gambling game at a location other than a retailer's licensed premises; commits a Class A misdemeanor.	4-36-6-5
Hospital Bonding Authorities - Interest in contracts	5-1-4-22
(a) Except as provided in subsection (b), a person who knowingly releases criminal intelligence information to an agency or person other than a criminal justice agency commits a Class A misdemeanor.	5-2-4-7(a)

Exhibit B

Publication of Notices - Publication Procedures - Violations	5-3-1-9
State Teachers' Retirement Fund Board - violations	5-10.4-3-16
Class B infraction	5-11-1-10
A person who recklessly communicates knowledge of any proposed examination of any public account to the officer in charge of the account or to any other unauthorized person commits a Class B misdemeanor	5-11-1-18
Class C infraction	5-11-1-21
Failure to perform duty	5-13-14-4
A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency, except as provided by IC 4-15-10, who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor.	5-14-3-10
A contractor or subcontractor who knowingly fails to pay the rate of wages determined under this chapter commits a Class B misdemeanor.	5-16-7-3
Any person who displays for use in parking in a parking space reserved for a person with a physical disability a placard or a special license plate that was not issued under IC 9-14-5, IC 9-18-18, IC 9-18-22, or under the laws of another state commits a Class C misdemeanor	5-16-9-5(c)
A board member, a U.E.A. member, or an agent of a board member or U.E.A. member who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.	5-28-15-7(b)
A person or an entity that receives confidential records or information under this section and knowingly or intentionally discloses the records or information to an unauthorized person commits a Class A misdemeanor	5-28-15-8(c)

## Exhibit C

The United States FAR subchapters and parts include:  
(<https://www.acquisition.gov/Far/>)

- Subchapter A—General
  - Part 1—Federal Acquisition Regulations System
  - Part 2—Definitions of Words and Terms
  - Part 3—Improper Business Practices and Personal Conflicts of Interest
  - Part 4—Administrative Matters
  
- Subchapter B—Competition and Acquisition Planning
  - Part 5—Publicizing Contract Actions
  - Part 6—Competition Requirements
  - Part 7—Acquisition Planning
  - Part 8—Required Sources of Supplies and Services
  - Part 9—Contractor Qualifications
  - Part 10—Market Research
  - Part 11—Describing Agency Needs
  - Part 12—Acquisition of Commercial Items
  
- Subchapter C—Contracting Methods and Contract Types
  - Part 13—Simplified Acquisition Procedures
  - Part 14—Sealed Bidding
  - Part 15—Contracting by Negotiation
  - Part 16—Types of Contracts
  - Part 17—Special Contracting Methods
  - Part 18—Emergency Acquisitions
  
- Subchapter D—Socioeconomic Programs
  - Part 19—Small Business Programs
  - Part 20--[RESERVED, not currently in use]
  - Part 21--[RESERVED, not currently in use]
  - Part 22—Application of Labor Laws to Government Acquisitions
  - Part 23—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace
  - Part 24—Protection of Privacy and Freedom of Information
  - Part 25—Foreign Acquisition
  - Part 26—Other Socioeconomic Programs
  
- Subchapter E—General Contracting Requirements
  - Part 27—Patents, Data, and Copyrights
  - Part 28—Bonds and Insurance
  - Part 29—Taxes
  - Part 30--Cost Accounting Standards Administration

## Exhibit C

- Part 31—Contract Cost Principles and Procedures
- Part 32—Contract Financing
- Part 33—Protests, Disputes, and Appeals
  
- Subchapter F—Special Categories of Contracting
  - Part 34—Major System Acquisition
  - Part 35—Research and Development Contracting
  - Part 36—Construction and Architect-Engineer Contracts
  - Part 37—Service Contracting
  - Part 38—Federal Supply Schedule Contracting
  - Part 39—Acquisition of Information Technology
  - Part 40--[RESERVED, not currently in use]
  - Part 41—Acquisition of Utility Services
  
- Subchapter G—Contract Management
  - Part 42—Contract Administration and Audit Services
  - Part 43—Contract Modifications
  - Part 44—Subcontracting Policies and Procedures
  - Part 45—Government Property
  - Part 46—Quality Assurance
  - Part 47—Transportation
  - Part 48—Value Engineering
  - Part 49—Termination of Contracts
  - Part 50—Extraordinary Contractual Actions
  - Part 51—Use of Government Sources by Contractors
  
- Subchapter H—Clauses and Forms
  - Part 52—Solicitation Provisions and Contract Clauses
  - Part 53—Forms

Exhibit D

TEXAS GOVERNMENT CODE

- GOVERNMENT CODE
- TITLE 1. GENERAL PROVISIONS
- CHAPTER 1. GENERAL PROVISIONS
- TITLE 2. JUDICIAL BRANCH
- SUBTITLE A. COURTS
- CHAPTER 21. GENERAL PROVISIONS
- CHAPTER 22. APPELLATE COURTS
- CHAPTER 23. GENERAL PROVISIONS FOR TRIAL COURTS
- CHAPTER 24. DISTRICT COURTS
- CHAPTER 25. STATUTORY COUNTY COURTS
- CHAPTER 26. CONSTITUTIONAL COUNTY COURTS
- CHAPTER 27. JUSTICE COURTS
- CHAPTER 28. SMALL CLAIMS COURTS
- CHAPTER 29. MUNICIPAL COURTS
- CHAPTER 30. MUNICIPAL COURTS OF RECORD
- SUBTITLE B. JUDGES
- CHAPTER 31. ADDITIONAL COMPENSATION OF JUSTICES OF COURTS OF APPEAL
- CHAPTER 32. ADDITIONAL COMPENSATION OF DISTRICT JUDGES
- CHAPTER 33. STATE COMMISSION ON JUDICIAL CONDUCT
- CHAPTER 34. CODE OF JUDICIAL CONDUCT; CANDIDATES FOR JUDICIAL OFFICE
- CHAPTER 35. JUDICIAL COMPENSATION COMMISSION
- SUBTITLE C. PROSECUTING ATTORNEYS
- CHAPTER 41. GENERAL PROVISIONS
- CHAPTER 42. STATE PROSECUTING ATTORNEY
- CHAPTER 43. DISTRICT ATTORNEYS
- CHAPTER 44. CRIMINAL DISTRICT ATTORNEYS
- CHAPTER 45. COUNTY ATTORNEYS
- CHAPTER 46. PROFESSIONAL PROSECUTORS
- SUBTITLE D. JUDICIAL PERSONNEL AND OFFICIALS
- CHAPTER 51. CLERKS
- CHAPTER 52. COURT REPORTERS AND SHORTHAND REPORTING FIRMS
- CHAPTER 53. BAILIFFS
- CHAPTER 54. MASTERS; MAGISTRATES; REFEREES; ASSOCIATE JUDGES
- CHAPTER 55. OTHER COURT PERSONNEL

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- ⊕ CHAPTER 56. JUDICIAL AND COURT PERSONNEL TRAINING FUND
- ⊕ CHAPTER 57. COURT INTERPRETERS
- ⊕ SUBTITLE E. JURIES
- ⊕ CHAPTER 61. GENERAL PROVISIONS
- ⊕ CHAPTER 62. PETIT JURIES
- ⊕ SUBTITLE F. COURT ADMINISTRATION
- ⊕ CHAPTER 71. TEXAS JUDICIAL COUNCIL
- ⊕ CHAPTER 72. OFFICE OF COURT ADMINISTRATION
- ⊕ CHAPTER 73. ADMINISTRATION OF COURTS OF APPEALS
- ⊕ CHAPTER 74. COURT ADMINISTRATION ACT
- ⊕ CHAPTER 75. OTHER COURT ADMINISTRATION
- ⊕ CHAPTER 76. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS
- ⊕ CHAPTER 77. JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY
- ⊕ CHAPTER 78. CAPITAL WRITS COMMITTEE AND OFFICE OF CAPITAL WRITS
- ⊕ SUBTITLE G. ATTORNEYS
- ⊕ CHAPTER 81. STATE BAR
- ⊕ CHAPTER 82. LICENSING OF ATTORNEYS
- ⊕ CHAPTER 83. CERTAIN UNAUTHORIZED PRACTICE OF LAW
- ⊕ CHAPTER 84. UNAUTHORIZED ATTORNEY COMPENSATION
- ⊕ SUBTITLE H. INFORMATION RESOURCES
- ⊕ CHAPTER 91. STATE LAW LIBRARY
- ⊕ SUBTITLE I. COURT FEES AND COSTS
- ⊕ CHAPTER 101. FILING FEES AND OTHER FEES AND COSTS IN CIVIL PROCEEDINGS
- ⊕ CHAPTER 102. COURT COSTS IN CRIMINAL PROCEEDINGS
- ⊕ CHAPTER 103. ADDITIONAL COURT FEES AND COSTS
- ⊕ SUBTITLE J. GUARDIANSHIPS
- ⊕ CHAPTER 111. GUARDIANSHIP CERTIFICATION BOARD
- ⊕ TITLE 3. LEGISLATIVE BRANCH
- ⊕ SUBTITLE A. LEGISLATURE
- ⊕ CHAPTER 301. LEGISLATIVE ORGANIZATION
- ⊕ CHAPTER 302. SPEAKER OF THE HOUSE OF REPRESENTATIVES
- ⊕ CHAPTER 303. GOVERNOR FOR A DAY AND SPEAKER'S DAY
- ⊕ CHAPTER 304. EMERGENCY INTERIM LEGISLATIVE SUCCESSION
- ⊕ CHAPTER 305. REGISTRATION OF LOBBYISTS

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TEXAS GOVERNMENT CODE

- Ⓜ CHAPTER 306. LEGISLATIVE INFORMATION
- Ⓜ SUBTITLE B. LEGISLATION
- Ⓜ CHAPTER 311. CODE CONSTRUCTION ACT
- Ⓜ CHAPTER 312. CONSTRUCTION OF LAWS
- Ⓜ CHAPTER 313. NOTICE FOR LOCAL AND SPECIAL LAWS
- Ⓜ CHAPTER 314. FISCAL NOTES AND COST PROJECTIONS
- Ⓜ CHAPTER 315. ECONOMIC IMPACT STATEMENT
- Ⓜ CHAPTER 316. APPROPRIATIONS
- Ⓜ CHAPTER 317. STATE BUDGET EXECUTION
- Ⓜ CHAPTER 318. REVIEW OF REGULATORY PROGRAMS
- Ⓜ CHAPTER 319. LEGISLATION REGARDING JUDICIAL SYSTEM
- Ⓜ CHAPTER 320. UNFUNDED MANDATES ON POLITICAL SUBDIVISIONS
- Ⓜ SUBTITLE C. LEGISLATIVE AGENCIES AND OVERSIGHT COMMITTEES
- Ⓜ CHAPTER 321. STATE AUDITOR
- Ⓜ CHAPTER 322. LEGISLATIVE BUDGET BOARD
- Ⓜ CHAPTER 323. TEXAS LEGISLATIVE COUNCIL
- Ⓜ CHAPTER 324. LEGISLATIVE REFERENCE LIBRARY
- Ⓜ CHAPTER 325. SUNSET LAW
- Ⓜ CHAPTER 326. COOPERATION BETWEEN LEGISLATIVE AGENCIES
- Ⓜ CHAPTER 328. CRIMINAL JUSTICE LEGISLATIVE OVERSIGHT COMMITTEE
- Ⓜ SUBTITLE Z. MISCELLANEOUS PROVISIONS
- Ⓜ CHAPTER 391. RESOLUTIONS FOR STATE SYMBOLS, PLACE DESIGNATIONS, AND RECOGNITION DAYS, WEEKS, AND MONTHS
- Ⓜ TITLE 4. EXECUTIVE BRANCH
- Ⓜ SUBTITLE A. EXECUTIVE OFFICERS
- Ⓜ CHAPTER 401. GOVERNOR AND LIEUTENANT GOVERNOR
- Ⓜ CHAPTER 402. ATTORNEY GENERAL
- Ⓜ CHAPTER 403. COMPTROLLER OF PUBLIC ACCOUNTS
- Ⓜ CHAPTER 404. STATE TREASURY OPERATIONS OF COMPTROLLER
- Ⓜ CHAPTER 405. SECRETARY OF STATE
- Ⓜ CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS
- Ⓜ SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION
- Ⓜ CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS
- Ⓜ CHAPTER 413. CRIMINAL JUSTICE POLICY COUNCIL

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TEXAS GOVERNMENT CODE

- Ⓜ CHAPTER 414. TEXAS CRIME STOPPERS COUNCIL
- Ⓜ CHAPTER 417. STATE FIRE MARSHAL
- Ⓜ CHAPTER 418. EMERGENCY MANAGEMENT
- Ⓜ CHAPTER 419. TEXAS COMMISSION ON FIRE PROTECTION
- Ⓜ CHAPTER 420. SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES
- Ⓜ CHAPTER 421. HOMELAND SECURITY
- Ⓜ SUBTITLE C. STATE MILITARY FORCES AND VETERANS
- Ⓜ CHAPTER 431. STATE MILITIA
- Ⓜ CHAPTER 432. TEXAS CODE OF MILITARY JUSTICE
- Ⓜ CHAPTER 433. STATE OF EMERGENCY
- Ⓜ CHAPTER 434. VETERAN ASSISTANCE AGENCIES
- Ⓜ CHAPTER 436. TEXAS MILITARY PREPAREDNESS COMMISSION
- Ⓜ SUBTITLE D. HISTORY, CULTURE, AND EDUCATION
- Ⓜ CHAPTER 441. LIBRARIES AND ARCHIVES
- Ⓜ CHAPTER 442. TEXAS HISTORICAL COMMISSION
- Ⓜ CHAPTER 443. STATE PRESERVATION BOARD
- Ⓜ CHAPTER 444. TEXAS COMMISSION ON THE ARTS
- Ⓜ CHAPTER 445. TEXAS STATE HISTORY MUSEUM
- Ⓜ CHAPTER 447. STATE ENERGY CONSERVATION OFFICE
- Ⓜ CHAPTER 448. TEXAS EMANCIPATION JUNETEENTH CULTURAL AND HISTORICAL COMMISSION
- Ⓜ CHAPTER 449. TEXAS HOLOCAUST AND GENOCIDE COMMISSION
- Ⓜ SUBTITLE E. OTHER EXECUTIVE AGENCIES AND PROGRAMS
- Ⓜ CHAPTER 464. BUILDING MATERIALS AND SYSTEMS TESTING LABORATORY
- Ⓜ CHAPTER 466. STATE LOTTERY
- Ⓜ CHAPTER 467. TEXAS LOTTERY COMMISSION
- Ⓜ CHAPTER 468. STATE DEMOGRAPHER
- Ⓜ CHAPTER 469. ELIMINATION OF ARCHITECTURAL BARRIERS
- Ⓜ SUBTITLE F. COMMERCE AND INDUSTRIAL DEVELOPMENT
- Ⓜ CHAPTER 481. TEXAS ECONOMIC DEVELOPMENT AND TOURISM OFFICE
- Ⓜ CHAPTER 485. MUSIC, FILM, TELEVISION, AND MULTIMEDIA INDUSTRIES
- Ⓜ CHAPTER 485A. MEDIA PRODUCTION DEVELOPMENT ZONES
- Ⓜ CHAPTER 486. ASSISTANCE FOR LOCAL AREA AFFECTED BY DEFENSE RESTRUCTURING

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- Ⓜ CHAPTER 487. TEXAS DEPARTMENT OF RURAL AFFAIRS
- Ⓜ CHAPTER 488. SOUTHEAST TEXAS BIOTECHNOLOGY PARK
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- Ⓜ CHAPTER 490. FUNDING FOR EMERGING TECHNOLOGY
- Ⓜ CHAPTER 490A. TEXAS ENTREPRENEURSHIP NETWORK
- Ⓜ CHAPTER 490B. TEXAS-MEXICO STRATEGIC INVESTMENT COMMISSION
- Ⓜ CHAPTER 490C. PROMOTION OF TEXAS MANUFACTURED PRODUCTS
- Ⓜ CHAPTER 490E. TASK FORCE ON ECONOMIC GROWTH AND ENDANGERED SPECIES
  
- Ⓜ SUBTITLE G. CORRECTIONS
  - Ⓜ CHAPTER 491. TEXAS BOARD OF CRIMINAL JUSTICE, TEXAS DEPARTMENT OF CRIMINAL JUSTICE: GENERAL PROVISIONS
  - Ⓜ CHAPTER 492. TEXAS BOARD OF CRIMINAL JUSTICE: GENERAL DUTIES; MEMBERSHIP
  
- Ⓜ CHAPTER 493. TEXAS DEPARTMENT OF CRIMINAL JUSTICE: ORGANIZATION
- Ⓜ CHAPTER 494. INSTITUTIONAL DIVISION: POLICY, DIRECTOR, AND STAFF
- Ⓜ CHAPTER 495. CONTRACTS FOR CORRECTIONAL FACILITIES AND SERVICES
- Ⓜ CHAPTER 496. LAND AND PROPERTY
- Ⓜ CHAPTER 497. INDUSTRY AND AGRICULTURE; LABOR OF INMATES
- Ⓜ CHAPTER 498. INMATE CLASSIFICATION AND GOOD TIME
- Ⓜ CHAPTER 499. POPULATION MANAGEMENT; SPECIAL PROGRAMS
- Ⓜ CHAPTER 500. MISCELLANEOUS DISCIPLINARY MATTERS
- Ⓜ CHAPTER 501. INMATE WELFARE
- Ⓜ CHAPTER 507. STATE JAIL DIVISION
- Ⓜ CHAPTER 508. PAROLE AND MANDATORY SUPERVISION
- Ⓜ CHAPTER 509. COMMUNITY JUSTICE ASSISTANCE DIVISION
- Ⓜ CHAPTER 510. INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION
- Ⓜ CHAPTER 511. COMMISSION ON JAIL STANDARDS
  
- Ⓜ SUBTITLE I. HEALTH AND HUMAN SERVICES
  - Ⓜ CHAPTER 531. HEALTH AND HUMAN SERVICES COMMISSION
  - Ⓜ CHAPTER 533. IMPLEMENTATION OF MEDICAID MANAGED CARE PROGRAM
  - Ⓜ CHAPTER 534. LOCALLY BASED MEDICAID AND OTHER RELATED HEALTH CARE INITIATIVES
  
  - Ⓜ CHAPTER 535. PROVISION OF HUMAN SERVICES AND OTHER SOCIAL SERVICES THROUGH FAITH- AND COMMUNITY-BASED ORGANIZATIONS
  
- Ⓜ TITLE 5. OPEN GOVERNMENT; ETHICS
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- Ⓜ CHAPTER 551. OPEN MEETINGS
- Ⓜ CHAPTER 552. PUBLIC INFORMATION
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- Ⓜ CHAPTER 554. PROTECTION FOR REPORTING VIOLATIONS OF LAW
- Ⓜ CHAPTER 555. STATE AGENCY RECORDS RELATING TO LICENSE HOLDERS OR OTHER REGULATED PERSONS
- Ⓜ CHAPTER 556. POLITICAL ACTIVITIES BY CERTAIN PUBLIC ENTITIES AND INDIVIDUALS
- Ⓜ CHAPTER 557. SEDITION, SABOTAGE, AND COMMUNISM
- Ⓜ CHAPTER 558. INTERPRETERS FOR DEAF OR HEARING IMPAIRED PERSONS
- Ⓜ CHAPTER 559. STATE GOVERNMENT PRIVACY POLICIES
- Ⓜ CHAPTER 560. BIOMETRIC IDENTIFIER
- Ⓜ SUBTITLE B. ETHICS
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- Ⓜ CHAPTER 572. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST
- Ⓜ CHAPTER 573. DEGREES OF RELATIONSHIP; NEPOTISM PROHIBITIONS
- Ⓜ CHAPTER 574. DUAL OFFICE HOLDING
- Ⓜ CHAPTER 575. ACCEPTANCE OF GIFT BY STATE AGENCY
- Ⓜ TITLE 6. PUBLIC OFFICERS AND EMPLOYEES
- Ⓜ SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC OFFICERS AND EMPLOYEES
- Ⓜ CHAPTER 601. ELECTION AND OFFICE HOLDING
- Ⓜ CHAPTER 602. ADMINISTRATION OF OATHS
- Ⓜ CHAPTER 603. PROVISION OF DOCUMENTS AND FEES OF OFFICE
- Ⓜ CHAPTER 604. OFFICIAL BONDS
- Ⓜ CHAPTER 605. EIGHT-HOUR WORKDAY
- Ⓜ CHAPTER 606. SOCIAL SECURITY
- Ⓜ CHAPTER 607. BENEFITS RELATING TO CERTAIN DISEASES AND ILLNESSES
- Ⓜ CHAPTER 608. PAYROLL DEDUCTION FOR SAVINGS BONDS
- Ⓜ CHAPTER 609. DEFERRED COMPENSATION PLANS
- Ⓜ CHAPTER 610. CHILD CARE EXPENSE SALARY REDUCTIONS
- Ⓜ CHAPTER 611. LODGING, MEAL, AND TRAVEL REIMBURSEMENT
- Ⓜ CHAPTER 612. LIABILITY INSURANCE
- Ⓜ CHAPTER 613. REEMPLOYMENT FOLLOWING MILITARY SERVICE
- Ⓜ CHAPTER 614. PEACE OFFICERS AND FIRE FIGHTERS
- Ⓜ CHAPTER 615. FINANCIAL ASSISTANCE TO SURVIVORS OF CERTAIN LAW ENFORCEMENT

Exhibit D

TEXAS GOVERNMENT CODE

OFFICERS, FIRE FIGHTERS, AND OTHERS

- Ⓜ CHAPTER 616. EMERGENCY INTERIM PUBLIC OFFICE SUCCESSION
- Ⓜ CHAPTER 617. COLLECTIVE BARGAINING AND STRIKES
- Ⓜ CHAPTER 618. UNIFORM FACSIMILE SIGNATURE OF PUBLIC OFFICIALS ACT
- Ⓜ SUBTITLE B. STATE OFFICERS AND EMPLOYEES
- Ⓜ CHAPTER 651. GENERAL PROVISIONS
- Ⓜ CHAPTER 652. VACANCIES
- Ⓜ CHAPTER 653. BONDS COVERING CERTAIN STATE OFFICERS AND EMPLOYEES
- Ⓜ CHAPTER 654. POSITION CLASSIFICATION
- Ⓜ CHAPTER 655. MERIT SELECTION
- Ⓜ CHAPTER 656. JOB NOTICES AND TRAINING
- Ⓜ CHAPTER 657. VETERAN'S EMPLOYMENT PREFERENCES
- Ⓜ CHAPTER 658. HOURS OF LABOR
- Ⓜ CHAPTER 659. COMPENSATION
- Ⓜ CHAPTER 660. TRAVEL EXPENSES
- Ⓜ CHAPTER 661. LEAVE
- Ⓜ CHAPTER 662. HOLIDAYS AND RECOGNITION DAYS, WEEKS, AND MONTHS
- Ⓜ CHAPTER 663. CHILD CARE SERVICES FOR STATE EMPLOYEES
- Ⓜ CHAPTER 664. STATE EMPLOYEES HEALTH FITNESS AND EDUCATION
- Ⓜ CHAPTER 665. IMPEACHMENT AND REMOVAL
- Ⓜ CHAPTER 666. RECOVERING EXCESS COMPENSATION PAID TO A STATE OFFICER OR  
Ⓜ EMPLOYEE
- Ⓜ CHAPTER 667. MULTIPLE EMPLOYMENTS WITH STATE
- Ⓜ CHAPTER 668. MEMBERSHIP DUES
- Ⓜ CHAPTER 669. RESTRICTIONS ON CERTAIN ACTIONS INVOLVING EXECUTIVE HEAD OF  
Ⓜ STATE AGENCY
- Ⓜ CHAPTER 670. HUMAN RESOURCES STAFFING AND FUNCTIONS
- Ⓜ CHAPTER 671. HEALTH SERVICES IN STATE OFFICE COMPLEXES
- Ⓜ CHAPTER 672. EMPLOYMENT PREFERENCE FOR FORMER FOSTER CHILDREN

Exhibit E

**Indiana Inspector General**  
**Uniform Government Code [index: <http://www.in.gov/ig/2332.htm>]**  
**(codification of rules applying to Executive Branch)**

**Introduction**

- §1 Name
- §2 Purpose and goal
- §3 Jurisdiction
- §4 Use

**Crimes**

- §100 In General
- §101 Procedures in criminal cases
- §151 Official misconduct
- §152 Conflict of interest
- §153 Profiteering from public service
- §154 Bribery
- §155 Retaliation
- §156 Cashbook rule
- §157 Depository rule
- §158 Itemization rule
- §159 Federal Theft or Bribery

**Ethics**

- §200 In general
- §210 State Ethics Commission
- §211 Interpreting Code
- §212 Litigation
- §220 Procedures in ethics cases
- §230 Ethics Training
- §231 Ethics Advice
- §232 Ethics Officers
- §250 The ethics rules or Code of Ethics
- §251 Waivers
- §252 Federal Hatch Act

**Financial**

- §300 Three sources
- §301 Indiana Code
- §302 State Board of Accounts (SBOA) Manuals
- §303 State Budget Agency Circulars
- §351 Cash book rule (criminal offense)
- §352 Depository rule (criminal offense)
- §353 Itemization of invoices (criminal offense)
- §354 Fiscal spending plan
- §355 Payment in arrears
- §356 Timely payment of claims
- §357 Duplicate and over-payment collection
- §358 Claim vouchers less than \$25,000
- §359 Credit card use
- §360 SDO funds
- §361 Procurement cards (P cards)
- §362 Personal Use

- §363 Inventories
- §364 Inactive funds
- §365 Attendance reports
- §381 Food
- §382 Alcohol
- §383 Travel, in general
- §384 Lodging
- §385 Subsistence
- §386 Mileage
- §387 Bonuses and benefits

**Contracts**

- §400 The Indiana Attorney General
- §401 Application of rules
- §402 Grants versus contracts
- §403 Memorandums of Understanding
- §404 Independent contractor determination
- §405 Outside legal counsel contracts
- §451 Three-step process
- §452 Procurement Contracts Under \$25,000
- §453 Personnel transaction process
- §454 IOT approval
- §455 Form Approval and Pre-Review
- §456 Cost-effectiveness
- §457 Bidding and competition
- §458 Four-year limit
- §459 Early and late performance compensation
- §460 Minority and Women's Bus. Enterprises Div
- §461 Unspecified number of items at a fixed price
- §462 Cost Plus Contracts
- §463 Cost Reimbursement Contracts
- §464 Sex offender restriction
- §465 Petroleum product contracts
- §466 Steel product contracts
- §471 Writing requirement
- §472 EDS Executive Document Summary
- §473 Attachments
- §474 Original signatures
- §475 Vendor signatures
- §476 Statutory terms omitted
- §477 Ethics
- §478 Confidential information
- §479 Non-collusion statements
- §480 Lack of funds statement
- §481 Boilerplate
- §482 Double-sided printing and scanning
- §490 Amendments and change-orders
- §491 Addendums
- §492 Renewals
- §493 Lack of funds termination

Exh. B

