

THE EXECUTIVE BRANCH LOBBYING REGISTRATION AND REPORTING
MANUAL, 25 IAC 6

No responsibility of Government is more fundamental than the responsibility for maintaining the highest standards of ethical behavior by those who conduct the public business. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality, and complete devotion to the public interest. This principle must be followed not only in reality but in appearance. For the basis of effective government is public confidence; and that confidence is endangered when ethical standards falter or appear to falter.

President John F. Kennedy
April 27, 1961

INTRODUCTION

This manual is designed to aid members of the public, lobbyists of the executive branch, and any potential executive branch lobbyists to understand and follow the executive branch lobbying registration process in Indiana. It is important for people who conduct business and interact with the executive branch agencies of the state to become familiar with this registration process. By becoming familiar with this process, individuals who lobby executive branch agencies will be better equipped to serve their clients and improve the public's awareness and understanding of the lobbying efforts directed toward state agencies.

In the past, the activities and relationships of lobbyists who were paid to influence the decisions of executive branch agencies went unreported. Nevertheless, legislative lobbyists in Indiana have been subject to regulation since 1981 (*See IC 2-7-2-1 As added by Acts 1981, P.L.9*). On April 27, 2004, Indiana Governor Joseph E. Kernan signed Executive Order 04-11. The Executive Order directed the Commissioner for the Indiana Department of Administration to "promulgate rules requiring registration for individuals who lobby the Executive Branch in order to influence Executive Branch action." Executive Order 04-11 (2004). Governor Kernan's Executive Order accurately summarized the policy reasons behind this directive.

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.

Executive Order 04-11 (2004).

In 2005, under the direction of new Governor, Mitch Daniels, the Indiana Department of Administration, with the help of the Indiana State Ethics Commission and the newly created Office of Inspector General, promulgated rules requiring the registration of executive branch lobbyists. This new rule was intended to bring another level of transparency to the workings of state government so that the public will have full disclosure with respect to the influencing of the Executive Branch as well as the Legislative Branch.

This manual provides clarification of the Indiana Executive Branch Lobbying Rule by explaining who really is an executive branch lobbyist; and describing the exceptions to the registration requirement. The manual also provides assistance to lobbyists for the registration process itself. A registered executive branch lobbyist will be required to know, understand and abide by the State Ethics Code, and the rules of the Indiana Department of Administration. This manual will help guide executive branch lobbyists to find the important resources for attaining that understanding.

As illustrated above in the quote from President John F. Kennedy, “[T]he basis of effective government is public confidence.” This manual will assist both lobbyists and the public to understand the executive branch lobbying registration rule and its role in achieving that mission.

[signed]
Tim A. Grogg
Executive Director
Executive Branch Lobbying
Indiana Department of Administration

Executive Branch Lobbying Manual

Table of Contents

Introduction

Chapter I.

Who is an Executive Branch Lobbyist?

- 1-1 “Executive Branch Lobbyist” Defined
- 1-2 “Employer” and Real Party in Interest” Defined
- 1-3 The meaning of “Action or Communication”
- 1-4 Monetary Thresholds for Registration
 - 1-4(a) The meaning of “Engagement”
 - 1-4(b) Allocating Compensation for Services Other than Lobbying
 - 1-4(c) Determination May Require Estimation
- 1-5 Anticipatory Registration Discouraged

Chapter II

Who Must Register as an Executive Branch Lobbyist?

(Exceptions to the Registration Requirement)

- 2-1 “Lobbyist” Exceptions
 - 2-1(a) Public Officials
 - 2-1(b) Attorneys in Administrative Proceedings
 - 2-1(c) Religious Organizations
 - 2-1(d) Media
 - 2-1(e) Bid Information Gathering
 - 2-1(e)(1) State Public Works
 - 2-1(e)(2) Public Procurement
 - 2-1(e)(3) INDOT Highway Contracts
 - 2-1(e)(4) Design-Build Public Works Projects
 - 2-1(e)(5) INDOT Highway Contracts
 - 2-1(f) Personal Actors
- 2-2 “Activity” Exceptions
 - 2-2(a) Grant Awards
 - 2-2(b) Outstanding Tax Matters
 - 2-2(c) Indiana Economic Development Corporation
 - 2-2(d) Paid Advertising
 - 2-2(e) Public Hearings
 - 2-2(f) Requests For Proposals
 - 2-2(g) Solicitation from Agencies
 - 2-2(h) Advisory Bodies
 - 2-2(i) Licenses or Permits
- 2-3 Implicit Exceptions

Chapter III

Lobbyist Registration Procedures

- 3-1 Initial Registration Statement
 - 3-1(a) Electronic Registration
 - 3-1(b) A Rule for Individuals not Organizations
 - 3-1(c) Verified Ethics Certification
 - 3-1(d) Fees and Fines

- 3-2 Changes in Information; Termination of Engagements
- 3-3 Annual Reports
- 3-4 Persons Barred from Executive Branch Lobbying

Chapter IV

Enforcement

- 4-1 IDOA Jurisdiction and Sanctions
- 4-2 Inspector General Jurisdiction and Sanctions

Chapter V

Public Records

Chapter VI

Advisory Opinions

EXECUTIVE BRANCH LOBBYING MANUAL

The rule promulgated by the Indiana Department of Administration (IDOA) can be found in the Indiana Administrative Code at 25 IAC 6. Effective January 1, 2006, the executive branch lobbying rule required that all executive branch lobbyists file an initial Executive Branch Lobbyist Registration Statement with the Indiana Department of Administration (IDOA). On April 9, 2008 the rule was amended to allow the IDOA to charge registration and filing fees, impose financial penalties for late or missing filings, and require annual registration. These changes were initially authorized by statute in IC 4-2-8 which was passed in the 2006 session of the General Assembly and became effective on July 1, 2008.

1. WHO IS AN EXECUTIVE BRANCH LOBBYIST?

1-1 “Executive Branch Lobbyist” Defined

To determine whether a particular individual would be considered an executive branch lobbyist, an examination of the various definitions in 25 IAC 6-1-1 is required.

25 IAC 6-1-1(8) defines executive branch lobbyist:

“Executive branch lobbyist” means any individual who is employed and receives payment, or who contracts for financial consideration, exceeding one thousand dollars (\$1,000) in any registration year, for the purpose of engaging in executive branch lobbying *activity*.

25 IAC 6-1-1(7) defines executive branch lobbying “activity”:

“Executive branch lobbying activity” means action or communication made to delay, oppose, promote or otherwise influence the outcome of an executive branch *action*.

25 IAC 6-1-1(6) defines executive branch “action”:

“Executive branch action” means a decision of an agency regarding either of the following:

- (A) The expenditure of state funds with respect to the award of:
 - (i) a contract;
 - (ii) a lease; or
 - (iii) any other financial arrangement;under which such funds are distributed or allocated.
- (B) The:
 - (i) proposal;
 - (ii) drafting;
 - (iii) development;

(iv) consideration;
(v) promulgation;
(vi) amendment;
(vii) repeal; or
(viii) rejection;
by any agency of a rule as defined by IC 4-22-2-3(b).

In construing these definitions, a very basic description of an executive branch lobbyist would be: an individual who is paid at least \$1,000 to make communications to an executive branch agency for the purpose of trying to influence the award of a contract; a lease; another financial arrangement; or the outcome of a rule.

1-2 “Employer” and “Real Party in Interest” Defined

As noted above, the first element of the definition of “Executive Branch Lobbyist” refers to the fact that the lobbyist must be employed and paid at least \$1,000 to engage in lobbying activity. This begs two questions, “Who employs the lobbyist?” and “On whose behalf is he acting?”

(4) “Employer” means the person that principally employs the executive branch lobbyist. The term does not include a person that only retains or contracts with an executive branch lobbyist as an independent contractor and does not directly employ that executive branch lobbyist. 25 IAC 6-1-1(4).

(11) “Real party in interest” means the person on whose behalf the executive branch lobbyist is acting, if that person is not the employer. 25 IAC 6-1-1(11).

This information must be reported on the registration form. In situations where the lobbyist is employed by the entity on whose behalf he is acting the real party in interest will be the same as the employer. In situations where the lobbyist is employed by an organization or firm that is contracted by a client, the client will be the real party in interest.

1-3 The meaning of “Action or Communication”

The Executive Branch Lobbying Rule defines the types of information exchanges that could impact an executive branch action. 25 IAC 6-1-1(2) provides:

“Communication” means the exchange of any thoughts, messages, or information
by:

- (A) contact in person;
- (B) telephone;
- (C) letter;
- (D) telegraph;
- (E) facsimile;
- (F) electronic mail;

- (G) text messaging; or
- (H) any other form of electronic transmission of information.

Note that the term “action” is not defined in the rule; however, its plain meaning would denote some exertion of influence that is intended to “delay, oppose, promote or otherwise influence the outcome of an executive branch action.” 25 IAC 6-1-1(7).

1-4 Monetary Thresholds for Registration

As noted above, a lobbyist is not required to register under this rule unless he/she is paid in excess of \$1,000.00 in a registration year to engage in lobbying activity. 25 IAC 6-1-1(8). The amount of compensation a lobbyist receives to engage in lobbying activity is not required to be reported in the initial registration statement. However, the calculation made to determine the threshold should be done in conformance with the reporting guidance found in 25 IAC 6-2-2 (4) (A) and (B).

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

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

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

25 IAC 6-2-2 (4).

1-4(a) Meaning of “engagement.” The term “engagement refers to

any arrangement whereby a person receives financial consideration, in the form of salary, retainer, compensation, or other fee, for or on behalf of any employer or real party in interest to:

- (A) influence an executive branch action; or
- (B) conduct any executive branch lobbying activity.

25 IAC 6-1-1(5).

For each real party in interest (client) or employer who compensates a lobbyist for engaging in executive branch lobbying activity, a lobbyist would be considered to have a new “engagement” and must report the total amount of compensation received for that engagement in the annual report. That amount will eventually be reported in the annual report form in a field referred to as: “Compensation Year Amount”.

1-4(b) Allocating Compensation for Services Other Than Lobbying. A lobbyist who receives compensation or reimbursement for both lobbying and non-lobbying services is required to make a reasonable allocation of the compensation or

reimbursement for lobbying. Only the compensation or reimbursement attributable to lobbying counts toward the compensation threshold and is reported as compensation in the annual report.

1-4(c) Determination May Require Estimation. The determination of whether one is required to register may involve the need to estimate the amount of compensation a lobbyist expects to earn in a given registration year. As noted below, an executive branch lobbyist is required to register within 15 days from his/her initial contact with a state agency for the purpose of engaging in lobbying activity. 25 IAC 6-2-1.

It is foreseeable and in many cases probable that a lobbyist would make contact with an agency for the purpose of engaging in lobbying activity, and not yet be compensated by the real party in interest or the employer for such activity. In such a circumstance, the lobbyist would be required to estimate or project the amount of compensation he/she would expect to earn for the registration year in order to make the determination of whether registration as an executive branch lobbyist is required.

If the lobbyist does not know whether the compensation threshold will be reached, but has engaged in lobbying activity the recommended course of action is register. In the alternative, the lobbyist can consciously limit his/her lobbying activity to ensure that the lobbyist stays below the \$1,000 threshold. In that case, the lobbyist would not be required to file a registration. It is always possible to report less than the \$1,000 or have the lobbyist's registration revoked, if the threshold is not met.

1-5 Anticipatory Registration

The question may arise about "when" a lobbyist should register. The requirement for filing the initial registration statement is outlined in 25 IAC 6-2-1.

Sec. 1. Within fifteen (15) business days of making any contact with an agency regarding an executive branch action, an executive branch lobbyist shall file with the department a signed initial registration statement on a form approved by the commissioner....

This language is specific about when a person should register as an executive branch lobbyist. A person should register AFTER they have made contact with an executive branch agency. There may be circumstances where a lobbyist anticipates that he or she may engage in lobbying activity at some point in the future and will want to register ahead of time. This practice of "anticipatory registration" is not expressly prohibited by the rules, but there are a few reasons why the practice is discouraged.

Statement Filed under Oath. IC 4-2-8-3, 25 IAC 6-2-1(7) and 25 IAC 6-2-2(8) require that the initial registration statement and the annual report must be filed under oath. When a lobbyist files their initial registration statement or their annual report they must check a box indicating that the information is true and accurate under the penalties of perjury. This information is then immediately posted to the searchable database on the Executive Branch Lobbying website and is immediately available for public

inspection pursuant to IC 5-14-3. If a lobbyist has filed an initial registration statement thereby indicating that lobbying activity took place, when it actually did not, then the information on the registration statement would be materially misleading and arguably false.

Accuracy of Information. The Department of Administration has a duty to the public to ensure to the extent possible that the information contained in the searchable database is accurate and reliable. To allow non-lobbyists to remain in the database would be confusing to the public who search the database and rely on the accuracy of that information.

Registration is not a License. Unlike other types of lobbying registration, executive branch lobbyists need not be registered in order to engage in their lobbying activity. They must, however, be registered in order to report their lobbying activity. The only purpose served by registering as an executive branch lobbyist is to allow a lobbyist to report their lobbying activity. People are not prohibited from engaging in executive branch lobbying activity because they have not registered as an executive branch lobbyist; however, if reportable activity occurs, registration is necessary in order to report that activity.

Reporting “Zero” Compensation. In filing an annual report, a lobbyist will be asked to indicate the total amount of compensation received to engage in lobbying activity. The annual report form allows a lobbyist to record “zero” as a compensation amount. The significance of reporting a zero compensation amount is that it indicates that the lobbyist did engage in lobbying activity on behalf of a particular client or real party in interest; however the lobbyist received “zero” compensation for that activity. This might be the case in certain “contingency fee” payment arrangements or with “commission based” remuneration. It would be inaccurate to assume that a “zero” compensation amount actually indicated that no lobbying took place.

2. WHO MUST REGISTER AS AN EXECUTIVE BRANCH LOBBYIST?

Not all contact with an executive branch agency will require registration as a lobbyist. Numerous exceptions exist to the registration requirement. To determine whether an executive branch lobbyist must register with the Indiana Department of Administration (IDOA) an examination of the various exceptions to 25 IAC 6-1-1 (7) and (8) is required. Note that any person who meets the criteria above and who does not fall under an exception mentioned below is required to register as an executive branch lobbyist.

Exceptions to the Registration Requirement

There are several exceptions to the registration requirement for Executive Branch Lobbyists. These exceptions, as enumerated in the rule, can be divided into three

categories which will be discussed below. Those categories are “Lobbyist Exceptions”; “Activity Exceptions,” and “Implicit Exceptions.”

2-1 “Lobbyist” Exceptions - 25 IAC 6-1-1 (8)

These exceptions to the registration requirement are enumerated exceptions to the definition of “executive branch lobbyist”:

(A) Public Officials. Any elected or appointed officer, employee, or special state appointee of a federal or state agency is not required to register as an executive branch lobbyist. A “special state appointee” means someone who is elected or appointed to an authority, board, commission, committee, council, task force, or other body that is authorized by statute or executive order and functions either in a policy role or an advisory role in the executive department of state government including bodies corporate and politic. *See*, IC 4-6-2-1 (15). This category of exceptions also relieves an officer, employee or special state appointee of the judicial and legislative branches of state government from having to register if they are attempting to influence an executive branch action while acting within the scope of their official duties.

Further, any officer, employee, or special state appointee of a state educational institution such as a state university, college, or other state funded postsecondary educational institution, existing on or after March 29, 1971, in Indiana, is exempted from the registration requirement as long as the attempt to influence the executive branch agency is done in the course of that individuals’ official duties. This same exception applies to officers, employees, and special state appointees of political subdivisions such as municipal corporations or special taxing districts.

(B) Attorneys in Administrative Proceedings. Any attorney or other individual who is representing a client in a proceeding conducted pursuant to the Administrative Orders and Procedures Act (AOPA) in IC 4-21.5 *et. seq.* is not required to register as an executive branch lobbyist. Additionally, this exception applies to attorneys or others representing clients in some proceedings that are exempted from the AOPA. Those proceedings are listed in IC 4-21.5-2-4 and include proceedings before the Governor, the State Board of Accounts, state postsecondary educational institutions, the Department of Workforce Development; the Unemployment Insurance Review Board of the Department of Workforce Development; the Worker's Compensation Board of Indiana, military officers or boards; the Indiana Utility Regulatory Commission, the Department of State Revenue, and the Department of Local Government Finance. Thus, if an attorney is representing a person in proceedings before any of the enumerated agencies, that attorney is not required to register as an executive branch lobbyist.

An attorney or other individual who represents a client in any of the proceedings described in IC 4-21.5-2-6 is not required to register as executive branch lobbyist. Those proceedings are described as the formulation, issuance, or administrative review of certain determinations by the Division of Family Resources and the Department of Child Services, determinations by the Alcohol and Tobacco Commission, and determinations by the Office of Medicaid Policy and Planning concerning recipients and applicants of Medicaid. Note that this exception also applies to attorneys or caseworkers representing

clients in determinations by the Office of Medicaid Policy and Planning concerning providers. Further, an attorney representing a client for a final determination of the Indiana Board of Tax Review would not be required to register as an executive branch lobbyist.

(C) Religious Organizations. An attorney or other individual who represents a religious organization solely for the purpose of protecting the organization's constitutional rights is not required to register as an executive branch lobbyist.

(D) Media. Certain media are exempt from the registration requirement. If, in the ordinary course of business, a certain media outlet publishes news items, editorials, or other comments or paid advertisements that directly or indirectly urge executive branch action, they would not be required to register as executive branch lobbyists so long as they do not engage in any additional lobbying activities in connection with executive branch action. The types of media that are excluded from registration include newspapers, book publishers, news wire services, radio or television stations and periodicals of general circulation. Relief from the registration requirement extends to any individual who owns, publishes, or is employed by any such media outlet, and who may incidentally engage in lobbying activity by virtue of their position in the ordinary course of business.

(E) Bid Information Gathering. This exception applies specifically to communications that are made for the sole purpose of gathering certain public information related to a bid or procurement in one of three areas:

1. State Public Works. The State Public Works Act in IC 5-16 details requirements and procedures for state public works projects such as the construction, alteration, or repair of a public building or other public work or improvement owned by the state.

2. Public Procurement. The Public Purchasing Act in IC 5-22 applies to expenditures of public funds by a governmental body subject to certain exceptions.

3. Public-Private Agreements. IC 5-23 governs state or political subdivisions entering into public-private agreements with an operator to construct, operate, and maintain a public facility and to transfer the public facility back to the governmental body at an established future date.

4. Design-Build Public Works Projects. IC 5-30 governs contracts between a public agency and a design-builder to furnish architectural, engineering, and related design services as required for a public project; and labor, materials, and other construction services for the same public project.

5. Indiana Department of Transportation Highway Contracts. IC 8-23 establishes the Indiana Department of Transportation (INDOT) and outlines the procedures that INDOT must use to award contracts.

If a person communicates with an executive branch agency for the sole purpose of gathering information related to these types of bids that is produced in a public record and is done under and in full compliance with the above-mentioned statutes, that communication will not trigger the registration requirement.

(F) Personal Actors. Any individual who is acting on his or her own behalf or who assembles together with other individuals for the common good, or who petitions an agency for redress of grievances, will not be required to register as an executive branch lobbyist. These are basic rights that are protected by both the U.S. and Indiana Constitutions.

2-2 “Activity” Exceptions – 25 IAC 6-1-1 (7)

These exceptions to the registration requirement are enumerated exceptions to the definition of “executive branch lobbying activity.”

(A) Grant Awards. An individual who applies for a grant, or who negotiates the terms or conditions of a grant, whether state or federal, is not required to register as an executive branch lobbyist. Thus an individual may attempt to influence a state agency’s award of a grant and those communications are exempted from the definition of “lobbying activity.”

(B) Outstanding Tax Matters. Individuals who communicate with a state agency for the purpose of trying to resolve an outstanding tax matter are not required to register as an executive branch lobbyist. Note that the tax matter in question does not have to be their own. Accountants or attorneys may engage in such communications on behalf of clients and will not have to register as executive branch lobbyists. Examples of the types of outstanding tax matters that could be the subject of these communications include tax audits, administrative appeals, claims for refunds, or collection activity. The state agencies involved in these types of matters would typically be the Indiana Department of Revenue or the Indiana Department of Local Government Finance.

(C) Indiana Economic Development Corporation. Any communication pertaining to the award of incentives that are related to an “economic development project” that is specifically negotiated by the Indiana Economic Development Corporation (IEDC), are not subject to the executive branch lobbying registration rule. Certain attempts to influence the IEDC in areas other than the “award of incentives” could trigger the registration requirement. An “economic development project” would normally involve an effort to diversify and grow the state economy, create new jobs or retain existing ones, grow and modernize existing industry within the state and generally promote Indiana.

(D) Paid Advertising. Any paid advertising communications that are disseminated to the public by radio, television, or newspapers and periodicals of general circulation, that are an attempt to influence the outcome of an executive branch action are excluded from the definition of “lobbying activity.” This is an exception for certain

“grassroots” lobbying efforts, where communications are directed to the public in general with the intent of creating support for a particular position in the arena of public opinion, which in turn could impact the outcome of an executive branch action.

(E) Public Hearings. The Indiana Open Door Law found in IC 5-14-1.5 provides that all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. Any communications or testimony that is submitted during a public hearing or meeting as described in the Open Door Law will not invoke the registration requirement for executive branch lobbyists. This exception includes written as well as testimonial communications.

(F) Requests for Proposals. Any formal response to a request for proposal (RFP), a bid, a request for quote (RFQ), or other solicitation made by an agency will not invoke the registration requirement for executive branch lobbyists. This exception is related to the exception in 25 IAC 6-1-1(8)(E) concerning requests for bid information. Note that the solicitation from the agency must be made in conformance with applicable public works or procurement statutes and rules. Because of that, no additional documentation is required by the agency to document the solicitation under this exception.

(G) Solicitations from Agencies. If an agency requests or solicits any testimony or communication, then the agency is inviting the participation of that prospective lobbyist and therefore the prospective lobbyist would not need to register even if the intent of the communication is to influence the outcome of an executive branch action. The idea here is that state agencies will from time to time invite someone else’s expertise or advice concerning a given situation. When an agency asks for such input the agency is in the position of desiring the information provider to work in the best interest of the agency. For that reason, such testimony or communications made either publicly or privately will not require the person providing such testimony or communications to register as an executive branch lobbyist.

This is the one exception to the registration requirement that puts any burden at all on the state agency. If an agency invites such participation, the agency must keep written documentation detailing the public policy purpose for extending that invitation.

NOTE TO AGENCIES: There is no explicit form that this documentation must take. It will be within the discretion of the agency to determine how it will comply with this provision.

NOTE TO LOBBYISTS: If you have any question about whether your communications have been solicited pursuant to this paragraph, you will need to reach a consensus with the agency in question and they will have to prepare and keep the written documentation on file.

(H) Advisory Bodies. If a person participates in a workgroup, taskforce, council, committee, commission, or board that works in an “advisory” capacity, meaning

that it is only authorized to make nonbinding recommendations to an agency, then that person's subsequent communications to that agency will not invoke the registration requirement. *See* IC 4-2-6-11.5. The state ethics code provides that executive branch lobbyists are precluded from taking positions on commissions, boards or similar bodies that have "binding" authority over an agency. Those types of boards and commissions would be considered "policy" bodies as opposed to "advisory" bodies.

(I) Licenses or Permits. Persons who apply for and attempt to influence the award of any state or federal license or permit are not required to register as executive branch lobbyists.

2-3 Implicit Exceptions.

There are a few types of communications with state agencies that are not specifically listed or set out in the rule. A basic rule of statutory construction is that omissions of certain language describing the prohibited activity in a rule or a statute can be indicative of the intent to exclude that activity from the scope of the rule or statute. *See, State v. Carmel Healthcare Management*, 660 N.E.2d 1379 (Ind. Ct. App. 1996). The definition of "executive branch action" in 25 IAC 6-1-1(6) illustrates the narrowness of the scope of the Executive Branch Lobbying Rule. As noted earlier, only two categories of executive branch actions can be the subject of the regulated communications. One category concerns the "expenditure of state funds with respect to the award of" a contract, lease or other financial arrangement. 25 IAC 6-1-1(6)(A). The second category concerns the activity of rulemaking by an agency. *See*, 25 IAC 6-1-1(6)(B). The significance is that if the communications made to influence a state agency do not concern the "expenditure of state funds with respect to the award of" a contract, lease or other financial arrangement" or "rulemaking" by the agency, then the communicator is not required to register as an executive branch lobbyist.

3. LOBBYIST REGISTRATION PROCEDURES

Executive Branch Lobbyist registration may only be conducted electronically through the IDOA website. A description of the process and procedures for registering and filing Initial registration statements and annual reports is disclosed later in this chapter. However, IDOA, through the registration application, has expanded the available methods for filing the necessary registrations and reports.

Individual Lobbyists and Third-Party Delegates

There are two "categories" of people who are now allowed to create lobbyist registrations, make amendments and changes to those registrations, and file lobbyists' annual reports. The individual lobbyist, of course, can create his/her own registration and file his/her own annual report electronically through the IDOA website. However, IDOA has created another "category" of individuals who can create a registration on behalf of an executive branch lobbyist. For the purpose of explaining this process, those

individuals are referred to in this manual and on the IDOA website as “Third-Party Delegates.” A third-party delegate is a person other than the executive branch lobbyist, who has been “delegated” authority by the executive branch lobbyist to create and edit registration statements and file annual reports on behalf of the lobbyist.

Under this system the third-party delegate would create his/her own “Third-Party Delegate” account through which they would have access to an executive branch lobbyist’s registration. When a registration or annual report is created by a third-party delegate, an E-mail will be sent to the executive branch lobbyist directing the lobbyist to access the registration and confirm the accuracy of the information. When the lobbyist confirms the accuracy of the information in his/her registration or annual report and the appropriate filing fee has been paid the registration or reporting process will be complete.

The Executive Branch Lobbying Rule does not require, nor contemplate the concept of the third-party delegate. This concept was incorporated into the executive branch lobbying application by IDOA in order to accommodate and facilitate the business practices of the lobbying community. A lobbyist is not required to register or file through a third party delegate and can always create his/her own registration or file his/her own annual report. More information on third-party delegates will be incorporated as needed throughout this manual.

3-1 Initial Registration Statement. Any individual who meets the registration criteria for lobbyists must file an initial registration statement with the Indiana Department of Administration within fifteen days of making any contact with a state agency regarding an executive branch action. 25 IAC 6-2-1. There is a \$50.00 registration fee that will be charged for the filing of an initial registration statement. That fee must be paid online either by credit card, or by eCheck as part of the lobbyist registration process.

(a)Electronic Registration. Executive branch lobbyists may only file their registration by going to the Department of Administration website and filling out the on-line registration form. The website address is: <http://www.in.gov/idoa/2471.htm>. Paper or hard copy registration forms will not be accepted. In addition, payment of the registration fee may only be accomplished online.

Initial registration statements of lobbyists are required to report executive branch lobbying activity on an annual basis and thus, expire after the filing of the annual report. Lobbyists who file their annual report will be required to re-register in the following year in order to report additional lobbying activity. In such an instance, the lobbyist will be able to simply re-activate the prior electronic registration.

For a lobbyist to register him/her self:

1. Once on the Executive Branch Lobbying Registration website, create a lobbyist account by clicking on the appropriate link.
2. Provide answers to the preliminary questionnaire, the purpose of which is to help you determine whether you actually need to register as an executive branch lobbyist. If registration is not necessary at this time you

will be redirected to the Executive Branch Lobbying Registration home page.

3. If registration is required you will be directed to create a user-name and password. Note that we will no longer accept E-mail addresses as usernames. This process creates your access account.
4. Enter all relevant information in the required fields of the registration form. Make sure to save information in each section before proceeding to the next.
5. Make sure you have read and understood the “Ethics Certification” and click on the appropriate box to indicate that you affirmatively accept the representations of the Ethics Certification box.
6. Make sure you have read and understood the “Verification” and click on the appropriate box to indicate that you affirmatively accept the representations in the Verification box.
7. The system will direct you to the payment processing page. Successfully enter all payment information.
8. System will save your information and send you an E-mail confirming your registration as an executive branch lobbyist.

For a third-party delegate to register a lobbyist:

1. Once on the Executive Branch Lobbying Registration website you will first create your own “third-party delegate account” by clicking on the appropriate button. This is a separate and distinct account from the lobbyist registration.
2. Create a user-name and password. Note E-mail addresses will not be accepted as user-names.
3. Enter third-party delegate account information in the required fields and then click the appropriate button to create the third-party delegate account. This account and the information contained therein will not be publicly displayed on the website, but this information will appear on the registration page of the lobbyist for whom you are registering.
4. A confirmation E-mail will automatically be sent to your E-mail address to confirm that you created a third-party delegate account.
5. Once on the third-party delegate homepage (having created the third-party delegate account), click on the appropriate button to create a lobbyist account.
6. Provide answers to the preliminary questionnaire, the purpose of which is to help you determine whether the lobbyist is actually required to register as an executive branch lobbyist. If registration is not necessary at this time you will be redirected to the Executive Branch Lobbying Registration home page. If you have questions concerning the questionnaire please consult the lobbyist in question or contact the Executive Director of Executive Branch Lobbying via E-mail at ebl@idoa.IN.gov.

7. If registration is required you will be directed to create a user-name and password for the lobbyist. Note that we will no longer accept E-mail addresses as usernames. This process creates the lobbyist's access account. (Note: the lobbyist will be directed to change the password for his/her account when they login for the first time.)
8. Enter all relevant information in the required fields of the registration form and click on the appropriate button to register the lobbyist. Make sure to save the information in each section before proceeding to the next.
9. The system will direct you to the payment processing page. Successfully enter all payment information.
10. System will save the lobbyist's information and automatically send an E-mail to the lobbyist. This E-mail will notify the lobbyist that you have created an executive branch lobbyist account on his/her behalf and will invite the lobbyist to login to the account to verify the information on the registration.
11. The lobbyist must login, and change the password on his/her own account.
12. The lobbyist must then verify that the information is accurate or make changes. Once the information is correct, the lobbyist will click the "Register" button.
13. The lobbyist will be presented with the "Ethics Certification" box and the "Verification" box on the registration page. He must check the boxes indicating his affirmative understanding before the registration is officially filed with the IDOA.
14. Confirmation E-mails will automatically be sent to the lobbyist and the third-party delegate.

Once an initial registration statement has been filed, Indiana law requires that a lobbyist update the registration within 15 days of any material change in the lobbyist's registration information. A material change includes termination of an engagement to lobby.

(b) A Rule for Individuals not Organizations. The rule is a registration rule for individuals. Businesses or organizations cannot and should not try to register. It would be the "individual" who engages in lobbying "activity" on behalf of a business or organization who is required to register. A particular business or organization may have multiple individuals who have such contact with an executive branch agency. Under the current rules, all would be required to register individually.

(c) Verified Ethics Certification. According to the statute passed in the 2006 session of the General Assembly, IC 4-2-8-3, and the rule in 25 IAC 6-2 an executive branch lobbyist shall file the following with the department:

- (1) A registration statement.

(2) An annual report as required by the department.

(b) Statements and reports filed under this section must be filed under oath. *Id.* (emphasis added).

Additionally, 25 IAC 6-2-1(6) requires that a “verified statement certifying that in the course of engaging in any executive branch lobbying activity, the executive branch lobbyist has read and will comply with (A) The state statutes governing ethics and conflicts of interest set forth in IC 4-2-6, and rules promulgated thereunder; and (B) The state statutes governing the office of the inspector general as set forth in IC 4-2-7 and rules promulgated thereunder.”

The Indiana Rules of Trial Procedure Trial Rule 11 provides guidance as follows:

Verification by affirmation or representation. When in connection with any civil or special statutory proceeding it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind, be verified, or that an oath be taken, it shall be sufficient if the subscriber simply affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

"I (we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true. (Signed) -----"

Any person who falsifies an affirmation or representation of fact shall be subject to the same penalties as are prescribed by law for the making of a false affidavit.

Thus, in order to comply with the requirements of this section, each lobbyist must affirmatively check two boxes in the appropriate places on the registration form that correspond to the following Ethics Certification and Verification:

Ethics Certification

I hereby certify and affirm, under the penalties of perjury pursuant to IC 35-44-2-1, that in the course of engaging in any executive branch lobbying activity, I have read and complied with the state statutes and administrative rules governing ethics and conflicts of interest set forth in IC 4-2-6; IC 4-2-7; 40 IAC 2; and 42 IAC 1.

Verification

I swear or affirm under the penalties of perjury pursuant to IC 35-44-2-1, that the foregoing representations are true to the best of my knowledge and ability.

The checking of those boxes by the individual logged into the secure website registration form and annual report form will constitute proof that the individual has read and understands the aforementioned clauses.

IMPORTANT: IC 4-2-6; IC 4-2-7; 40 IAC 2; and 42 IAC 1 comprise the State Ethics Code, which, in turn, contains laws that govern the solicitation, acceptance and disclosure of gifts by state officers, special state appointees, and state employees. The State Ethics Code prohibits state officers; special state appointees; and state employees, from accepting, receiving, or soliciting any gift from someone engaged in executive branch lobbying activity regardless of whether or not they are registered. Additional information concerning the ethics rules may be found at the State Ethics Commission Website: <http://www.in.gov/ig/2336.htm>.

(d) Fees and Fines. 25 IAC 6-2-1 (8) provides that the “department shall charge each executive branch lobbyist an initial registration fee of fifty dollars (\$50) per calendar year.” Those fees may be changed by the department by rule pursuant to IC 4-22-2. Additionally, any fee associated with the filing of an initial registration statement will not take effect until July 1, 2008, unless the department promulgates a rule which states otherwise.

25 IAC 6-3-1 (i) states that if the “department finds that:

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

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

(3) a corrected statement or report has not been filed;

The department may refer the matter to the inspector general or, after a hearing conducted under IC 4-21.5-3, take action under subsection (j).

Accordingly subsection (j) provides:

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

(1) Revoke the registration of the person who has failed to file a corrected statement or report.

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

The same penalties are applicable if the department finds that a person has failed to file a registration statement or report required by the rule. In the course of assessing the penalties the department shall consider whether the failure to file the statement or report was willful or negligent and any other mitigating circumstances.

3-2 Changes in Information; Termination of Engagements. If a material change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed with the department within fifteen (15) days after the change.

The filing of such an amendment may be made by simply accessing the Initial Registration Statement through the IDOA website and editing or adding the necessary information to reflect the change. Once the appropriate registration fields have been updated, follow the on-screen instructions to confirm the registration information and re-submit the initial registration statement. By so doing, the appropriate amendment will be “filed” with the department.

Each registered executive branch lobbyist shall file a “notice of termination” with the department within fifteen (15) days after the end of the engagement. (25 IAC 6-2-3). An “engagement” means:

[A]ny arrangement whereby a person receives financial consideration, in the form of salary, retainer, compensation, or other fee, for or on behalf of any employer or real party in interest to:

- (A) influence an executive branch action; or
- (B) conduct any executive branch lobbying activity.

To file a “notice of termination” a lobbyist must access their initial registration statement through the IDOA website. The lobbyist must then go to the appropriate field corresponding to the particular Real Party in Interest for whom the lobbyist no longer lobbies or Employer whose employment has been terminated and find the appropriate box labeled “Terminate Date.” Next, input the exact date that the particular engagement ended in the appropriate field and follow the on-screen instructions to “save” or confirm the registration information. By so doing, the “notice of termination” with respect to that particular engagement will be “filed” with the department.

3-3 Annual Reports.

In addition to filing an initial registration statement, an executive branch lobbyist shall file with the department not later than January 15, a signed annual report. The annual report must include all of the information contained in the initial registration statement for the preceding year. In addition, the annual report shall include the total amount of payments received by the lobbyist for each engagement during the preceding year.

“Engagement” is defined as:

any arrangement whereby a person receives financial consideration, in the form of salary, retainer, compensation, or other fee, for or on behalf of any employer or real party in interest to:

- (A) influence an executive branch action; or
- (B) conduct any executive branch lobbying activity.

25 IAC 6-1-1(5). Additionally, 25 IAC 6-2-2 (4) provides:

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

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

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

Therefore, an executive branch lobbyist is required to report the total amount of money the lobbyist received to engage in the lobbying activity. Thus, any time there is a new "employer" or new "real party in interest," there is a new engagement and the total amount of money received from that employer or real party in interest must be reported. This would not require an itemization of specific instances of lobbying. Given the language of the rule, a lobbyist is not required to give an itemized list of payments received throughout the year.

Salaried employees who only engage in executive branch lobbying as part of their overall employment with an employer should report the percentage of their salary that corresponds to the amount of time they spent engaged in lobbying activity. If the lobbyist or his/her firm is paid a retainer or flat fee by the real party in interest, they should report the entire fee amount. This is true, even if multiple individuals engage in lobbying activity on behalf of the same employer and real party in interest. However, only that part of the retainer or flat fee that can be attributable to executive branch lobbying activity should be reported. If the retainer or flat fee paid to a firm contemplates additional services beyond executive branch lobbying; only the lobbying compensation is reportable.

Fees

25 IAC 6-2-1 (8) provides that the "department shall charge each executive branch lobbyist an annual report filing fee of fifty dollars (\$50) per calendar year." Those fees may be changed by the department by rule pursuant to IC 4-22-2. Additionally, any fee associated with the filing of an initial registration statement will not take effect until July 1, 2008, unless the department promulgates a rule which states otherwise.

25 IAC 6-3-1 (i) states that if the "department finds that:

- (1) a statement or report required to be filed under this article was materially incorrect;
- (2) the person filing the statement or report was requested to file a corrected statement or report; and
- (3) a corrected statement or report has not been filed;

The department may refer the matter to the inspector general or, after a hearing conducted under IC 4-21.5-3, take action under subsection (j).

Accordingly subsection (j) provides:

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

(1) Revoke the registration of the person who has failed to file a corrected statement or report.

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

The same penalties are applicable if the department finds that a person has failed to file a registration statement or report required by the rule. In the course of assessing the penalties the department shall consider whether the failure to file the statement or report was willful or negligent and any other mitigating circumstances.

3-4 Persons Barred from Executive Branch Lobbying. The following persons are prohibited from engaging in executive branch lobbying:

A. Any person convicted of a felony for violating any law while the individual was an officer or employee of any agency or political subdivision.

B. Any person convicted of a felony relating to executive branch lobbying.

C. Any person convicted of a felony who is in prison, on probation, or has been in prison or on probation within the past twelve (12) months.

D. Any person whose statement or report required under these rules was found to be materially incorrect and who has not filed an amended statement or report within thirty (30) days after having been notified to do so by the department.

E. Additionally, the State Ethics Code provides in 42 IAC 1-5-14, that a former state officer, employee, or special state appointee, who had worked in that capacity after January 10, 2005, is prohibited from working as a registered executive branch lobbyist, "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." 42 IAC 1-5-14.

F. The State Ethics Code in IC 4-2-6-11.5 also prohibits executive branch lobbyists from serving on executive branch boards, commissions, authorities, or task forces unless the board, commission, authority or task force is an advisory body and not a policy making body. This section also applies only to special state appointees appointed after January 10, 2005. This requirement is echoed in the Executive Branch Lobbying Rule in 25 IAC 6-4-1.

4. ENFORCEMENT

The Indiana Department of Administration is required to take all steps allowed by applicable law to enforce the executive branch lobbying rules. (25 IAC 6-5-1) Additionally, the Office of the Inspector General shall receive complaints concerning unlawful executive branch lobbying activity, and violations of the executive branch lobbying rules. The Inspector General also receives complaints and conducts investigations concerning violations of the state ethics rules.

Complaints alleging unlawful executive branch lobbying activity and violations of the executive branch lobbying rules may be made either to the Indiana Department of Administration's Executive Director of Executive Branch Lobbying at ebl@idoa.IN.gov or to the Office of Inspector General via the following website:
<http://www.in.gov/ig/2330.htm>.

4-1 IDOA Sanctions

Indiana Code 4-2-8 and Indiana Administrative Code 25 IAC 6-3-1 provide authority for the Indiana Department of Administration ("department") to impose sanctions on executive branch lobbyists if certain violations are found. If the department finds that a registration statement or annual report required to be filed was materially incorrect, the department must afford the registrant an opportunity to correct the statement or report. *Id.* If the person who filed the statement or report was requested by the department to file a corrected statement or report and fails to do so, the department may refer the matter to the Inspector General or can take its own action by conducting an administrative hearing pursuant to IC 4-21.5-3 (Administrative Orders and Procedures Act). IC 4-2-8-5, 25 IAC 6-3-1.

If the matter proceeds to an administrative hearing pursuant to the Administrative Orders and Procedures Act and the department finds a violation, the department may revoke the registration of the person who has failed to file a corrected statement or report. Additionally, the department may assess a civil penalty of not more than five hundred dollars (\$500) if the finding of a violation was made after June 30, 2007. IC 4-2-8-5, 25 IAC 6-3-1.

Additionally, the department may pursue sanctions if a person has failed altogether to file an initial registration statement or annual report as required by the rule. IC 4-2-8-6, 25 IAC 6-3-1. If, after a hearing conducted pursuant to the Administrative Orders and Procedures Act, the department finds that a person has failed to file a registration statement or an annual report as required by the rule, the department may revoke the person's registration or assess a civil penalty on the person of not more than five hundred dollars (\$500) provided that the finding is made after June 30, 2007. *Id.*

In the process of imposing sanctions under this rule the department is bound to consider whether the failure to file a statement or report was willful or negligent. The department must also consider any mitigating circumstances.

4-2 Inspector General Jurisdiction and Sanctions

Indiana Code § 4-2-7-3(3)(F) and Indiana Administrative Code § 25 IAC 6-5-1 provide authority for the Office of the Inspector General to receive complaints concerning unlawful executive branch lobbying activity, violations of the executive branch lobbying rules, or violations of state ethics rules committed by executive branch lobbyists. If the Inspector General has determined through an investigation, that a formal complaint should be filed, that complaint would be filed with the Indiana State Ethics Commission pursuant to IC 4-2-7-5. The State Ethics Commission would have several sanctions at its disposal. IC 4-2-6-12 provides:

Violations; penalties; sanctions

Sec. 12. If the commission finds a violation of this chapter, IC 4-2-7, or IC 4-2-8, or a rule adopted under this chapter IC 4-2-7, or IC 4-2-8, in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed three (3) times the value of any benefit received from the violation.
 - (2) Cancel a contract.
 - (3) Bar a person from entering into a contract with an agency or a state officer for a period specified by the commission.
 - (4) Order restitution or disgorgement.
 - (5) Reprimand, suspend, or terminate an employee or a special state appointee.
 - (6) Reprimand or recommend the impeachment of a state officer.
 - (7) Bar a person from future state employment as an employee or future appointment as a special state appointee.
 - (8) Revoke a license or permit issued by an agency.
 - (9) Bar a person from obtaining a license or permit issued by an agency.
 - (10) Revoke the registration of a person registered as a lobbyist under IC 4-2-8.
 - (11) Bar a person from future lobbying activity with a state officer or agency.
- As added by P.L.9-1990, SEC.10. Amended by P.L.15-1992, SEC.7; P.L.222-2005, SEC.11; P.L.89-2006, SEC.12.*

5. PUBLIC RECORDS

The registration statements and annual reports required to be filed by these rules constitute part of the public records of the Indiana Department of Administration and are available for public inspection and duplication pursuant to IC 5-14-3. All such records are maintained permanently on the IDOA website and may be accessed at no cost through the search engine at <https://secure.in.gov/apps/idoa/regfile/search.aspx>.

6. ADVISORY OPINIONS

The department has the power and duty to render advisory opinions at the request of any person subject to the executive branch lobbyist registration rule. The department will render advisory opinions through the Executive Director of Executive Branch Lobbying. E-mails requesting advisory opinions may be sent to eb1@idoa.IN.gov.

Advisory opinions rendered by the Executive Director are informal and are not binding on the department. However, the department will consider that a person acted in good faith if it is determined that the person committed a violation after receiving advice from the Executive Director and the alleged violation was directly related to the advice rendered. Also, note that the advice given is based on the facts as represented by the individual seeking the advice. If a request for advice misstates facts in any material way, or omits important information, the opinion will be invalid. If, in responding to a request for an advisory opinion, it becomes clear that the Executive Director has misunderstood or misstated any facts forming the basis of the opinion, then those inaccuracies should be brought to the Executive Director's attention as soon as possible.

Tim A. Grogg
Executive Director
Executive Branch Lobbying
Indiana Department of Administration
tigrogg@idoa.IN.gov
(317) 232-3073