

January 2012

# 2012 Guidebook for Maine Lobbyists

Maine Commission on Governmental Ethics and Election Practices

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## Recommended Citation

Maine Commission on Governmental Ethics and Election Practices, "2012 Guidebook for Maine Lobbyists" (2012). *Governmental Ethics and Election Practices Documents*. Paper 16.  
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# 2012 GUIDEBOOK FOR MAINE LOBBYISTS



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
45 MEMORIAL CIRCLE, 2<sup>ND</sup> FLOOR  
135 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0135  
PHONE: 207-287-4179  
[WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

October 2011

## *Declaration of Purpose*

*3 M.R.S.A § 311*

The Constitution of Maine guarantees the right of the people to petition their government for the redress of grievances and to freely express their opinions on legislation and issues. The Legislature reaffirms its obligation to hear the requests and opinions of all of the people, and to preserve and maintain the integrity and accessibility of the legislative process.

The Legislature recognizes that groups of citizens may choose one among them to present their views to Legislators, and, because of the amount and complexity of proposed legislation, may employ persons knowledgeable in the legislative process to present their views. Such activities are proper methods of expressing the opinion of a group of citizens.

The Legislature also recognizes that such activities must be carried out openly so that other citizens are aware of the opinions and requests made in this manner. Legislative decisions can fully reflect the will of all the people only if the opinions expressed by any citizen are known to all and debated by all, and if the representatives of groups of citizens are identified and their expenditures and activities are regularly disclosed.

Therefore, the Legislature declares that, in order to insure the full participation of all the people of the State in the legislative process, full disclosure of the identity, expenditures and activities of any persons who engage in professional lobbying is required. Such disclosure will insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State.

### **ADVICE FROM THE COMMISSION**

The Ethics Commission staff can provide assistance, including informal guidance in person, by e-mail, and by phone. If you have questions regarding lobbying registration and reporting requirements, please contact the Commission's lobbyist registrar at 287-4179.

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## LOBBYING BASICS

### WHAT IS LOBBYING?

*Lobbying* means to communicate directly with an official in the legislative branch, an official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action, or with the Governor or the Governor’s cabinet and staff for the purpose of influencing the approval or veto of a legislative action when compensation or reimbursement for expenditures is made for those activities. Lobbying includes time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral or written proposals for, or testimony or analyses concerning, a legislative action.

Under Maine law, an activity must have these four elements to count as lobbying. A lobbyist:

<b>1</b> must communicate with a covered governmental official	<b>2</b> for the purpose of influencing that official	<b>3</b> regarding a legislative action	<b>4</b> and must be compensated for that activity or reimbursed for related expenditures.
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If the lobbyist’s client (employer) compensates the lobbyist for the time spent communicating with covered governmental officials, giving committee testimony, researching and analyzing specific bills, etc., or if the lobbyist’s client reimburses the lobbyist for expenditures related to lobbying, that time is reportable lobbying.

Lobbying does not include time spent by any person providing information to or participating in a subcommittee, a stakeholder group, task force, or other work group regarding a legislative action by the appointment or at the request of the Governor, a Legislator or legislative committee, a constitutional officer, a state agency commissioner or the chair of a state board or commission.

### WHAT KINDS OF LEGISLATIVE ACTION ARE COVERED BY THE LAW?

*Legislative action* is defined in 3 M.R.S.A. § 312-A(8) as “the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature, by either the House of Representatives or the Senate, any committee or an official in the Legislative Branch acting in his official capacity, or action of the Governor in approving or vetoing any legislative document presented to the Governor for his approval.”

### ARE THERE OTHER ACTIVITIES THAT CONSTITUTE LOBBYING?

In addition to direct communication, lobbying includes “the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action.”



## WHAT IS INDIRECT LOBBYING?

*Indirect lobbying* means to communicate with members of the general public to solicit them to communicate directly with any covered official for the purpose of influencing legislative action, other than legislation that is before the Legislature as a result of a direct initiative in accordance with the Constitution of Maine, Article IV, Part Third, Section 18, when that solicitation is made by:

- A broadcast, cable or satellite transmission;
- A communication delivered by print media; or
- A letter or written communication delivered by mail or by comparable delivery service. E-mail is not considered a letter for the purposes of this paragraph. (3 M.R.S.A. § 312-A(7-B))

When expenditures on indirect lobbying exceed \$15,000 during a calendar month, the lobbyist must report those expenditures made or incurred by the lobbyist, lobbyist associates, and clients in the monthly report. The lobbyist must report the expenditure using expenditure categories as determined by the Commission, indicate the legislative actions that are the subject of the indirect lobbying and provide a general description of the intended recipients. (3 M.R.S.A. § 317(E-1))

**For more information about lobbying activities, see Appendix A.**

## WHO IS A LOBBYIST?

*Lobbyist* means an individual who is employed by another person for the purpose of and who engages in lobbying more than 8 hours in any calendar month. *Lobbyist* includes an individual who is a regular employee of another person and who lobbies on a full- or part-time basis for that employer. The term lobbyist does not include a lobbyist associate (see next section).

*Person* means an individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club, or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert. The term “person” does not include the State or any state department or agency.

*Employer* means a person who agrees to compensate or reimburse a person who in return agrees to provide lobbying services. *Employer* includes any political action committee as defined in 3 M.R.S.A. § 312-A(13) which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process. In

*“... groups of citizens may choose one among them to present their views to Legislators, and, because of the amount and complexity of proposed legislation, may employ persons knowledgeable in the legislative process to present their views. Such activities are proper methods of expressing the opinion of a group of citizens.”*



### **WHO IS A LOBBYIST ASSOCIATE?**

*Lobbyist Associate* means an individual who:

- Is a partner, associate or employee of a lobbyist or is a co-employee of a regular employee of another person if that regular employee is registered as a lobbyist;
- Lobbies on behalf of the employer named on the lobbyist registration; and
- Expends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

### **WHO IS A VOLUNTEER LOBBYIST?**

*Lobbyist* does not include an individual who receives no compensation for lobbying other than reimbursement for lobby-related travel within the State and reimbursement for other out-of-pocket expenditures made by the individual for printing, postage, and food and lodging connected with lobbying activities paid for by the individual. For the purposes of this subsection, “reimbursement for other out-of-pocket expenditures” does not include reimbursement for the individual’s time spent lobbying that would have been otherwise compensated by an employer or in the course of the individual’s employment. (3 M.R.S.A. §

## **REGISTRATION**

Lobbyists must file a joint registration for each client with the Ethics Commission once they have reached 8 hours of lobbying in a calendar month. The registration form and fee must be filed no later than 15 business days after the lobbyist has lobbied more than 8 hours in a calendar month. Lobbyists can register and pay online on the Commission’s website, [www.maine.gov/ethics](http://www.maine.gov/ethics), or they can file a paper registration at the Commission’s office.

### **REGISTRATION FEES**

The registration fee for each joint lobbyist/client registration is \$200. For each lobbyist associate included in the registration, the fee is \$100.

The registration lasts for one lobbying year which begins on December 1<sup>st</sup> and ends on November 30<sup>th</sup>. All registrations expire on November 30<sup>th</sup>.

### **COMPLETING THE REGISTRATION FORM**

The registration form includes contact information for the lobbyist and each lobbyist associate, the name of any person authorized to sign reports on the lobbyist’s behalf, contact information for the lobbyist’s client, the date when lobbying commenced or is expected to commence, the date on which the time spent lobbying reached 8 hours in a calendar month, the amount of compensation the lobbyist will receive or the basis of the lobbyist’s compensation, a description of the nature of the client’s business activity or mission or a description of the industry, trade or profession that the client represents, the areas of the client’s legislative interests, and the legislative committees that the lobbyist will lobby on behalf of the client. A lobbyist may also submit a photo to be uploaded to the lobbyist’s profile page on the Commission’s website.



The lobbyist must disclose the amount of the compensation he or she will receive from the client, *i.e.*, the amount of a retainer or the hourly rate charged to the client. If the lobbyist is unable to ascertain the amount of compensation, the basis for the compensation rate must be disclosed.

If the lobbyist is an employee of the client (an in-house lobbyist), the amount of compensation should be a pro-rated share of the lobbyist's compensation based on the proportion of his or her time spent on lobbying. That amount should be disclosed in the registration.

Amendments to the registration may be made at any time by contacting the Commission staff. Additional lobbyist associates may be added, provided that the \$100 fee is submitted.

#### **IMPORTANT NOTE ABOUT FILING MONTHLY REPORTS**

Once a lobbyist has registered with the Commission, the lobbyist must file monthly reports. Even if the lobbyist did not engage in any lobbying, a report (Short Form) must be filed for that month. If a registered lobbyist spent less than eight hours in a month lobbying, the lobbyist must still file a Long Form Monthly Report.

#### **ELECTRONIC FILING**

All lobbyists must file monthly reports through the Commission's electronic filing system. Upon registration, the Commission will provide the lobbyist a user code, temporary password and directions to file reports electronically. Lobbyists with multiple clients will have one user code and password.

The Commission may make an exception to the electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or does not have the technological ability to file reports electronically. The request for exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The Commission will grant reasonable requests for exceptions.

#### **MONTHLY DISCLOSURE REPORTS**

Every registered lobbyist must file a monthly report with the Commission on the 15<sup>th</sup> day of the month, which covers lobbying activity for the prior calendar month. If the deadline falls on a weekend, holiday or state government closure day, the report is due on the next regular business day. Reports are due by 11:59 p.m. on the deadline.

There are two types of monthly reports:

**Short Form:** This form may be used only if the lobbyist did not lobby during the preceding month.

**Long Form:** If the lobbyist engaged in any lobbying activities during the previous month, he or she is required to file the long form. The long form discloses how much compensation the lobbyist and any lobbyist associates earned for lobbying activities during the previous month, expenditures made by the lobbyist, and bills or issues lobbied on during the month of the report.





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**DIRECTIONS FOR COMPLETING THE LONG FORM**

Section 1 – Displays lobbyist information.

Section 2 – Displays client information.

The information for Questions 1 & 2 is automatically entered in the electronic version of the report.

Section 3 – List the lobbyist associates who received compensation for lobbying during the month. Lobbyist associates must be registered with the Commission. In the electronic version of the report, all registered lobbyist associates will be listed and the lobbyist must select only those lobbyist associates who were compensated for lobbying activities during the month.

Section 4 – Specify the total compensation for lobbying by the lobbyist and lobbyist associates for the month. Lobbyists must report the amount of compensation for lobbying officials in the legislative branch, officials in the executive branch, and constitutional officers separately. For reporting purposes, the amount of compensation earned during the month should be reported, even if the lobbyist has not received payment.

- *Salaried or hourly employees* should compute the amount by multiplying the hours engaged in lobbying by the employee's regular rate of pay based on a 40-hour week.
- Lobbyists who receive a *lump sum payment or retainer* to cover the entire session must report the portion of the payment that is compensation for lobbying for the month. The lump sum payment may also be reported in installments by dividing the total payment by the number of months during which lobbying is expected to occur or the number of months of the session. The amount reported for the month should be distributed among the three types of covered officials according to the proportion of time spent lobbying those officials. If there is any balance of the lump sum payment remaining at the end of the lobbying year or when lobbying activity ceases, it should be reported on the last monthly report filed by the lobbyist or the lobbyist should amend previously filed monthly reports to reflect the appropriate distribution of the compensation.

Section 5 – Specify the amount of expenditures (not compensation) made or incurred by the lobbyist during the month for lobbying purposes (the preparation of documents, research, travel reimbursement, etc.). The amount of expenditures spent on lobbying officials in the legislative branch, the executive branch, and constitutional officers should be reported

Section 6 – Specify the total money expended by the lobbyist or client directly to or on behalf of covered officials or their immediate family. Do not include amounts reported in Section 8.

Section 7 – If the total amount reported in Section 6 includes expenditures of \$25 or more on behalf of a covered official or a member of the official's immediate family or on anything with a retail value of \$25 or more given to a covered official or a member of the official's immediate family, enter the name of each covered official or family member, the date, amount, and purpose of the expenditure.

*The Commission encourages lobbyists to disclose as much information as possible. If you have questions about how to complete a monthly report, please call the lobbyist registrar at 287-4179 before filing the report.*



**Section 8** – Enter the date, cost and description of an event paid for by the lobbyist or client if the total amount spent on legislative or executive branch officials and family members was \$250 or more. Also enter a list of the officials and family members who attended the event. This includes but is not limited to events held by the client or lobbyist to present information to Legislators, such as legislative breakfasts or catered events in the State House Hall of Flags.

**Section 9** – List each legislative action lobbied on during the month by bill number or legislative record number, if a bill number has not been assigned. If the lobbyist lobbies a covered official on a matter that does not have a bill or record number, enter a description of the matter or issue. Only list those bills and issues which were lobbied on during the month.

When listing issues, please use a brief description that provides some specificity about the particular program, regulation, or issue which is the subject of the communication. Avoid descriptions that are so broad as to convey little about what issue has been lobbied on:

<b>Unacceptable</b>	<b>Preferred</b>
Public Assistance	TANF eligibility criteria
Energy	Wind power plant siting criteria
Taxation	Business equipment tax reimbursement
Animal welfare	Mass breeding facilities

**Section 10** – List all legislative actions (bills by bill number or legislative record number and issues) for which the lobbyist (including any lobbyist associates) was compensated or expects to be compensated more than \$1,000 for lobbying during the month, or for which the lobbyist made or incurred expenditures of more than \$1,000 during the month. In order to complete this section accurately, the lobbyist must be able to determine how much of his or her compensation is attributable to a particular bill. If the amount of compensation reported in Section 4 or expenditures reported in Section 5 is more than \$1,000, and there is only one bill reported in Section 9, it is likely that the compensation should also be reported in Section 10.

**Section 11** – List all original sources that have contributed or paid \$1,000 or more during the lobbying year, directly or indirectly, to the client for the purposes of lobbying. An “original source” is any third-party that has given \$1,000 or more to the client for lobbying or indirect lobbying purposes, except that membership dues to non-profit corporations are not considered contributions by an original source.

**Section 12** - Lobbyists will report expenditures made for indirect lobbying in this section. As of the date of publication, the e-filing system has not yet been updated to include this section. Lobbyists will be notified when the update has been made. See page 5 for more information about indirect lobbying.

*“... in order to insure the full participation of all the people of the State in the legislative process, full disclosure of the identity, expenditures and activities of any persons who engage in professional lobbying is required. Such disclosure will insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State.”*



## **ANNUAL REPORT**

As of September 2011 registered lobbyists are no longer required to submit annual reports. Lobbyists want to make sure that all of the reports from throughout the year are filed and not left in a pending status. The e-filing system will calculate all of the necessary information automatically at the end of the lobbying year.

## **PENALTIES FOR FILING LATE**

It is critical that you file your lobbyist reports on time, as there are substantial penalties for late filing. Late filing of the Joint Lobbyist/Client Registration results in a \$100 penalty for each month the registration is filed late. Monthly reports have a penalty of \$50 if the report is filed within the first 24 hours of the reporting deadline and \$100 after the first 24 hours and for each month the report is filed late. Penalty notices are mailed within 3 calendar days of a missed deadline by certified mail to the lobbyist. Within 10 days of receiving the penalty notice, the lobbyist may request that the Commission waive or reduce the penalty if mitigating circumstances exist. Mitigating circumstances include a valid emergency, an error by the Commission staff, or other evidence that the lobbyist made a bona fide effort to file the report in accordance with the statutory requirements. The members of the Commission will make a decision on the waiver request at their next monthly meeting. If no request for a waiver is made, the penalty must be paid within 30 days. The penalty may be paid by check made payable to the Treasurer, State of Maine or on-line by going to [www.maine.gov/ethics](http://www.maine.gov/ethics), lower left hand side, penalty payment.

Upon written notice, the Commission may suspend any person who fails to file a report or pay a fee from any further lobbying until the failure is corrected.

## **REQUEST FOR NON-SESSION WAIVERS**

If, at the end of the legislative session, a lobbyist does not expect to perform any additional lobbying through the end of the lobbying year (November 30<sup>th</sup>), the lobbyist can request a non-session waiver. The Commission will automatically grant a waiver of the monthly reporting requirement through the lobbying year. If the lobbyist resumes lobbying after the waiver is granted, monthly disclosure reports must be filed for the months in which lobbying is conducted. The electronic filing system will only activate a waiver if the date indicating when the lobbying ceased is entered. The lobbyist does not need to re-file the non-session waiver once lobbying ceases.

## **TERMINATION REPORT**

If the client terminates the employment of a lobbyist prior to November 30<sup>th</sup>, the client can notify the Commission by filing a termination report indicating that the lobbyist is no longer engaged by the client. The lobbyist and client must file the appropriate monthly report prior to the termination report. Upon receiving the termination form, the Commission will waive the monthly reporting requirement for the rest of the lobbying year.



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## **PUBLIC AVAILABILITY OF INFORMATION**

Lobbyist and client profiles, registration information, and monthly and annual disclosure reports are available to the public on the Commission's website. The public can also search for which lobbyists and clients lobbied on specific legislative actions.

## **COMMISSION INVESTIGATIONS**

Any person may file a complaint with the Commission. The complaint must state specific allegations of violations of the Lobbyist Disclosure Law (3 M.R.S.A. § 311 *et seq.*). Once a complaint is filed, the Commission staff must notify the party against whom the complaint has been filed and may undertake an investigation if directed by the Commission members.

The Commission may also undertake an investigation into the failure to file a registration or to determine the accuracy and completeness of a registration or monthly report. To initiate an investigation, the Commission must find that there is cause to believe that a violation may have occurred based on a properly filed complaint or other information received by the Commission.

In conducting an investigation, the Commission may subpoena witnesses and take testimony under oath. It may also subpoena records when a lobbyist, employer or other person refuses to provide relevant records in the course of an investigation. Any record or information obtained by the Commission in the course of an investigation that is covered by a privilege against discovery or used as evidence is not a public record unless the privilege is waived.

## **OTHER REQUIREMENTS AND RESTRICTIONS**

### **TESTIFYING BEFORE A LEGISLATIVE COMMITTEE**

When testifying before a legislative committee, a lobbyist must disclose to the committee the name of the person or organization the lobbyist represents. If the lobbyist or the lobbyist's client compensates another individual to provide testimony to a legislative committee, the lobbyist must disclose the name of that individual to the committee orally or in writing.

A Legislator may file a complaint with the Commission alleging a violation of this disclosure requirement. If the Commission determines that a violation has occurred, the Commission may suspend the lobbyist and impose a penalty of up to \$5,000 against the lobbyist.

### **NAME TAGS**

In 2009, the Legislature enacted a law requiring a registered lobbyist to wear a clearly visible name tag when engaged in the act of lobbying. The name tag must clearly display the lobbyist's name and must include either the name of the firm the lobbyist works for, the name of the lobbyist's employer, the organization the lobbyist represents, or the term "lobbyist."

### **CONTINGENT COMPENSATION AND INSTIGATION OF LEGISLATIVE ACTION**

A person may not accept employment as a lobbyist if the proposed compensation is contingent on the outcome of legislative action. No person shall instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to oppose or support such legislative action.



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## GIFTS AND CAMPAIGN CONTRIBUTIONS

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### GIFTS

In their monthly and annual reports, lobbyists must report the names of all covered officials and members of their immediate family to whom the lobbyist or the client spent \$25 or more on behalf of or gave anything with a retail value of \$25 or more. However, it is important to note that there are significant restrictions on gifts to public officials.

The Legislative Ethics Law forbids a Legislator or an immediate family member from accepting a gift (other than a campaign contribution) from persons affected by legislation or who have an interest in a business affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his or her official duties or vote, or is intended as a reward for action on his or her part.

The most stringent prohibitions are found in the Bribery and Corrupt Practices provisions of the Maine's Criminal Code (17-A M.R.S.A. § 601 *et seq.*) It is unlawful for a public servant to solicit, accept or agree to accept any pecuniary benefit from a person "if the public servant knows or reasonably should know that the purpose of the donor in making the gift is to influence the public servant in the performance of the public servant's official duties or vote, or is intended as a reward for action on the part of the public servant." It is also unlawful for a person to knowingly give, offer or promise to a public servant any pecuniary benefit prohibited under the law.

Pecuniary benefit is defined as any economic advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. It does not include economic advantage applicable to the public generally, such as a tax reduction. Pecuniary benefit also does not include a meal provided by industry or special interest organizations as part of an informational program presented to a group of public servants, a prayer breakfast, or a subscription to a newspaper, news magazine or other news publication.

The two questions to ask before making or offering a gift are: 1) Does the person making the gift have an interest in a matter that is or will be considered by the Legislature; and 2) Would the gift result in any economic advantage to the public servant that is not applicable to the general public or is not permitted by the law? Under the standard in the Criminal Code, the value of the gift is not a factor. Any economic gain or advantage is enough to make the prohibition applicable.

The State of Maine Department of Administrative and Financial Services has established a policy on gifts to state employees (this does not apply to officials and employees of the legislative branch):

"It is against the policy of the State for an employee to accept gifts from any person or business that does business, or expects to do business with the State of Maine.

Further, it is unlawful (Title 17-A, M.R.S.A. Sections 602, 604, 605 and 606) for

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certain persons or businesses to give gifts to State employees and have them accepted. For the purpose of administrative guidance, gifts do not include advertising items of nominal value such as calendars, pens, or pencils. Goods and services which involve a pecuniary benefit should be considered to be gifts.”

### **CAMPAIGN CONTRIBUTIONS**

During any time in which the Legislature is in session, lobbyists, lobbyist associates, and their clients may not intentionally give, offer or promise a campaign contribution to the Governor, members of the Legislature, constitutional officers of the State, or their staff or agents. Several exceptions apply to the prohibition, including contributions to a Legislator’s campaign for federal office. For more information, please see the exceptions in 1 M.R.S.A. § 1015(3).

The in-session ban applies to contributions directly and indirectly solicited or accepted by, or given, offered and promised to a political action committee, ballot question committee or party committee of which the Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials is a treasurer, officer, or primary fund-raiser or decision maker. For example, a lobbyist may not make a contribution to a legislative caucus PAC or a leadership PAC during session, unless the contribution meets the exceptions in 1 M.R.S.A. § 1015(3)(C) and (C-1). An organization that employs a lobbyist and that is closely affiliated with a PAC may not direct the PAC to make a contribution during the legislative session.

Lobbyists and lobbyist associates may make \$5 qualifying contributions during the legislative session in support of a covered official who is a candidate for Legislature or Governor and who is attempting to qualify for public financing under the Maine Clean Election Act. Lobbyists and lobbyist associates may not make seed money contributions (donations of up to \$100 from individual contributors) to a covered official who is a candidate during the legislative session, except in special elections as provided in the exceptions in 1 M.R.S.A. § 1015(3)(C).

Contributions from lobbyists and employers to privately financed candidates are subject to the contribution limitations (\$350 for candidates for the Legislature and \$1,500 for gubernatorial candidates). These limitations apply per election, for example, a lobbyist may make an out-of-session contribution of up to \$350 to a legislative candidate who is running in a primary election. If the candidate becomes the nominee of the party, the lobbyist may make another out-of-session contribution of up to \$350 to the candidate for the general election.

A campaign contribution consisting of funds from a lobbyist’s client must be made in the name of the client – not the lobbyist. The Election Law forbids any person “mak[ing] a contribution in the name of another person, or knowingly permitting his name to accomplish such a contribution.” (21-A M.R.S.A. § 1004(3))

The Commission has developed Guidelines on Acceptance of Gifts, which is available on the Commission’s website, [www.maine.gov/ethics](http://www.maine.gov/ethics). Lobbyists are strongly encouraged to review these guidelines before providing any gifts to Legislators, officials of the executive branch, constitutional officers, or their staff or families.





## **APPENDIX A: MORE ON “WHAT IS LOBBYING?”**

### **What if a lobbyist communicates with a Legislator or an executive branch official for the purpose of influencing the official regarding a policy issue, but there is no proposed legislation related to that issue at that time? Is that lobbying?**

The definition of legislative action includes the drafting of legislation and the introduction of legislation. So, communications made for the purpose of influencing how legislation will be drafted, what to include in the proposed legislation, or whether legislation will be introduced is lobbying.

If a lobbyist does not intend to influence the drafting or introduction of legislation, the communication is not lobbying. Lobbyists who are uncertain whether their communications qualify as lobbying are welcome to turn to the Commission staff for advice.

### **What about meetings with agency officials made for the purpose of obtaining information or documents or to conduct other research?**

If the lobbyist is not communicating with the official for the purpose of influencing legislative action, the meeting is not lobbying. Meeting with agency officials to discuss policy matters in a general way, to explore an agency’s policy positions on issues, or to inquire how proposed legislation would affect an agency’s programs or operations is not lobbying. Merely gathering information or documents is not lobbying, even if the information or documents relate to a subsequent legislative proposal. There may be other types of communications or interactions with agency officials that would not be considered lobbying. The most important factor to determine whether some activity is lobbying is whether its purpose is to influence the agency official concerning a legislative action. If the lobbyist is uncertain, the Commission staff is available to provide specific guidance to the lobbyist.

### **What about other research or preparatory activities that are conducted before the lobbyist knows whether legislation will be introduced, such as:**

- **drafting a written history of current law in Maine for a client,**
- **conducting quantitative analysis on a policy issue of interest to a client, or**
- **engaging experts in the field to conduct research or to offer advice?**

Research or analysis concerning legislative action only counts as lobbying if it is submitted to a covered official in the form of oral or written proposals, testimony, or analysis. If the analysis is conducted only to educate the lobbyist or client and is not submitted to a covered official, it is not lobbying.

If research or analysis is conducted and the lobbyist does not intend to use it to influence legislative action, the research or analysis is not lobbying. Even if the research or analysis is later submitted to a covered official, it does not count as lobbying if at the time it was prepared the lobbyist did not intend to submit it to a covered official.



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**What about drafting legislation if the lobbyist does not intend to submit it to a covered official?**

Lobbying includes “the time spent to prepare and submit to [covered officials] oral and written proposals for...legislative action.” (3 M.R.S.A. § 312-A(9)) If, at the time a legislative proposal is drafted, the lobbyist does not intend that it will be submitted to a covered official, the drafting is not lobbying. If the legislation is later submitted to a covered official, the drafting does count as lobbying. The Commission advises that the lobbyist should report any compensation and expenditures connected with the drafting as though they occurred during the month when the legislation is submitted.

**What about monitoring the activities of agency officials regarding legislative action?**

Monitoring the legislative plans or other activities of executive branch agencies is not lobbying, as long as there is no communication made to influence legislative action.

**What about influencing other kinds of actions by executive branch agencies?**

Communications with covered executive branch officials count as lobbying if they are made to influence legislative action. Communicating with agency officials in an effort to influence other kinds of administrative action, such as licensing, permitting, rate setting, or government procurement is not lobbying. Contacts with an agency to influence a rulemaking prior to the agency’s adoption of rule changes do not count as lobbying because they are not intended to influence legislative action. If the rule changes are major substantive, communicating with a covered official to influence the Legislature’s review of the adopted rule changes is lobbying.





**Does lobbying include...**

sitting and waiting for an opportunity to communicate with a covered official?	No. Only direct communication is considered lobbying.
monitoring legislation?	No. Attending a hearing or work session to monitor the progress of legislation is not lobbying, as long as the lobbyist does not communicate with a covered official.
travel time to the State House or other event for the purpose of communicating with a covered official?	No.
speaking to a covered official about general issues of interest to the employer?	As long as the communication is not intended to influence the drafting or consideration of a specific legislative action, the communication is not considered lobbying.
educational seminars for a covered official?	No, provided the seminar is to educate the officials about the employer's business or general issues of interest and not specific legislation as outlined above.
communicating with the employer regarding a specific LD?	If the communication is part of preparing a proposal, testimony, or analysis concerning a legislative action, the communication is lobbying. If it is for another purpose ( <i>e.g.</i> , reporting to the client on the progress of legislation), the communication is not
research for a specific LD?	Yes, if the research will be used for a proposal, testimony or analysis concerning a legislative action. Otherwise, the research is not lobbying.
communicating with staff of the Legislature or the Governor?	Yes. If the communication deals with specific matters as outlined above.



## **APPENDIX B: COVERED GOVERNMENTAL OFFICIALS**

### **Which governmental officials are covered by the law?**

The law covers:

- officials in the legislative branch (“a member, member-elect, candidate for or officer of the Legislature or an employee of the Legislature”),
- the Governor’s cabinet and staff,
- officials in the executive branch, and
- constitutional officers.

### **Which officials in the executive branch are covered?**

A list of the positions in the executive branch is on the Commission’s website, [www.maine.gov/ethics](http://www.maine.gov/ethics).

The term “[o]fficial in the executive branch” refers to an individual in a major policy-influencing position in:

- A department or agency listed in Title 3, section 959 or in Title 5, chapter 71
- Individuals in those departments and agencies who have major policy development as a major function of their positions but whose positions are not specifically listed, and
- The Governor’s cabinet and staff.

Title 5, chapter 71 [Sections 932-95p] lists about 25 departments, agencies and offices within Maine state government and designates over 100 high-ranking positions within those departments and agencies as being “major policy-influencing positions.”

The Governor’s cabinet and staff are listed on the Commission’s website and the Governor’s website, [www.maine.gov/governor](http://www.maine.gov/governor). In the opinion of the Commission, the reference to “staff” in the phrase “the Governor’s cabinet and staff” was intended to mean employees who work in the Office of the Governor and not the entire staffs of those agencies whose Commissioners or directors are in the Governor’s cabinet.

The state’s constitutional officers are the Attorney General, the Secretary of State, and the State Treasurer. Although some personnel in the offices of the Attorney General and the Secretary of State are listed in Title 5, Chapter 71, for reporting purposes lobbyists should count those officials as constitutional officers rather than as officials in the executive branch. The State Auditor is a statutory officer. Management-level employees in the Department of Audit, including the State Auditor, should be considered to be officials of the executive branch for reporting purposes.



## **APPENDIX C: STATE DEPARTMENT OR AGENCY LOBBYISTS**

Certain employees of state departments or agencies who lobby or monitor legislation must register with the Commission. The Lobbyist Disclosure Law defines “legislative designee” as “any employee of a state department or agency who is directed by the head of the department or agency to lobby or monitor legislation on behalf of the department or agency. Legislative designee includes an employee who is reasonably expected to lobby or monitor legislation on behalf of the department or agency for more than 20 hours during the session.” Monitoring legislation is defined as “attending legislative hearings and sessions regarding a legislative action.”

### **Registration**

Each department of state government and each agency must register the officers and employees who will serve as the department’s or agency’s legislative designees. The registration must be filed with the Commission within 15 business days of the convening of each regular session. The registration form contains:

The name and contact information for the legislative designee and the department or agency, including its website address;

- A description of the designee’s position;
- A description of the department or agency, its jurisdiction, and activities; and
- The general subject areas of legislation that the department or agency is attempting to influence.

Any changes to the information in the registration form must be reported to the Commission within 15 days of the change. Legislative designees are exempt from the requirement to file monthly or annual reports and other requirement under the Lobbyist Disclosure Law.

Legislative designees are not required to file monthly or annual reports with the Commission and are not subject to other requirements of the Title 2, chapter 15.

A list of legislative designees is available to the public on the Commission’s website.





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**Commission on Governmental Ethics and Election Practices**

Office Location: 45 Memorial Circle, Second Floor, Augusta

Mail: 135 State House Station

Augusta, Maine 04333-0135

Telephone: (207) 287-4179 Fax: (207) 287-6775

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)

Electronic Filing: [www.maine.commerce.com/public/home.asp](http://www.maine.commerce.com/public/home.asp)

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