

2013 GUIDEBOOK FOR MAINE LOBBYISTS



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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. This guidebook provides an overview of lobbying registration and reporting requirements in the State of Maine. While we believe it provides an accurate description of what the law requires, it should not act as a substitute for the law itself.

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CHAPTER 1

INTRODUCTION TO LOBBYING TERMS

What is lobbying?

Lobbying is the direct communication with covered officials for the purpose of influencing legislative action or the approval or veto of legislative action when compensation or reimbursement for expenses is paid.

- ◆ *Covered officials* are members, members-elect, officers and employees of the Legislature, legislative candidates, the Governor and the Governor's cabinet and staff, constitutional and statutory officers (Attorney General, Treasurer, Secretary of State, and State Auditor), and executive branch officials in major policy influencing positions. (See Appendix B)
- ◆ *Direct communication* includes any oral or written communication with a covered official (e.g., one on one conversations, oral and written testimony, letters, e-mails, text messages, phone calls, etc.) and the time spent preparing oral or written proposals for, or testimony or analysis concerning, a legislative action.
- ◆ *Legislative action* is a broad term that covers the process of drafting, amending and enacting legislation and resolutions and other matters that may be acted upon by officials in the legislative branch or by the Governor. The statute defines it 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."

- ◆ *Compensation* is the payment of money or anything of value received or to be received for rendering services.

Lobbying does not include time spent providing information to or participating in a subcommittee group, stakeholder group, task force or other work group regarding legislative action, when participation is by the appointment of 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. For example, the presiding officers of the Legislature appoint a registered lobbyist to an advisory committee on legislative ethics and authorize the committee to develop legislation. The time spent by the lobbyist attending committees meetings and drafting legislation is not lobbying

Who is a (principal) lobbyist?

A lobbyist is an individual who engages in more than 8 hours of lobbying in any calendar month and who is either:

- ◆ specifically employed or retained by another person (client) for the purpose of engaging in



lobbying (i.e., a contract lobbyist) or

- ◆ the regular employee of another person (i.e., an in-house lobbyist).
- ◆ *Person* includes individuals, corporations, proprietorships, associations, labor unions, and groups of persons acting in concert.
- ◆ *Employment* means an agreement to provide services in exchange for compensation or reimbursement.

Who is a lobbyist associate?

A lobbyist associate is an individual who is a partner, associate, employee or co-employee of registered (principal) lobbyist and who lobbies more than 8 hours in a calendar month on behalf of the client listed in the principal lobbyist's registration.

- ◆ For example, Larry Lobbyist and Adam Associate are attorneys in the same law firm that specializes in governmental relations. Larry is the principal lobbyist for Acme Corporation. If Adam lobbies on behalf of Acme Corp. for more than 8 hours in a calendar month that makes him a lobbyist associate.

Who is a volunteer lobbyist?

A volunteer lobbyist is an individual who receives no

compensation for lobbying other than reimbursement for lobby-related travel within the State and reimbursement for other costs for printing, postage, and food and lodging connected with lobbying activities paid for by the individual out-of-pocket. However, the reimbursement for other out-of-pocket expenditures does not include reimbursement for the volunteer lobbyist's time spent lobbying that would have been otherwise compensated by an employer or in the course of the individual's employment.

What is indirect lobbying?

Indirect lobbying (sometimes called grassroots lobbying) is when a lobbyist communicates with members of the general public by radio or television, print media or direct mail or similar service to solicit them to communicate directly with any covered official for the purpose of influencing legislative action. This does not apply to solicitations to communicate with covered officials about legislation resulting from a direct citizen initiative or to e-mail solicitations.

- ◆ The requirement to report indirect lobbying costs applies only to registered lobbyists. If an organization or business does not have a registered lobbyist, they are not responsible for reporting their indirect lobbying expenditures.
- ◆ *Solicit* means to entreat, implore, urge or ask.

LEGAL REFERENCES

Definition of "indirect lobbying"	3 M.R.S.A. § 312-A(7-B)
Definition of "legislative action"	3 M.R.S.A. § 312-A(8)
Definition of "lobbying"	3 M.R.S.A. § 312-A(9)
Definition of "lobbyist," including volunteer lobbyist	3 M.R.S.A. § 312-A(10)
Definition of "lobbyist associate"	3 M.R.S.A. § 312-A(10-A)
Definition of "official in the executive branch"	3 M.R.S.A. § 312-A(10-C)
Definition of "official in the Legislative Branch"	3 M.R.S.A. § 312-A(11)



CHAPTER 2

REGISTRATION AND REPORTING

This chapter provides guidance on

- ◆ when and how to register as a principal lobbyist or lobbyist associate
- ◆ when and how to report lobbying activity
- ◆ how to get a waiver of the reporting requirement when the Legislature is out of session
- ◆ how to terminate as a lobbyist

IMPORTANT INFORMATION ABOUT REGISTRATIONS

A registration is a joint declaration by both the principal lobbyist and the client that the lobbyist will lobby on behalf of the client during the lobbying year. As such, a joint registration must be filed by a lobbyist for each client the lobbyist has during the lobbying year.

- ◆ Lobbyist associates, if known at the time of registration, must be named in the joint registration. If a lobbyist associate has to be added after the registration is filed, the lobbyist should contact the Commission staff at (207) 287-4179 and request an amendment to the registration to include the new lobbyist associate.

A registration fee of \$200 applies to each joint registration filed by a lobbyist. An additional \$100 is required to register a lobbyist associate for the client.

Once a joint registration form is filed and the registration fees paid, it is effective for the duration of the lobbying

year, which runs from December 1 through November 30. A joint registration automatically terminates at the end of the lobbying year, but can also be terminated by a joint statement of the lobbyist and client that all lobbying activity on behalf of the client has ceased.

REGISTERING AS A LOBBYIST

When to register

The requirement to register as a lobbyist is triggered when an individual has lobbied more than 8 hours in a calendar month. Once that threshold is crossed, a registration form must be filed with the Commission within 15 business days.

NOTE: The 8-hour threshold only applies to the registration requirement. Once registered, a lobbyist has to report all lobbying activity monthly even if they lobbied less than 8 hours in that month.

Joint registration forms may be filed at any time in anticipation that a lobbyist will meet the threshold registration requirement. But once a lobbyist is registered, they will have to file monthly reports even if no lobbying activity occurred in the month.

How to register

Registering as a lobbyist can be done online or on paper. To register online, go to the Commission's website—www.maine.gov/ethics—and click on the "Lobbyist Registration" link under "Online Resources." If you register online, you can pay the registration fee online by



using a credit or debit card (Visa and MasterCard only) or by mailing a check to the Commission at the address below. If registering on paper, mail the joint registration and applicable registration fee to:

Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135.

All registrations, filed online or by mail, must first be approved by Commission staff before taking effect. Registrations will not be approved until payment is received.

Content of the registration

Joint registration forms must include the following information:

- ◆ Name of the lobbyist and any associates.
- ◆ The client on whose behalf the lobbyist and associates will lobby.
- ◆ Business address and contact information for the lobbyist, any associates, and the client.
- ◆ The date upon which lobbying commenced and the date on which the 8 hour threshold was exceeded.
- ◆ A description of the client's business or mission and its legislative interests.
- ◆ The legislative committees the lobbyist will lobby during the year.
- ◆ The amount of compensation the lobbyist will receive, or the basis by which compensation will be determined.
- ◆ The names of any person authorized to file reports on behalf of the lobbyist.

NOTE: It is the lobbyist's responsibility to report to the Commission any changes to the information submitted on the joint registration within 10 days of the change. Changes can be reported by submitting a written statement to the Commission staff detailing the changes.

IMPORTANT INFORMATION ABOUT MONTHLY REPORTING

Once a lobbyist and client are registered, the lobbyist is required to file monthly reports with the Commission. A separate monthly report must be filed for each client and the reports must include the activity of any lobbyist associates.

There are two types of monthly reports, long-form reports and short-form reports. Long form reports are required to be filed:

- ◆ if any lobbying at all occurred during the calendar month, even if less than 8 hours of lobbying occurred in the month;
- ◆ if the lobbyist incurred or was reimbursed for any expenditures associated with lobbying activities, such as travel and lodging, outside research or consulting services, printing, etc.;
- ◆ if the lobbyist or the client had any expenditures related to covered officials, including expenditures related to informational events; or
- ◆ if the lobbyist or client had any expenditures related to indirect lobbying.

If no lobbying was done and no expenditures incurred or made in a month, a short-form report may be filed. Monthly reports will be discussed further below in greater detail.



Each report covers one calendar month. Reports must be filed by 11:59 p.m. on the 15th day of the month after the month covered by the report. For example, the report for the month of January (covering activity between January 1 and January 31) is due by 11:59 p.m. on February 15.

If a due date falls on a Saturday, Sunday, or recognized holiday, the report is due by 11:59 p.m. on the next regular business day.

NOTE: Sometimes there is confusion about the 8-hour threshold and a lobbyist may mistakenly believe they do not have to file a long form monthly report if they have not lobbied over 8 hours in a month. That is wrong.

The 8-hour threshold only applies to the registration requirement. It has nothing to do with the monthly reports. Once registered, a lobbyist must file monthly reports regardless of how many hours of lobbying activity occurred in the month. That means that even if the lobbyist only has one hour of lobbying time in a month, a long form report must be filed.

HOW TO FILE MONTHLY REPORTS

Monthly reports must be filed using the Commission's filing website, which can be found at www.mainecampaignfinance.com. The site is accessed by entering the lobbyist's user code and password, which are sent to the lobbyist upon registration.

Once a lobbyist is logged into the e-filing system, select which form you want to complete—the long-form or short-form—by clicking on the report name. Next, click the “add” button and select the appropriate month. The system will then generate a blank report to complete.

Short-Form reports

A short-form report may only be filed if a lobbyist did not engage in any lobbying or make any expenditures during the covered calendar month.

A short-form report requires that the lobbyist affirm that no lobbying was done and no expenditures were made during the previous month. To file the report, click the “file report” button at the bottom of the screen.

Long-Form reports

A long-form report must be filed if any lobbying or indirect lobbying was done or if the lobbyist made or incurred any expenditures during the covered month. The individual sections of the report are outlined in more detail below.

- ◆ **Lobbyist Associates:** Include all lobbyist associates who lobbied during the month. If an associate had no lobbying activity during the month, they should not be listed on the report.
- ◆ **Total Compensation:** All compensation received by lobbyists and lobbyist associates for lobbying done during the reporting month is aggregated in this section. Totals for lobbying the legislative branch, executive branch and/or constitutional officers must be separately recorded.
- ◆ 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 determine compensation by multiplying the time spent lobbying by the employee's regular rate of pay (assuming a 40 hour work week).



- ◆ Lump sum payments or retainers can be reported in one of two ways:
 - ◆ 1) Lump sum payments or retainers must either be allocated by reporting the portion of payment that is compensation for the lobbying month, or by allocating the lump sum or retainer amount among those months during which lobbying is performed. This can be done by estimating at the beginning of the lobbying year the amount of hours lobbying will take or the number of months lobbying will occur and dividing compensation accordingly. If necessary, adjustments may be made to reports to ensure the reports are complete and accurate.
 - ◆ 2) If the payment arrangement between the lobbyist and the client is based on an hourly rate, the compensation for lobbying activities for that month should be reported based on that rate. However, 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.
 - ◆ **Total Expenditures:** Include all expenditures made for the purpose of lobbying—travel reimbursements, payments to others to provide testimony, research and analysis costs, printing, etc. Expenditures related to lobbying covered officials must be separately recorded.
 - ◆ **Total Expenditures on Officials and Family Members:** Include the amount of all expenditures made by the lobbyist, associate or client, directly to or on behalf of one or more covered officials, including members of the official's immediate family. Do not include expenditures for events costing more than \$250 (see below).
- If more than \$25 is spent on behalf of a covered official or their immediate family, the lobbyist must also disclose the name of the official or family member, the person making the expenditure, and the amount and purpose of the expenditure. (See Chapter 4 for information about restrictions on gifts to covered officials).
- ◆ **Events Costing \$250 or More:** Include a description of each event that took place during the month costing \$250 or more which is attended by covered officials and/or family members. Include a list of all covered officials and their family members who were in attendance.
 - ◆ This includes events held in the Hall of Flags and legislative breakfasts.
 - ◆ **Legislative Actions:** List all bills and issues which were the subject of lobbying during the month. When listing issues please provide a brief description that provides some specificity about the particular program, regulation or issue which is the subject of the communication. (See chart on following page)
 - ◆ **Legislative Actions Where Compensation or Expenditures Exceed \$1,000:** List all legislative actions named in the previous section where compensation or expenditures for the action exceeded \$1,000, and include the specific amount of compensation or expenditures for that particular action.



Unacceptable	Acceptable
Public assistance	TANF eligibility criteria
Energy	Wind power plant siting criteria
Budget bill	Hospital reimbursement rates
Taxation	Historic preservation tax credit

- ◆ Original Sources: List all persons who have given more than \$1,000 to the client for the purpose of paying for lobbying or indirect lobbying during the lobbying year.
- ◆ Indirect Lobbying: List all legislative actions that were the subject of indirect lobbying if more than \$15,000 was spent on indirect lobbying for the action during the covered month. In addition, include the total amount spent on indirect lobbying for the action and a general description of the intended recipients.

Filing the Report

Once you have completed all sections of the report, click the “view/print” button on the bottom of the screen. This will allow you to review the report and check for any errors or omissions. Once you are satisfied that the information is correct and complete, click the “file report” button to complete the filing process.

NON-SESSION REPORTING WAIVERS

Lobbyists must file monthly reports throughout the year. However, once the Legislature has adjourned *sine die* (final adjournment), a lobbyist who does not anticipate engaging in lobbying for the remainder of the lobbying year may request a waiver of the monthly reporting requirement.

A non-session waiver relieves the lobbyist of the obligation to file monthly reports. The lobbyist’s and client’s joint registration remains active until the end of the year. If the lobbyist wishes to re-engage in lobbying before the end of the lobbying year, they should notify the Commission staff and resume their monthly reporting starting with the month they began lobbying again.

Before a non-session waiver will be accepted by Commission staff a monthly report must be filed that covers the period between the last filed report and the date of the request. This ensures that a report has been filed for all activity prior to the effective date of the waiver.

To file the non-session waiver, log into the e-filing site and click on the “Request for Waiver of Non-Session Reporting Requirements.” Click on the “Affirmation Signatures” link and input the requested information. Do the same for the “Client Information” link. Once you are sure the information entered is correct and complete, file the report.

TERMINATION REPORTS

If the lobbyist’s employment with the client terminates prior to the end of the lobbying year (November 30), the lobbyist should notify the Commission by filing a termination report indicating that the lobbyist is no longer engaged by the client.

Before a termination report can be accepted by the Commission, a monthly report must be filed that covers the period between the last filed report and the date of termination.

Once a termination report is received by the Commis-



sion, the lobbyist no longer has to file the remaining monthly reports for that specific client.

LEGAL REFERENCES

Lobbyist Registration and Fees	3 M.R.S.A. § 313
Duration of Registration/Lobbying Year	3 M.R.S.A. § 314
Contents of Registration	3 M.R.S.A. § 316
Contents of Monthly Reports	3 M.R.S.A. § 317
Non-Session Reporting Waivers	3 M.R.S.A. § 317(4)
Termination Reports	3 M.R.S.A. § 314



CHAPTER 3

PENALTIES AND INVESTIGATIONS

FAILURE TO FILE A REGISTRATION OR REPORT

Failure to File a Registration

If a person who is required to file a lobbyist registration with the Commission fails to file within 15 business days of exceeding the 8-hour threshold in a calendar month, they may be assessed a fine of \$100 for every month the person fails to register.

Failure to File a Report

If a registered lobbyist fails to file a monthly report with the Commission by the reporting deadline, the lobbyist will be assessed a fine of \$100 for each month the report remains unfiled. However, if the lobbyist files the report within 24 hours of the reporting deadline, the fine is reduced to \$50.

To determine the amount of the fine, a month will be measured from the filing deadline to the 15th day of the month following the month of the deadline.

Suspension

The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fine. However, the lobbyist will be reinstated on the date the required report or payment is received by the Commission.

REQUESTING A WAIVER OF A PENALTY

A lobbyist may request a waiver of any preliminary penalty assessed by the Commission staff. Waivers must be made in writing to the Commission and must state the reason for the delinquency. Waiver requests will be noted on the agenda for the next Commission meeting. Only the Commission may grant penalty waivers.

Mitigating Circumstances

The Commission may waive a penalty in whole or in part if the failure to register or file a report was due to mitigating circumstances or the fine or penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late registration or report. Mitigating circumstances include:

- ◆ A valid emergency;
- ◆ An error by the Commission; or
- ◆ Evidence that a bona fide effort was made to file the report on time.

COMMISSION INVESTIGATIONS

Any person may file a complaint with the Commission and ask that it conduct an investigation into an alleged violation of the lobbying rules and regulations.

If the members of the Commission find cause to believe that a violation may have occurred—based on a complaint or other information received by the Commis-



sion—the Commission may undertake an investigation into the failure to file a registration or to determine the accuracy or completeness of a registration or report.

The Commission may also turn matters over to the Attorney General for enforcement.

LEGAL REFERENCES

Penalty for Failure to Register/File Monthly Reports	3 M.R.S.A. § 319(1)
Suspension	3 M.R.S.A. § 319(1-A)
Waiver Requests	3 M.R.S.A. § 319(1); Rules, Chapter 1, Section 4(3)(B)
Commission Investigations	3 M.R.S.A. §§ 321(8), 322(1&2)



CHAPTER 4

RESTRICTIONS AND ADDITIONAL REQUIREMENTS

Once registered with the Commission, there are several restrictions and requirements—in addition to filing reports—placed upon lobbyists and lobbyist associates. These restrictions and requirements, including when lobbyists can give campaign contributions, are discussed further below.

RESTRICTIONS ON LOBBYISTS

Campaign Contributions

A lobbyist, lobbyist associate, or client may not intentionally give, offer or promise a contribution to a covered official while the Legislature is in regular or special session.

- ◆ Contributions include direct campaign contributions and seed money contributions to covered officials as well as direct or indirect contributions to a political action committee, ballot question committee or party committee of which a covered official is a treasurer, officer or primary fund-raiser or decision maker.
- ◆ Contributions do not include “qualifying contributions” to legislative candidates, as the term is used in 21-A M.R.S.A. § 1122.
- ◆ Covered officials include the Governor, any member of the Legislature, Constitutional officers, or staff or agents of any of the above. (See definition on page 1)
- ◆ The restriction does not apply to contributions to candidates for Governor, State Senator or State Representative who do not already hold those offices. The restriction also do not apply to contributions to county or local candidates unless the candidate is a covered official.
- ◆ The Legislature is not considered adjourned until it has adjourned *sine die*—for the session. This can be confirmed by calling the Clerk of the Maine House or Senate or by calling the Commission staff.
- ◆ Exceptions to this prohibition include:
 - ◆ Contributions for social events hosted for non-partisan, charitable purposes;
 - ◆ Contributions relating to special elections to fill a vacancy; and
 - ◆ Contributions accepted by a member of the Legislature supporting that member’s campaign for federal office.
- ◆ Once the Legislature has adjourned *sine die*, the same contribution limits apply to lobbyists, associates and clients as apply to other persons.
 - ◆ \$350 per election for Legislative candidates;
 - ◆ \$1,500 per election for Gubernatorial candidates.



Gifts to Covered Officials

A person may be found guilty of bribery if that person promises, offers or gives any pecuniary benefit to another with the intention of influencing the other's action, decision, opinion, recommendation, vote, nomination or other exercise of discretion as a public servant, party official or voter.

- ◆ Pecuniary benefit is broadly defined to mean any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. The criminal code does not assign a certain monetary value to what will be considered a pecuniary benefit.
- ◆ This provision does not apply to campaign contributions.
- ◆ Pecuniary benefit does not include:
 - ◆ A meal, if provided by industry or special interest organizations as part of an informational program presented to a group of public servants, or if the meal is a prayer breakfast or served during a meeting to establish a prayer breakfast;
 - ◆ A subscription to a newspaper, news magazine or other news publication.
- ◆ Bribery is a Class C crime. Giving improper gifts to a Public Servant is a Class E crime.

Compensation Contingent on Outcome of Legislative Action

A person may not accept employment as a lobbyist if the proposed compensation is contingent upon the outcome of legislative action.

Instigating Legislative Action to Obtain Employment as a Lobbyist

A person may not instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to support or oppose such legislative action.

ADDITIONAL REQUIREMENTS FOR LOBBYISTS

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.

In addition, when a lobbyist, lobbyist associate or client is compensating someone for the purpose of testifying before a legislative committee, the lobbyist must disclose to the committee, either orally or in writing, the name of that individual.

If a lobbyist or lobbyist associate fails to disclose this information, the Commission may suspend the lobbyist or associate and/or assess a penalty of up to \$5,000 against the lobbyist or associate.

Name Tags

Whenever a registered lobbyist or lobbyist associate is engaged in the act of lobbying they must wear a clearly visible name tag. The name tag must display both the lobbyist's or associate's name and either the name of the lobbyist's firm or employer, the organization the lobbyist represents, or the word "lobbyist."



LEGAL REFERENCES

Restriction on Campaign Contributions	1 M.R.S.A. § 1015(3); Commission Rules Chapter 1, § 12(2-3)
Contribution Limits to Candidates	21-A M.R.S.A. § 1015(1&2)
Bribery	17-A M.R.S.A. § 602
Contingent Compensation/Instigated Legislation	3 M.R.S.A. § 318
Testifying Before Legislative Committee	3 M.R.S.A. § 319-A
Name Tag Requirement	3 M.R.S.A. § 327



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. Communications made for the purpose of influencing how legislation will be drafted, what a draft will include, 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 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.

**** See the drafting legislation example on the next page for an exception to this rule.**



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.



MORE GUIDANCE ON WHAT IS AND IS NOT LOBBYING

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 (e.g., reporting to the client on the progress of legislation), the communication is not lobbying.
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

Who are covered officials?

- 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 and statutory 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.

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 932-959] 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. 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.

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



APPENDIX D: LEGISLATIVE RULES FOR LOBBYISTS

Senate Rules

Rule 102: Lobbyist Banned from Member's Desk. At no time may a registered lobbyist be at the desk of any member. A registered lobbyist may not directly initiate communication with any member in the Senate chamber while the Senate is in order, except that a registered lobbyist may send a note to a member through the Senate chamber staff requesting that the member meet with the lobbyist at the back row of chairs in the Senate.

House Rules

Rule 105: Lobbyists Banned from House Floor. One-half hour before the beginning of any regularly scheduled session, registered lobbyists are banned from the floor of the House of Representatives.

Joint Standing Committees

Agriculture, Conservation and Forestry	Appropriations and Financial Affairs
Criminal Justice and Public Safety	Education and Cultural Affairs
Energy, Utilities and Technology	Environment and Natural Resources
Health and Human Services	Inland Fisheries and Wildlife
Insurance and Financial Services	Judiciary
Labor, Commerce, Research and Economic Development	Marine Resources
State and Local Government	Taxation
Transportation	Veterans and Legal Affairs

LAWS GOVERNING LOBBYING, LEGISLATIVE ETHICS

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| ◆ Lobbyist Disclosure Law | 3 M.R.S.A. §§ 311 – 327 |
| ◆ Governmental Ethics Law | 1 M.R.S.A. §§ 1001 – 1023 |
| ◆ Campaign Reports and Finances Law | 21-A M.R.S.A. §§ 1001 – 1105 |
| ◆ Maine Clean Election Act | 21-A M.R.S.A. §§ 1121 – 1128 |
| ◆ Criminal Statutes on Bribery and Corrupt Practices | 17-A M.R.S.A. §§ 601 – 609 |
| ◆ Ethics Commission Rules | 94-270 C.M.R., Chapters 1 - 3 |

These statutes and rules are available on the Commission's website.



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