



## CENTER FOR ETHICS IN GOVERNMENT

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To: Indiana House Ethics Committee  
From: Peggy Kerns, Natalie Wood and Ethan Wilson, Center for Ethics in Government,  
National Conference of State Legislatures (NCSL)  
Date: October 20, 2014  
Re: Testimony on specific ethics laws

The House Ethics Committee asked NCSL and its Center for Ethics in Government to review portions of Indiana's ethics laws and House rules and provide a national perspective on other states' laws in the same categories. Specifically this document addresses the codes of ethics, issues of transparency, statements of economic interests (financial disclosure), conflicts of interest and voting recusal procedures.

### CODES OF ETHICS

"The restoration of public trust is one of the objectives of ethics reform practically everywhere," said the late Alan Rosenthal, professor of public policy at Rutgers University and the author of numerous books, articles and reports on state legislatures.

To help achieve this purpose, all 50 states have statutes that regulate, to some degree, the conduct of public officials. Some states compile these laws in a "code of ethics" or "code of conduct" and begin these codes with statements of ethical principles, for example, stating that holding public office is a public trust and one's position cannot be used for personal financial benefit. Alaska and Wisconsin are examples of states that begin their codes with aspirational statements addressing the public trust.

#### Alaska 24.60.010

The legislature finds that (1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state; (2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

#### Wisconsin 19.41, Subchapter III, Code of Ethics for Public Officials and Employees.

(1) It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.

These codes may serve an important purpose, because they provide a framework to guide legislators' actions and establish minimal standards of conduct. These laws can reassure the public that the legislature believes that the legislative process should be ethical and conducted with high standards.

### TRANSPARENCY

Both nationally and internationally, the trend is for more openness, accountability and communication in all sectors. These traits are especially important in the public sector where citizens want to know what government is doing and how taxpayers' dollars are spent.

At least 36 states, including **Indiana**, have passed legislation—sometimes designated “taxpayer transparency acts” —requiring a centralized, searchable website that provides information to the public about state expenditures or state contracts. <http://www.ncsl.org/research/telecommunications-and-information-technology/statewide-transparency-spending-websites-and-legis.aspx>

In its report, *Following the Money 2014*, the U.S. PIRG Education Fund gives **Indiana** its highest rating in providing online access to government spending data with a grade of A- and a top point total of 94 points. <http://www.uspirg.org/reports/usp/following-money-2014>

## **FINANCIAL DISCLOSURE LAWS - STATEMENT OF ECONOMIC INTERESTS**

### **The Indiana Statement of Economic Interests**

Forty-seven states, including **Indiana**, require legislators to file some type of financial disclosure. **Indiana’s** Statement of Economic Interests requires lawmakers to disclose specific information including: the names of the member’s and the member’s spouse’s employer, any sole proprietorships or professional practices, and certain information on partnerships, companies and corporations with which the general assembly member or member’s spouse is affiliated.

**Indiana’s** Statement of Economic Interests must be filed by legislators no later than seven days following the first session in January of each year. Like many states, **Indiana’s** statement covers only activity occurring in the preceding calendar year.

### **Comparison of Indiana’s Statement of Economic Interest with Other States**

Statements of economic interests or financial disclosures vary from state to state and no two are alike. Some states require information that Indiana does not.

#### *Physical Business Addresses*

**Indiana** does not require the filer of a statement of economic interests to disclose physical addresses of business interests or information on real property interests. Seventeen states require this information.

Alaska, for example, requires the physical address of any publicly traded corporations, non-publicly traded corporations, sole proprietorships, limited liability companies, trade groups, and other associations that the filer has an interest in.

Georgia’s law is more encompassing as it requires disclosure of the physical address of any business entity. Business entity is defined as a corporation, sole proprietorship, partnership, limited partnership, limited liability company, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether profit or non-profit.

Some states also require physical business addresses and a detailed description of the business. Alaska’s financial disclosure statement requires a “detailed description of business activity.” Georgia requires the disclosure of the “principal activity of each business entity” disclosed in the statement.

#### *Interests in Real Property*

**Indiana** is one of 14 states that do not require the disclosure of real property interests as a part of its statement of economic interests. The other 36 states vary in specific requirements. Disclosure

requirements in these states often include physical address, legal description, lot size, and market value. Some states require further information about real property, such as whether it is commercial, residential, income producing, situated in a trust, or contains particular natural resources. Maryland and New York require information on real property including each interest held in the name of a partnership, limited liability partnership, or limited liability company in which the filer holds an interest. South Carolina and Utah require the disclosure of real property if such interest would present a conflict of interest for the filer.

### **Online Submission and Public Accessibility of Statements of Economic Interests**

Twenty-one states allow statements of financial disclosure to be completed and submitted in an online form. **Indiana** does not. In these 21 states, forms are accessed by the filer online and completed and submitted electronically. Ten of these 21 states require statements of financial disclosure to be submitted online. Many online forms can adjust to the amount of content disclosed on a form and increase in size and room for required information where the original field becomes over-populated with text.

Twenty-eight states, including the **Indiana** House of Representatives, allow the public to access financial disclosure statements online. Most states provide for online access to documents disclosed in years prior to the current disclosure year. It is not uncommon for states to have financial disclosure databases dating back five years or more. **Indiana's** House of Representatives provides access to financial disclosure documents filed as early as 1997. Only Ohio offers access to older documents with a database dating back to 1994.

### **Lobbyist Connections**

#### *Disclosure of Member Connections with Lobbyists*

**Indiana** is one of 20 states that require legislators to disclose connections with lobbyists. States vary in what they specifically require to be disclosed; however, they commonly require the disclosure of economic relationships or associations with registered lobbyists or persons doing business with or seeking to do business with the state.

**Indiana's** statute contains three specific circumstances for the disclosure of professional connections with lobbyists; however, it does not expressly require the disclosure of economic associations. Alaska and Illinois require the disclosure of "close economic associations" between the filer of the statement and a lobbyist. Alaska defines "close economic association" as a financial relationship between the filer of the disclosure statement and another person who serves as a consultant or advisor to, is a member or representative of, or has a financial interest in, any association, partnership, business, or corporation.

Three states require disclosure of lobbyists who are family members. Kentucky requires the filer of a statement of economic interests to disclose the names of any immediate family members who are legislative agents. North Carolina and South Carolina require filers to disclose if they have family members who are registered lobbyists or lobbyist principals.

#### *Disclosure of Lobbyist Connections with Members*

In all 50 states, lobbyists must report on their lobbying activities. Depending on the state, reportable activities range from gifts given to the names of persons they have lobbied. **Indiana** requires lobbyists to report expenditures, reimbursements, receptions, entertainment and gifts.

**Indiana** is also one of at least eight states to require a list of the general subject matter of each bill or resolution, or identifying bill or resolution number, on which a lobbying effort was made.

Many statutes stipulate that lobbyists must report on certain relationships or connections. At least 10 states instruct lobbyists and legislative agents to disclose direct business relationships and other financial transactions with legislators.

For example, Utah requires lobbyists to disclose the names of legislators who were employed by the lobbyist. In Alabama, Arkansas, Missouri and South Carolina, lobbyists must disclose direct business associations or relationships with legislators. North Carolina requires lobbyists to report the names of legislators with whom he or she has made certain contractual agreements. Alaska, Kentucky, Michigan, and Ohio require disclosure of certain financial transactions between lobbyists and public officials. **Indiana** does not expressly require lobbyists to disclose direct business associations or contractual agreements.

## **CONFLICT OF INTEREST**

Conflict of interest situations may be the most common ethical dilemma faced by legislators, particularly in a part time legislature. The Hastings Center defines conflicts of interest as situations in which “a legislator’s personal or political self-interest pulls in one direction and his or her duty to serve broader public interests pull in another.”

These types of conflicts are inherent to the job. When people enter public life, they bring their backgrounds and experiences with them. Conflicts of interest may arise in normal routine of legislative work. But the emphatic rule is that a legislator or public employee must not have the potential to receive a personal or financial benefit based on his or her public position. And some states broaden the definition to include spouse and other family members.

States’ definitions of conflicts of interests are contained in state constitutions, statutes or chamber rules. Again, while these definitions may differ slightly among states, the “personal or financial gain” element is common in most definitions: a legislator may not have a personal or private interest in or gain from a public matter, and may not benefit personally or financially from such private interest.

A few states add additional language that it is not a conflict of interest if a legislator is part of a larger group that is also benefits, but the size of the group is never specified.

Wisconsin’s statute outlines and this dichotomy in statute. (§ 19.45. Standards of conduct; state public officials) It says, in part:

*The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust...*

*The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material;*

*And that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity...*

**Indiana** describes conflict of interest in IC 35-44.1-1-4, not by a specific definition, but by listing situations where conflicts may arise and where there are prohibitions. Both the Senate and the House have addressed conflicts of interest in their legislative rules. The Senate, in its Standing Rules, includes an ethics section with a preamble that “declared that high moral and ethical standards among State Senators are essential to the conduct of free government...and that a code of ethics for the guidance of State Senators will help them avoid conflicts of interest...”

In its Code of Ethics, the House provides clear direction in when a conflict arises and what to do.

## **VOTING RECUSAL PROCEDURES**

Questions regarding conflict of interest commonly arise around a legislator acting on legislative issues and voting on them. Voting on matters in which a legislator may have an interest can be complicated. Legislators are elected to represent their constituencies, and are expected to vote so their constituents know where they stand on issues. In most jobs, experience and knowledge are considered assets. In the public sector, this expertise on issues may be a liability, if legislators are perceived as voting their own interest. Public perception plays a role – the public becomes skeptical and mistrustful of government when it thinks that someone is voting or acting on an issue that may benefit them.

Kentucky law states:

*A legislator, by himself or through others, shall not intentionally*

- (1) Use or attempt to use his influence as a member of the General Assembly in any matter which involves a substantial conflict between his personal interest and his duties in the public interest. Violation of this subsection is a Class A misdemeanor.*
- (2) Use his official position or office to obtain financial gain for himself, any members of the legislator’s family, or a business associate of the legislator. Violation of this subsection is a Class D felony.*
- (3) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in direct contravention of the public interest at large. Violation of this subsection is a Class A misdemeanor;...*

Voting recusal and disclosure of conflicts practices and provisions differ from state to state, and can also differ chamber to chamber. They are in constitutions and statutes, but most commonly found in chambers rules.

Alabama is one of seven states that have constitutional provisions regarding voting: *A member of the legislature who has a personal or private interest in any measure or bill proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.*

**Indiana** is one of 46 states that have different house and senate rules, or a joint rule on voting recusal procedures. House Rule 47 declares: *“Members who are immediately and particularly interested in a measure shall ask to be excused and shall not vote on it. Members requesting recusal may make a brief statement, but the question is to be considered without debate.”*

In some states the matter of recusal is debatable by the chamber, but the Indiana House rule is clear that the member requests recusal and it is not debatable.

Voting recusal provisions involve states or chambers that require the following actions or a combination:

- Outright prohibit action, mostly voting, in matters in which there is an interest,
- Disclosure (and sometimes an abstention),
- Members to receive permission from the presiding officer or a vote of the body to recuse themselves,
- Suggest guidance for members who think they may have a conflict.

Approximately 75 percent of legislative chambers have requirements, at least in certain circumstances, where a legislator shall not vote on a measure before the legislature in which he or she has a personal or financial interest. About the same number require some form of disclosure, at least in certain circumstances. In some cases once this disclosure occurs the member is allowed to act on the matter.

Some states include specific examples of what might constitute a conflict, such as ownership in a business. Others, like Wisconsin, state that family members also cannot benefit from a legislator's action.

Montana's statute gives legislators a list of factors to consider including, "whether the conflict impedes the legislator's independence of judgment; the effect of the legislator's participation on public confidence in the integrity of the legislature; and whether the legislator's participation is likely to have any significant effect on the disposition of the matter..." An Illinois statute is similar to Montana

The National Conference of State Legislatures' Center for Ethics in Government website provides information on all 50 states' ethics and lobbying laws at [www.ncsl.org](http://www.ncsl.org) by clicking on the Research/Ethics links.

*Disclaimer: This document is an attempt to provide legislators and staff with information on how **Indiana** compares to other states in certain ethics provisions. The Center for Ethics in Government at NCSL does not evaluate or rank states as to the strength or weakness of their ethics laws. We make no judgment on whether a law is effective or should be copied and we are not suggesting any particular changes or revisions. Our research focuses on how ethics and lobbying laws apply to the legislative branch of government, not the executive branch.*