

CHAPTER 8
EXECUTIVE BRANCH LOBBYING

[Prior to 11/26/03, see 351—Ch 13]

351—8.1(68B) Executive branch lobbying defined. “Executive branch lobbying” means acting directly to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by a state agency or any statewide elected official. For purposes of this chapter, “state agency” does not include the legislative branch of state government.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.2(68B) Executive branch lobbyist defined. “Executive branch lobbyist” means an individual who by acting directly does at least one of the following:

1. Receives compensation for engaging in executive branch lobbying.
2. Is a designated representative of an organization that has as one of its purposes engaging in executive branch lobbying.
3. Represents the position of a federal, state, or local agency in which the person serves or is employed as the representative designated to engage in executive branch lobbying.
4. Makes expenditures of more than \$1,000 in a calendar year to communicate in person for the purpose of engaging in executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.3(68B) Individuals not considered executive branch lobbyists. The following individuals are not considered to be executive branch lobbyists:

1. Officials and employees of a political party that is organized in the state of Iowa and that meets the requirements of Iowa Code section 43.2, when the officials and employees represent the political party in an official capacity.
2. Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.
3. All federal, state, and local elected officials, while performing the duties and responsibilities of office.
4. Individuals whose activities are limited to appearances to give testimony or provide information or assistance at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.
5. Members of the staff of the United States Congress or the Iowa general assembly.
6. Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency within which an official’s or employee’s agency is involved in a collaborative project.
7. An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization and who is not paid compensation or is not specifically designated as an executive branch lobbyist.
8. Individuals whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under Iowa Code section 17A.4(1).
9. Individuals whose activities are limited to monitoring or following the progress of legislation, a rule, or an executive order, but who do not engage in executive branch lobbying.
10. Individuals who represent a client in responding to a request for proposal or otherwise receiving a contract or grant from a state agency.
11. Individuals who represent a client involved in a legal dispute with the state, including a contested case proceeding.
12. Individuals advocating for or against the appointment of a particular individual to a board or commission of the state.

Individuals who are uncertain as to whether or not they are considered executive branch lobbyists should contact the board for guidance prior to engaging in any executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.4(68B) Executive branch lobbyist client defined. “Executive branch lobbyist client” means a private person or a federal, state, or local governmental entity that pays compensation to or designates an individual to be a lobbyist before the executive branch.

This rule is intended to implement Iowa Code section 68B.2(6).

351—8.5(68B) Lobbyist compensation defined; contingency fee lobbying prohibited.

8.5(1) Lobbyist compensation defined. “Lobbyist compensation” means any money, thing of value, or financial benefit conferred in return for engaging in executive branch lobbying.

8.5(2) Contingency fee lobbying prohibited. No person shall offer, nor shall any person accept, compensation contingent upon the outcome of executive branch lobbying services rendered or to be rendered. Complaints or information alleging a violation of this subrule shall be filed with the board and governed by Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.2(7).

351—8.6(68B) Executive branch lobbying expenditures. This rule is intended to aid executive branch lobbyists in reporting expenditures as required by Iowa Code section 68B.37 that are made by lobbyists for executive branch lobbying purposes. The provisions of this rule are intended to serve as a general guideline to obtain uniform reporting.

8.6(1) Expenditures defined. The following are defined as executive branch lobbying expenditures:

a. Direct communication expenses such as telephone calls, letters, faxes, printing, and postage for purposes of engaging in executive branch lobbying.

b. Other tangible costs directly associated with engaging in executive branch lobbying as defined in rule 351—8.1(68B).

8.6(2) Lobbyist client expenses. For purposes of this rule, any of the expenses set out in subrule 8.6(1) incurred by a lobbyist’s client shall apply to the lobbyist and shall be a reportable expense by the lobbyist. However, an expenditure made by any organization for publishing a newsletter or other informational release for its members is not a reportable expenditure.

This rule is intended to implement Iowa Code section 68B.37.

351—8.7(68B) Lobbyist registration required.

8.7(1) Time of filing. Any individual engaging in executive branch lobbying activity shall register by filing an executive branch lobbyist registration statement with the board on or before the day the lobbying activity begins. Registration expires upon the commencement of a new calendar year. Persons wishing to register for a new calendar year may do so on or after December 1 of the previous year.

8.7(2) Place of filing. Executive branch lobbyist registration statements shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Registration statements may also be filed by fax at (515)281-3701 or electronically through the board’s Web site at www.iowa.gov/ethics.

8.7(3) Information required. The following information shall be disclosed on the executive branch lobbyist registration statement:

a. The lobbyist’s name and business address. The lobbyist’s residential address and E-mail address are optional. The lobbyist shall indicate whether mail should be sent to the lobbyist’s office or residence.

b. A general description of the issues or interests that the lobbyist might follow and a list of agencies or offices that may be lobbied.

c. Whether or not the lobbyist is a governmental official representing the official position of the lobbyist’s department, agency, or governmental entity.

d. Each of the lobbyist’s clients, including the name and address of the client, a contact person and job title, and the contact person’s telephone number. An E-mail address is optional.

e. The lobbyist's signature and date of filing. Registration statements filed electronically through the board's Web site are deemed signed and dated when filed.

8.7(4) *Government employee authorization letter.* As required by Iowa Code section 68B.36(5), all federal, state, and local officials or employees representing the official positions of their departments, commissions, boards, or agencies shall submit with their registration statements letters of authorization from their department or agency heads. Federal, state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies shall disclose this fact on their lobbyist registration statements.

8.7(5) *Amendment to registration.* Any change or addition to the information in an executive branch lobbyist's registration statement shall be filed with the board within ten days after the change or addition is made known to the lobbyist. The lobbyist may file changes or additions by submitting an amended registration statement or by letter. If the lobbyist submits the changes or additions by letter, the letter shall contain sufficient information to notify the public and the board of the change or addition.

8.7(6) *Cancellation.* If a lobbyist's service on behalf of a client is concluded prior to the end of the calendar year, the lobbyist or client may cancel the registration and terminate the reporting requirements of Iowa Code section 68B.37 and rule 351—8.8(68B) so long as compliance with subrule 8.8(4) is achieved. Cancellation may be completed by the filing of an executive branch lobbyist termination statement or by letter.

8.7(7) *Failure to timely file registration.* An individual who fails to file an executive branch lobbyist registration statement before engaging in executive branch lobbying is in violation of Iowa Code section 68B.36 and is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code section 68B.36.

351—8.8(68B) Executive branch periodic lobbyist reports.

8.8(1) Every executive branch lobbyist, unless an exemption is granted pursuant to subrule 8.8(5), shall file periodic reports disclosing all of the following:

- a.* The lobbyist's name and address.
- b.* The reporting period covered by the filed report, including disclosing whether the report is an original or amended report.
- c.* The lobbyist's clients.
- d.* The recipient and amount of campaign contributions made by the lobbyist to candidates for state office. Campaign contributions shall not be made to state officers during the time period described in Iowa Code Supplement section 68A.504 and rule 351—8.15(68A).
- e.* Expenditures made by the lobbyist for executive branch lobbying purposes.
- f.* The lobbyist's signature and the date filed. Reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.8(2) *Place of filing.* Executive branch periodic lobbyist reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.8(3) *Time of filing.* An executive branch periodic lobbyist report shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the lobbyist was engaged in executive branch lobbying. The report must be physically received by the board on or before the report due date. If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

8.8(4) *Cancellation.* If the lobbyist cancels registration on behalf of a client under rule 351—8.7(68B), the lobbyist shall file a final executive branch periodic lobbyist report on the next required due date or within 15 days of the cancellation, whichever is earlier. As required by Iowa Code section 68B.37(3), the final report shall include cumulative year-to-date information.

8.8(5) *Exemption.* As provided in Iowa Code section 68B.37(3), if the lobbyist is designated to represent an organization other than a governmental entity and is not paid compensation or does not

expend more than \$1,000 to lobby, the lobbyist may file an Application for Lobbyist Quarterly Reporting Exemption form and one Executive Branch Periodic Lobbyist Report disclosing anticipated expenditures for the year in lieu of filing the quarterly reports. The exemption form and cumulative report shall be filed at the same time the lobbyist registration statement is filed.

8.8(6) *Attorney-client privilege not applicable.* Attorneys who engage in executive branch lobbying shall comply with the requirements of Iowa Code section 68B.37 and shall not avoid public disclosure of executive branch lobbying expenditures by asserting attorney-client privilege.

This rule is intended to implement Iowa Code section 68B.37.

351—8.9(68B) Executive branch lobbyist client reporting.

8.9(1) Every executive branch lobbyist client shall file reports that contain the following information:

- a. The name and address of the client, including a contact person.
- b. The name of the client's lobbyists.
- c. The amount of all salaries, fees, retainers, and reimbursements paid or anticipated to be paid by the client to each lobbyist for engaging in executive branch lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. A report shall be filed even if the client did not pay any compensation to the client's lobbyist. If no compensation was paid, the client shall disclose on the report \$0.00 as compensation paid. In the case of a salaried position when executive branch lobbying is part of the individual's duties, the reportable salary shall be based on a pro-rata basis of time spent engaging in executive branch lobbying.

d. The signature of the client's contact person and the date signed. Lobbyist client reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.9(2) Place of filing. Executive branch lobbyist client reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.9(3) Time of filing. An executive branch lobbyist client report shall be filed on or before July 31. The report must be physically received by the board on or before the report due date. If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

This rule is intended to implement Iowa Code section 68B.38 as amended by 2004 Iowa Acts, Senate File 2179, section 13.

351—8.10(68B) Reception reporting form. Rescinded IAB 12/21/05, effective 1/25/06.

351—8.11(68B) Penalties for delinquent reports.

8.11(1) *Late lobbyist report.* An executive branch lobbyist who fails to timely file an executive branch periodic lobbyist report shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	1st Delinquency	2nd Delinquency	Subsequent Delinquencies
1 to 14	\$25	\$50	\$100
15 to 30	\$50	\$100	\$200
31 and over	\$100	\$200	\$400

For purposes of this subrule, second and subsequent delinquencies apply to a report that covers any quarter of the year for which the lobbyist is registered to lobby the executive branch.

8.11(2) *Late client report.* An executive branch lobbyist client who fails to file an executive branch lobbyist client report on or before the required due date shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	Amount
1 to 14	\$25
15 to 30	\$50
31 and over	\$100

8.11(3) Additional penalty. If an executive branch lobbyist or an executive branch lobbyist client fails to file a required report within 45 days of the report due date, or fails to file a complete report, a contested case proceeding may be held to determine whether a violation has occurred. If, after a contested case proceeding, it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action so imposed would be in addition to the automatically assessed penalty in this rule.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.12(68B) Request for waiver of penalty. An executive branch lobbyist or an executive branch lobbyist client that believes there are mitigating circumstances that prevented the timely filing of a report may make a written request to the board for waiver of the penalty. The board must receive the request for waiver within 30 days of the lobbyist's or lobbyist client's being notified of the civil penalty assessment. Waivers will be granted only for exceptional or very unusual circumstances.

The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or request a contested case proceeding pursuant to rule 351—8.13(68B) to appeal the board's decision.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.13(68B) Contested case proceeding.

8.13(1) Request. If an executive branch lobbyist or an executive branch lobbyist client accepts administrative resolution of a matter through the payment of an assessed civil penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny a request or grant a partial waiver of an assessed civil penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

8.13(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

8.13(3) Failure to request a contested case proceeding. The failure to request a contested case proceeding to appeal the board's decision on a waiver request is the failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code sections 68B.32A(4), 68B.32A(8), and 68B.33.

351—8.14(68B) Payment of penalty. An assessed civil penalty shall be paid by check or money order and shall be made payable to the State of Iowa General Fund and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The payment shall be deposited in the general fund of the state of Iowa.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.15(68A) Campaign contributions by lobbyists during the regular legislative session prohibited. Pursuant to Iowa Code Supplement section 68A.504, individuals who are registered in Iowa as either executive branch or legislative branch lobbyists are prohibited from contributing to, acting as an agent or intermediary for contributions to, or arranging for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session.

8.15(1) *Application to governor.* The prohibition on contributions to the governor or a gubernatorial candidate during session extends for an additional 30 days following the adjournment of a regular legislative session allowed for the signing of bills.

8.15(2) *Exceptions.* The prohibition on contributions during the regular legislative session does not apply to any of the following:

a. Contributions to an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office so long as the lobbyist's contribution is placed into the candidate's federal account.

b. Contributions to a candidate for state office who filed nomination papers for a special election called or held during the regular legislative session if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. However, elected state officials are prohibited from soliciting lobbyists for contributions to another candidate for state office when a special election is held during the regular legislative session.

c. Contributions made during a special legislative session. In the case of the governor and a gubernatorial candidate, this exception also includes the 30 days following a special legislative session unless that time period falls within 30 days of adjournment of the regular legislative session.

d. Contributions from a lobbyist's personal funds that a lobbyist makes to the lobbyist's own campaign for public office.

8.15(3) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code Supplement section 68A.504 involving either executive branch lobbyists or legislative branch lobbyists shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code Supplement section 68A.504.

351—8.16(68B) Lobbyists prohibited from making loans. Pursuant to Iowa Code section 68B.24, an executive branch official, executive branch employee, or a candidate for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

8.16(1) *Offer of loan prohibited.* An executive branch lobbyist shall not directly or indirectly offer or make a loan to an executive branch official, executive branch employee, or a candidate for statewide office.

8.16(2) *Exception.* The prohibitions in Iowa Code section 68B.24 do not apply to loans made in the ordinary course of business. "Ordinary course of business" means the loan is made by a person who is regularly engaged in a business that makes loans to members of the general public, and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

8.16(3) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code section 68B.24 by an executive branch official, executive branch employee, candidate for statewide office, or an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.24.

351—8.17(68B) Ban on certain lobbying activities by government personnel. Executive branch officials and executive branch employees are prohibited by Iowa Code section 68B.5A from engaging in certain types of lobbying activities during the time in which these officials and employees serve or are employed by the state. In addition, Iowa Code section 68B.5A prohibits executive branch officials and executive branch employees from accepting, under certain situations, employment as lobbyists within two years of leaving state government.

8.17(1) A person who serves as a statewide elected official, the executive or administrative head of an agency, or the deputy executive or administrative head of an agency shall not act as a lobbyist during the time in which the person serves or is employed by the state unless the person is designated to

represent the official position of the person's agency. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government.

8.17(2) The head of a major subunit of a department or independent state agency or a full-time employee of an office of a statewide elected official shall not act as a lobbyist during the time in which the person is employed by the state before the agency that the person is employed by or before state agencies, officials, or employees with whom the person has substantial or regular contact as part of the person's duties, unless the person is designated to represent the official position of the person's agency. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying before the agency that the person was employed by or before state agencies, officials, or employees with whom the person had substantial and regular contact as part of the person's former duties.

8.17(3) A state employee who is not included in subrule 8.17(1) or 8.17(2) shall not act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person is directly concerned and personally participates as part of the person's employment, unless the person is designated to represent the official position of the person's agency. Persons subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying in relation to any particular case, proceeding, or application with respect to which the person was directly concerned and personally participated as part of the person's employment.

8.17(4) Exception. As provided in Iowa Code section 68B.5A(7), the prohibition on accepting employment as a lobbyist does not apply to a person who, within two years of leaving state service or employment, is elected to, appointed to, or employed by another office of the state, an office of a political subdivision of the state, or the federal government and represents the position of the new office or employment.

8.17(5) Complaints. Complaints or information provided to the board alleging a violation of Iowa Code section 68B.5A by an executive branch official or an executive branch employee shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.5A.

351—8.18(68B) False communications prohibited.

8.18(1) *False material fact.* An executive branch lobbyist shall not intentionally deceive or attempt to deceive any executive branch official or any executive branch employee in regard to a material fact pertinent to an administrative rule, legislation, or an executive order.

8.18(2) *False communication.* An executive branch lobbyist shall not cause a communication to be sent to an executive branch official or an executive branch employee in the name of either of the following:

- a. A fictitious person; or
- b. A real person except with the consent of that person.

8.18(3) *Complaints.* Complaints or information provided to the board alleging a violation of this rule by an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.32A(12).

351—8.19(68B) Advisory opinions. Any person under the board's jurisdiction that is affected by Iowa Code chapter 68B or 351—Chapter 8 may seek an advisory opinion from the board pursuant to rules 351—1.2(68B) and 1.3(68B). The purpose of a board opinion is to apply a statute or rule to a particular factual situation. Advice contained in a board opinion, if followed, constitutes a defense to a subsequently filed complaint.

This rule is intended to implement Iowa Code section 68B.32A(11).

351—8.20(68) Retention and availability of filed forms.

8.20(1) *Public record.* All forms filed under this chapter are public records and shall be available in the board office for inspection and copying. A filed form shall be retained by the board for a period of at least five years from the date the form was filed.

8.20(2) *Internet access.* Forms filed under this chapter shall be accessible for viewing via the board's Web site at www.iowa.gov/ethics as follows:

a. A list of registered executive branch lobbyists and executive branch lobbyist clients for the current calendar year and the two previous calendar years.

b. An executive branch periodic lobbyist report for a period of at least three years from the report due date.

c. An executive branch lobbyist client report for a period of at least three years from the report due date.

d. A reception reporting form for a period of at least three years from the date the form was filed.

This rule is intended to implement Iowa Code Supplement section 68B.32A(4).

[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]

[Filed 12/16/94, Notice 8/17/94—published 1/4/95, effective 2/8/95]

[Filed 7/12/96, Notice 4/24/96—published 7/31/96, effective 9/4/96]

[Filed 10/18/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]

[Filed 10/3/97, Notice 7/2/97—published 10/22/97, effective 1/3/98]

[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

[Filed 4/23/04, Notice 3/3/04—published 5/12/04, effective 7/1/04]

[Filed Without Notice 4/23/04—published 5/12/04, effective 7/1/04]

[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04][◇]

[Filed 5/23/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]

[Filed 12/2/05, Notice 9/14/05—published 12/21/05, effective 1/25/06]

[Filed 4/2/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]

[Filed 9/2/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]

[◇] Two or more ARCs