



2019 State Agency Employee Lobbying Guide

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Commissioner of Political Practices

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WHAT IS LOBBYING?

Lobbying is defined as “the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators” ([MCA 5-7-102\(11\)](#)). Individuals who engage in these described activities may qualify as a lobbyist and be required to register as such.

HOW CAN PEOPLE GET INVOLVED DURING MONTANA’S LEGISLATIVE SESSION?

Each person in Montana has the constitutionally-protected right to have their voice heard by elected officials.

The Constitutions of the United States and of the State of Montana ensure every citizen the right to speak on every public issue and to be heard by officials at every level of government. The Montana Legislature extends that right to any bill (which includes any resolution). Montana’s Legislature functions in a completely open atmosphere. After full consideration and with comments and advice from the public, every vote by committee and by either house must be a public vote.

Not everyone who engages in lobbying activity is required to register as a lobbyist under Montana law. The term lobbyist does not include:

- 1- an individual acting solely on the individual’s own behalf,
- 2- an individual who is not paid, or
- 3- someone who is paid a total less than \$2,600* to lobby in 2019.

To learn more about the 2019 legislative session, the best resource is the [Montana Legislative Branch website \(https://leg.mt.gov\)](#). At this website, you can find information about the status and substance of a bill, who your legislators are and how to contact them, livestream hearings, and more! Make sure to check out their "[Guide to the Montana Legislature](#)" and their guide, "[Having Your Say Before a Montana Legislative Committee](#)."

WHICH STATE EMPLOYEES NEED TO REGISTER AS LOBBYISTS OR PRINCIPALS?

Any state employee who engages in lobbying activities (e.g. testifying in support or opposition of proposed legislation, conversations with legislators to support or oppose legislation, or written correspondence in support or opposition to a bill, etc.) for which they are compensated at least \$2,600 in state pay during the 2019 year must file an L-1 lobbyist registration form with the Commissioner of Political Practices (See [COPP lobbying page](#) for details).

If you think you will commit at least \$2,600 worth of hours for lobbying activities on behalf of your agency, it is best to simply register and track the required disclosure details. Once you have met the \$2,600 threshold, you must file a L-1 form within five business days.

Will you reach the \$2,600 threshold? To calculate this, add up your hourly wage and the hourly value of your benefits package. Divide \$2,600 by this combined hourly amount to see the number of hours you must spend lobbying as a state employee to pass the \$2,600 threshold.

For example, let's say you are paid an hourly wage of \$21.50. When the benefit package is included, as *broadly* defined in the COPP's administrative rules (ARM 44.12.102A), the hourly rate becomes \$29.00. For the first 89 hours of lobbying, you would not be required to file an L-1 ($\$29.00/\text{hour} \times 89 \text{ hours} = \$2,581$). However, you would need to file an L-1 with the COPP within five days of exceeding 89 hours of lobbying activity.

HOW DOES A STATE EMPLOYEE REGISTER AS A LOBBYIST?

The COPP can issue a state employee a lobbyist license only once the three steps below have been satisfied:

Step 1: The lobbyist must register with the Commissioner of Political Practices by submitting a L-1 lobbyist license application ([more details here](#)). The L-1 application lists the name of the principal(s) the lobbyist will be working for, as well as the subject(s) or issue(s) the applicant will be lobbying for or against.

Step 2: Pay the \$150.00 lobbyist registration fee. This can be paid by either the principal on behalf of the lobbyist or the lobbyist personally. There is an option to apply for a waiver if the fee presents a hardship ([more details here](#)).

Step 3: The principal must file an L-2 Principal Authorization Statement. This document authorizes the lobbyist to lobby on behalf of the principal.

HOW DOES A STATE EMPLOYEE REGISTER AS THEIR AGENCY'S PRINCIPAL?

Each agency is the principal for employee lobbyists. The principal must designate a person as the signing authority to register and submit required lobbying reports (Form L-5). Each agency must register as a principal if lobbying efforts valuing \$2,600* or more will be made in 2019. Businesses, associations, government agencies and others who pay lobbyists to work on their behalf are also principals (See § 5-7-208 and 5-7-112, MCA; and § 44.12.202, ARM for more information.).

There are two forms a principal may need to fill out to register:

- Form L-2 ([more details here](#)) authorizes each state employee who will be paid at least \$2,600 to lobby on the agency's behalf in 2019. A L-2 form must be completed for each lobbyist who will be paid at least \$2,600 to lobby for the agency.
- Form L3 ([more details here](#)) registers the agency as a principal if a group of state employees will **collectively** expend efforts valuing \$2,600 or more for lobbying activities.

If you have questions on what type of lobbyist or principal registration form to complete, reference this [Scenario Guide for Required Lobbying Forms](#) for example scenarios.

WHAT CONSTITUTES LOBBYING (AND NON-LOBBYING) ACTIVITY BY STATE EMPLOYEES?

Montana Code Annotated [§ 5-7-102\(11\)\(a\)](#), defines lobbying as:

- The practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and
- The practice of promoting or opposing official action of the legislature.
- The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

A. Lobbying Activities

Activities that are lobbying-related (reference [ARM 44.12.105\(1\)](#) and 44.12.102) and thus must be disclosed in L-5 reports include:

1. Any "direct communication" [face-to-face meetings, telephone conversations, and written or electronic correspondence or communication] by a lobbyist or an individual engaged in lobbying activities with a legislator to promote or oppose official action;
2. All time spent by a lobbyist or an individual engaged in lobbying activities to present oral or written testimony to one or more legislators promoting or opposing official action by any legislator or group of legislators, including the legislature or a committee of the legislature; or
3. Signing a sign-in sheet as an opponent or proponent of official action at a legislative hearing.

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4. Actions or efforts by a lobbyist, including preparation and planning activities after a decision has been made to support or oppose official legislative action, and research and other background work that is intended (at the time it is performed) for use in lobbying or to support or assist lobbying activities.

B. Non-Lobbying Activities

Activities that are exempt from reporting while still being related to the legislature include (reference [ARM 44.12.105\(1\)](#) and [44.12.102](#)):

1. Recommendations or reports to the legislature or a committee thereof, in response to a legislative body or a legislator's request expressly requesting or directing a specific study, recommendation, or report by an agency on a subject;
2. Any duty that is mandated by law, rule, or executive order, such as the governor's annual message to the legislature;
3. Budget preparation activities related to preparation and submittal of the governor's executive budget as required by Article VI, section 9 of the Montana Constitution ([5-7-211](#) , MCA) ;
4. The actions of elected and appointed public officials designated in [ARM 44.12.106](#) and [44.12.106A](#) while acting in their official capacity for state government to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature ([5-7-102](#) (11) (b) , MCA); and
5. Information or testimony provided in response to a request from the legislature, a legislative committee if the information or testimony does not support or oppose the official action under consideration.

Legislative research is not inherently lobbying activity. By definition, lobbying activity must be oppositional or promotional in nature. Fact-finding activities/missions, alone, are not lobbying. If the research is used for lobbying efforts, it becomes a lobbying activity. Best practice would be to report and disclose even informational efforts, so that if it is later argued to be in support of or opposition to, the agency has already disclosed the effort.

Just like all other Montanans, state employees have the constitutionally-protected right to have their voice heard by elected officials. State employees do not need to register to lobby if they are:

- an individual acting solely on their own behalf,
- an individual who is not paid to lobby, or
- someone who is paid a total less than \$2,600* to lobby in 2019.

Best practices are to inform the legislators when you are speaking for your agency, or when you are lobbying as a citizen.

HOW MUST A STATE AGENCY TRACK ITS LOBBYING EFFORTS?

A. Responsibilities of the Principal

Any state agency required to register as a principal is responsible to file lobbying financial reports, otherwise known as form L-5. In the L-5 form, an agency's aggregate lobbyist expenditures, names of state employees who have registered as lobbyists, and the complete list of bills and the agency's position on the bills must be reported. **Compliance with Montana's lobbying laws is the responsibility of the agency.**

The agency's principal files the L-5 report. In the L-5 report, the twelve below details must be disclosed and reported (details at [MCA, 5-7-208 \(5\)\(a\)](#), see also [44.12.102](#)):

All payments for lobbying in each of the following categories:

1. Payments of compensation to all individuals who engage in lobbying the legislature,
2. Value of printing used to support lobbying efforts,
3. Advertising (including production) costs,
4. Postage costs,
5. Travel expenses,
6. Salaries and fees, including allowances, rewards, and contingency fees,
7. Entertainment, including all foods and refreshments (the payee and beneficiary must be disclosed),
8. Telephone costs,
9. Other office expenses that support lobbying efforts,

These items must be itemized with the payee and beneficiary identified:

10. Each separate payment conferring \$25 or more benefit to any public official when the payment was made for the purpose of lobbying,
11. Each separate payment conferring \$100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except in regard to a dinner or other function to which all senators or representatives have been invited (the beneficiary may be listed as all members of that group without listing separately each person who attended).

Other details to disclose and report:

12. List each contribution and membership fee that amounts to \$250 or more when aggregated over the period of one calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked,
13. List each official action on which the principal or the principal's agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action.

B. Responsibilities of the Lobbyist

Each state employee who lobbies can report their time spent on lobbying activity in the Statewide Accounting Budgeting and Human Resources System (SABHRS). This must be done by using the time reporting code of “99 RBLOG – Legislature Lobbying.”

For example, if an employee spent 4.25 hours lobbying, their time would be entered as (See image below for reference):

Timesheet

Employee ID 00000
Empl Record 0
Earliest Change Date 01/05/2019

Actions ▾

Select Another Timesheet

*View By Week
*Date 01/07/2019 [B] [↻]
Previous Week Next Week

Reported Hours 9.00

From Monday 01/07/2019 to Sunday 01/13/2019 ?

Mon 1/7	Tue 1/8	Wed 1/9	Thu 1/10	Fri 1/11	Sat 1/12	Sun 1/13	Total	Time Reporting Code
7.00	7.00	5.50	7.75	7.5			8.00	01 REG - Regular Earnings
1.00							1.00	02 SLT - Sick Taken
	1.00	2.50	.25	.5				99 RBLOG - Legislature Lobbying

Save for Later Submit

HRIS will send a report to each agency every pay period showing how much time each employee spent lobbying. Each agency should notify their employees who reach \$1,500 in payments that they are approaching the \$2,600 limit. Another notification should be sent when the employee reaches the \$2,000 limit. After reaching the \$2,600 threshold, the employee must register with the COPP within five days of exceeding the limit.

If you have questions or would like more information, please contact your agency’s staff person in charge of lobbying compliance.

WHEN MUST A STATE AGENCY FILE L-5 REPORTS?

For the 2019 legislative year, there are five possible L-5 report due dates:

1. Feb. 15, 2019: Mandatory non-session year-end report that covers January 1, 2018, through December 31, 2018.
2. Feb. 15, 2019: Mandatory L-5 report covering January 1-31st.
3. March 15, 2019: L-5 report covering February 1st-28th. This report is only required if you spent \$5,000 or more for the purposes of lobbying in February.
4. April 15, 2019: L-5 report covering March 1-31st. This report is only required if you spent \$5,000 or more for the purposes of lobbying in March.
5. End of session report: Mandatory L-5 report due 30 days after the session adjourns.

Please note: there is a \$50/day fine for late reports.

Best practice for agencies is to consistently report even if the threshold is not expected to be met to avoid having to go back after the session and report all activities for the entire session.

WHICH STATE EMPLOYEES ARE EXEMPT FROM REGISTERING TO LOBBY?

Elected officials and officers appointed by the Governor and those who are subject to Senate confirmation are exempt (See [MCA 5-7-102\(11\)\(b\)](#)).

All other public officials must comply with Montana lobbying laws. The definition of "public official" is: "an elected state official or an appointed state official acting in an official capacity for state government or a legislator. (See [MCA 5-7-102\(16\)\(a\)](#))

LOGISTICAL TIPS

In order for your agency to comply with Montana's lobbying laws, it is important to develop internal processes. **Compliance with Montana's lobbying laws is the responsibility of the agency head.**

Here are some suggestions to streamline your agency's reporting:

- Designate a key staff member to be responsible for timely filings.
- Ensure employees engaged in lobbying activities and the key staff member understand the necessity of filing an L-1 and L-2 within five days of exceeding the \$2,600 threshold for reporting lobbying activities.
- Develop an efficient, accurate method for tracking all employee lobbying hours (not just the registered lobbyists), hourly wage determinations, bills lobbied, and positions taken.
- Limit lobbying activities to the minimum number of employees needed to effectively represent the agency.

RESOURCES

This guide is a summary of Montana’s Lobbying laws and rules and is meant to provide general guidance. If you have further questions, please consult with your agency legal counsel.

Legal and COPP Resources

- To review Montana’s lobbying laws, see Montana Code Annotated, [Title 5, Chapter 7, Part 1](#), and the Lobbying Administrative Rules (ARM), [Chapter 44.12](#).
- Lobbying resources are also available at the COPP’s website, <http://politicalpractices.mt.gov/lobbying>. Familiarize yourself with these pages to be up-to-date on report due dates, compliance information, FAQs, and more!
- The COPP also shares report reminders and tips on [Twitter](#) and [Facebook](#).

Lobbying Registration and Forms

Lobbying Forms (available at <http://politicalpractices.mt.gov/forms>):

- 1- [Lobbying database](#) where principals and lobbyist can register and L-5 reports are submitted: <http://lobbyistregistration.mt.gov/login.jsf>
- 2- [L-1 Lobbying Form](#)
- 3- [Form L-2, Principal Authorization Statement](#)
- 4- [Form L-3, Principal Registration Application](#)
- 5- [Form L-5, Lobbying Financial Report](#)
- 6- [Lobbyist License Fee Waiver Request](#)
- 7- [Guide](#) to required lobbying forms (with scenarios): <https://bit.ly/2AJAliQ>

Questions? Reference the COPP’s lobbying resources at <http://politicalpractices.mt.gov/lobbying>. You can also contact the Commissioner of Political Practices Office at (406) 444-2942, email cpphelp@mt.gov, or stop by the office at 1209 8th Avenue in Helena.