

930 CMR: STATE ETHICS COMMISSION

930 CMR 2.00: DESIGNATIONS OF PUBLIC EMPLOYEES

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2.01 Scope and Purpose

M.G.L. c. 268B requires that public employees annually file Statements of Financial Interest with the State Ethics Commission for any year in which they are public employees for 30 days or more. M.G.L. c. 268B defines "public employee" to include, with certain enumerated exceptions, persons holding "major policy making positions" in governmental bodies and imposes upon certain state and county officials the obligation annually to designate the "major policy making positions" within their respective jurisdictions. M.G.L. c. 268B also empowers the Executive Director of the State Ethics Commission to add positions which he deems to be "major policy making positions".

930 CMR 2.00 establishes standards and procedures for the designation of "major policy making positions" and identification of public employees by the appropriate state and county officials and by the Executive Director of the State Ethics Commission. They are intended to carry out the purposes of M.G.L. c. 268B by insuring uniform designations throughout state and county government and facilitating the designation process.

2.02 Definitions

As used in 930 CMR 2.00, the following terms have the following meanings. All terms defined herein will be capitalized throughout 930 CMR 2.00.

Board, Commission or Council Which has no Authority to expend Public Funds means any board, commission or council which:

- (a) does not receive a periodic appropriation from the Commonwealth, and
- (b) has no express statutory authority to expend public funds, to hire employees, or to enter into contracts involving the expenditure of public funds; and
- (c) has no statutory duties which necessarily entail the expenditure of public funds unless provision is made by statute for payment thereof from a source other than the board, commission, or council itself.

Commonwealth means the Commonwealth of Massachusetts or any agency or political subdivision thereof.

Designation List means one of the lists of Major Policy Making Positions which must be filed with the State Ethics Commission pursuant to M.G.L. c. 268B, § 3(j).

Designator means a state or county official required by M.G.L. c. 268B, § 3(j) to submit a list of Major Policy Making Positions within his or her jurisdiction.

Executive Director means the Executive Director of the State Ethics Commission.

Executive or Administrative Head or Heads of a Governmental Body means:

- (a) the chief executive or administrative officer or officers of a Governmental Body; and
- (b) all members of any board, commission, authority or council which is a Governmental Body and the Executive Director thereof.

2.02: continued

Exercising Similar Authority means exercising authority on more than an occasional basis or for more than eight consecutive days which is qualitatively or quantitatively similar to, or the same as, that of the Executive or Administrative Head or Heads of a Governmental Body, a Member of the Judiciary, a person whose Salary Equals or Exceeds that of a State Employee Classified in Step One of Job Group XXV of the general salary schedule contained in M.G.L. c. 30, § 46 and who reports directly to said Executive or Administrative Head, or the Head of a division, bureau or other Major Administrative Unit Within a Governmental Body, except that no person shall be deemed to be exercising authority similar to that of another person merely by virtue of acting in the place of that other person during his or her normal vacation or sick leave periods.

Governmental Body means: any state or county agency, authority, board, bureau, commission, council, department, division, or other entity, including the general court and the courts of the Commonwealth, whether or not located within, or subject to the control of, a larger Governmental Body.

Head means the chief executive or administrative officer or officers.

Holding a Major Policy Making Position in a Governmental Body for 30 Days or More means occupying that position for that period of time, without regard to days of actual service.

Major Administrative Unit means any department, division, bureau, or other unit whether established by law or by administrative action and whether or not within another administrative unit, which

- (a) has, as its Head, a person whose Salary Equals or Exceeds that of a State Employee Classified in Job Group XXV and
- (b) has primary responsibility for
 - 1. matters arising within a particular geographic region; or
 - 2. contracting or procurement; or
 - 3. administering, awarding or monitoring grants, benefits or subsidies; or
 - 4. inspecting, licensing, regulating, or auditing any person or entity; or
 - 5. interpreting or enforcing laws, rules or regulations; or
 - 6. matters involving substantial responsibility requiring the exercise of independent judgment.

Major Policy Making Position(s) means:

- (a) The Executive or Administrative Head or Heads of a Governmental Body;
- (b) all Members of the Judiciary;
- (c) any person whose salary equals or exceeds that of a State Employee classified in Step One of Job Group XXV of the general salary schedule contained in M.G.L. c. 30, § 46 and who reports directly to said Executive or Administrative Head, except a person whose duties consist primarily of administrative tasks such as scheduling, record keeping, document handling, word processing and typing, and similar tasks;
- (d) the Head of each division, bureau or other Major Administrative Unit within such Governmental Body; and
- (e) persons exercising similar authority.

Members(s) of the Judiciary means every judge, justice, chief justice, chief judge, administrative justice, circuit justice, associate justice, associate judge, special justice, and master in chancery of every court of the Commonwealth.

Person who Receives no Compensation means any person who does not receive money or anything of value, except reasonable reimbursements for expenses actually incurred, in exchange for services rendered in a governmental position. Any person who serves in a position for which compensation is authorized by statute, rule, or regulation, shall be considered "a person who receives no compensation" within the meaning of this paragraph only if, by official act (including lack of an appropriation), the compensation is not made available to that person. Any person who fails for any reason to accept compensation which has been set aside for, or which has otherwise been made available to, him or her for their position, shall not be considered "a person who receives no compensation" within the meaning of 930 CMR 2.02.

2.02: continued

Public Employee means any person Holding a Major Policy Making Position in a Governmental Body for 30 Days or More during a Reporting Year whether by election, appointment, contract of hire or engagement, and whether on a full, part-time, intermittent, or consultant basis, excluding any person who serves on a Board, Commission or Council Which Has No Authority To Expend Public Funds other than to approve reimbursements for expenses and excluding any Person Who Receives No Compensation other than reimbursements for expenses.

Reporting Year means the calendar year for which a Statement of Financial Interest is required to be filed.

Salary Equals or Exceeds that of a State Employee Classified in Step One of Job Group XXV means that the salary, wages or other compensation authorized for the reporting year equals or exceeds the salary in effect on January 1st of the Reporting Year for step one of job group XXV; provided that in the case of individuals working as consultants for a period which exceeds or is reasonably expected to exceed 60 days, it means that the figure arrived at by annualizing the maximum possible earnings equals or exceeds the salary in effect on January 1 of the reporting year for step one of job group XXV. For purposes of 930 CMR 2.02, a day means a full working day or part thereof.

2.03 Submission of Annual Designation Lists

(1) Requests for Lists. On or before February 1 of each year, the Executive Director shall request every designator to prepare and submit a Designation List of the Major Policy Making Positions within his or her jurisdiction and to identify all public employees who are or have been in those positions during the Reporting Year.

(2) Submission of Lists

(a) The designator shall submit the designation list to the State Ethics Commission within 60 days of receiving the request therefor from the Executive Director on forms provided by the Executive Director.

(b) The Designator shall prepare and submit a separate Designation List for each Governmental Body within his or her jurisdiction, identifying therein the positions, names and mailing addresses of all Public Employees within that Governmental Body. If more than one individual held a particular Major Policy Making Position during the Reporting Year, names and mailing addresses shall be provided for each such individual.

(c) The Designator shall attach to each Designation List an organizational chart for the Governmental Body to which that list corresponds.

(3) Certifications. The Designator shall certify on each Designation List that the list has been prepared in accordance with M.G.L. c. 268B and 930 CMR 2.00 and notice served as required by 930 CMR 2.03(4).

(4) Notice. The Designator shall, before submitting any designation list to the Ethics Commission, notify each individual named on that list of his or her designation as a Public Employee and obligation to file a Statement of Financial Interest with the Ethics Commission on or before May 1.

2.04 Amendment of Lists

(1) A Designator may at any time add positions and/or individuals to his/her Designation List by submitting to the Ethics Commission a written amendment to the original Designation List, providing with respect to the new positions and individuals the same information and certifications as are required by 930 CMR 2.03(3) and (4) on the original Designation List.

(2) A Designator may delete positions and/or individuals from his/her Designation List during the 60-day period immediately following receipt of the Executive Director's request for designations by informing the Ethics Commission of the deletion in writing.

2.04: continued

(3) A Designator may delete positions and/or individuals from his/her Designation List after the 60-day period immediately following receipt of the Executive Director's request for designations by submitting the following data in writing to the Commission:

- (a) A statement of reasons for the deletion;
- (b) Certification that any position to be deleted is not a Major Policy Making Position and that any individual to be deleted is not a Public Employee;
- (c) The salary authorized for any position or individual to be deleted;
- (d) An organizational chart reflecting the placement within the Governmental Body of any position or individual to be deleted; and
- (e) An official job description of any position to be deleted.

2.05 Identification of New Public Employees

Every Designator shall submit to the Ethics Commission the name of any new Public Employee within his or her jurisdiction within ten days of his or her employment.

2.06 Designations by the Executive Director and Appeals Therefrom

(1) The Executive Director may at any time add to any Designation List submitted in accordance with 930 CMR 2.03 any position which he or she deems to be a Major Policy Making Position and/or the names of any individuals whom he or she deems to be Public Employees, provided he/she certifies in writing that the addition is in accordance with M.G.L. c. 268B and with these regulations and that he/she has served notice as required by 930 CMR 2.06(2).

(2) The Executive Director shall, within 30 days of adding any individual to a Designation List, send written notice to the individual of his or her designation and obligation to file a Statement of Financial Interest with the State Ethics Commission, stating the facts relied upon as the basis for the designation, citing the statute and regulations authorizing designations by the Executive Director, enclosing a copy of the forms to be filed, and informing the individual of his/her right to an appeal before the Ethics Commission. The Executive Director shall also send a copy of the notice of the designation to the Designator and the head of the individual's Governmental Body.

(3) Any person aggrieved by the action of the Executive Director may appeal that action to the Ethics Commission in accordance with the Formal Rules of the Standard Rules of Practice and Procedure, 801 CMR 1.00.

REGULATORY AUTHORITY

930 CMR 2.00: M.G.L. c. 268B, § 3.