



STATE OF INDIANA
OFFICE OF THE GOVERNOR
State House, Second Floor
Indianapolis, Indiana 46204

Eric J. Holcomb
Governor

January 3, 2025

FILED

Katherine Noel, Chair
Indiana State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46204

JAN 09 2025

INDIANA STATE
ETHICS COMMISSION

IC 4-2-6-11

Post-employment waiver: Michael Smith

As Appointing Authority of the Commissioner of the Indiana Department of Transportation (INDOT), I am filing this waiver of the application of a certain post-employment restriction of the Code of Ethics as it may apply to Michael Smith (hereinafter, "Smith") in his desired post-employment opportunity with HNTB.

I understand that I must file and present this waiver to the State Ethics Commission at its next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

Initial Comments: Smith desires to accept the role of National Practice Consultant (DOT) at HNTB. Smith was notified by Governor-elect Braun's transition team that he will not be reappointed as INDOT's Commissioner, leaving him in the position of having to immediately seek other employment. This waiver pertains to one aspect of the one-year "cooling off" period set forth in IC § 4-2-6-11(b)(2), as more particularly described below. As to those post-employment restrictions for which a waiver is not being sought here, Smith will comply with same, and, if necessary and appropriate, effectuate a proper screen in connection therewith. Further, he is aware of, and will fully honor and comply with, the requirements of the Indiana Code of Ethics pertaining to confidentiality of material information and not disclosing or using same. IC § 4-2-6-6.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives application of (Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

- ☐ IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- ☒ IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- ☐ IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.

- ☐ IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

- 1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:**

Answer: Smith has worked for INDOT for nearly a decade, first as the Greenfield District Deputy Commissioner, then as Chief Operating Officer and Chief Financial Officer, before eventually becoming the Commissioner. He has served as Commissioner for approximately two (2) years. As Commissioner, he has general oversight of the agency, which includes substantial decision-making authority over policies, rules, and contracts. INDOT awards hundreds of opportunities through its competitive bidding process each year, has a tiered management structure, and all contracts are administered out of various INDOT divisions.

First, under the ethics rule for the 365-day cooling-off period, IC § 4-2-6-11(b)(2), there are four specific prohibitions, only one of which may be triggered here. With respect to the first prohibition, Smith's potential position with HNTB will not involve executive branch lobbying. As for the second and third prohibitions, Smith, during his time at INDOT, has not made a regulatory or licensing decision directly applicable to his potential employer, HNTB. The final prohibition, however, involves the subject of agency contracts and is discussed in greater detail, below.

For purposes of this evaluation, it's important to note the prohibition regarding contracts is a two-part test. To be triggered, the statute specifically requires the state employee in question must have been "engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration." IC 4-2-6-11(b)(2). Under Indiana law, it is well-established that words in a statute must be taken in their plain, ordinary, and literal meaning, and effect must be given to every word; indeed, no word should be considered superfluous, void, or insignificant, as each word is presumed to have a purpose. Thus, the conjunctive "and" clearly establishes this statutory language as creating a two-part test.

Here, in the situation involving Smith, both parts of the test are likely triggered, thus the need for a waiver. HNTB is an engineering consulting firm, has been a vendor with INDOT since at least 2000, regularly bids on INDOT contract opportunities, and has many active contracts with INDOT. In particular, HNTB has a contract with INDOT to provide consulting services, which is administered by INDOT's Capital Program Department. A task order on that contract requires

HNTB to provide advice about funding options for INDOT's road work (that specific task order is directly administered by INDOT's Chief of Staff Division). Notably, Smith directly handled conversations about road funding on behalf of INDOT, aided by HNTB's advice pursuant to the task order under this contract. Smith has also been involved in strategy and advisory meetings with HNTB for the work that HNTB was hired to complete pursuant to the task order, and, as agency head, was in a position to make a discretionary decision affecting the outcome of the administration of the task order.

For transparency purposes, we also wanted to disclose the following. More than two (2) years ago, Smith served as INDOT's Chief Financial Officer, Chief Operating Officer, and Greenfield District Deputy Commissioner. In those roles, he attended various meetings with vendors, including HNTB. He does not recall signing any contracts involving HNTB during that time, and INDOT's tiered management structure is such that any such contracts would have been negotiated and administered by lower divisions, not Smith. Furthermore, we want to disclose that Smith, when he was Chief Operating Officer, was the supervisor of a division director who administered an HNTB contract to provide advice about tolling on the Ohio River Bridge. That contract is still active, but Smith's supervision in that regard ended more than two (2) years ago.

Thus, to the extent that Smith could be considered to have administered, or participated in the administration of, the HNTB consulting services contract, or other HNTB contracts, we respectfully request that a waiver of the "cooling off" period be granted for same.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Answer: In his role as HNTB's National Practice Consultant, Smith would be responsible for advising HNTB's clients who are leaders in departments of transportation located throughout the United States, about transportation-related issues. In addition, he would help manage client relationships and guide the application of HNTB services to best serve the interests of clients, provide leadership on complex projects within certain practice areas, be responsible for successful contracting and project execution, work closely with regional HNTB staff, and identify and execute high-level projects within assigned departments, agencies, and programs.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work of the employee:

Answer: Smith's position with HNTB would not involve substantial contact with INDOT. His potential position is a national role, and HNTB, through its Vice President for National Practice, will screen Smith from any contact and work involving INDOT, thus helping to ensure compliance with applicable post-employment restrictions. Smith notes that it's possible he could come across INDOT employees at national conferences/events, but those interactions, if they occur, would clearly not rise to the level of "substantial contact". Indeed, Smith has indicated he will not work on any matters related to INDOT during the applicable one (1) year "cooling-off" period after he leaves state employment.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

Answer: Smith has served in the transportation field for nearly ten (10) years, and thus has extensive knowledge and expertise in connection with same. His expertise as a transportation professional and leader is invaluable, as virtually everyone across the country utilizes various transportation methods (e.g., roads, highways, bridges, rail, etc.) every single day. Again, the role Smith would be accepting is a national position that has national impact. Therefore, Smith's role with HNTB will ensure that his knowledge and expertise in this important field will continue to be utilized in a beneficial way going forward, serving numerous states, as well as state and local agencies, that HNTB works with across the country, thus helping on a larger scale and benefiting the public and departments of transportation located outside of Indiana. Lastly, as noted above, Smith has had limited involvement with HNTB's contracts over the years, and will be screened from involvement with INDOT for the applicable one-year "cooling-off" period required by the Indiana Code of Ethics.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Answer: Notably, Smith has spent a significant portion of his career working in different roles for INDOT. Continuing in the transportation field is a natural, and logical, next step in the evolution of his career, and to be barred or prevented from accepting this HNTB position would take away an important opportunity from him, leaving him to look for employment elsewhere, in other fields, for which he would have little or no experience. And employment that would not utilize Smith's knowledge and expertise would be a great loss not only to him, but also to the public and to the transportation field in general. Smith has five children to support and needs to continue working in a role at a similar level in order to provide for his family. Not granting this waiver would almost certainly cause major economic hardship to Smith, especially in the short-term, but also in terms of the level of position he could obtain or the salary he would earn in another field. We believe that the above-referenced reasons weigh heavily in favor of granting a waiver here.

[Remainder of Page Intentionally Left Blank.]

C. Signatures

1. Appointing Authority/state officer of agency:

By signing below, I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Earl A. Goode, Appointing Authority

1/3/25
DATE

2. Ethics Officer of agency:

By signing below, I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



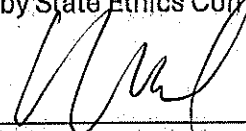
Joseph R. Heerens, Ethics Officer

1/3/25
DATE

D. Approval by State Ethics Commission:

FOR OFFICE USE ONLY

Approved by State Ethics Commission.



Katherine Noel, Chair, State Ethics Commission

1-9-25
Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

OR

Email scanned copy to: info@ig.in.gov

Upon receipt you will be contacted with details regarding the presentation of this waiver to the State Ethics Commission.



STATE OF INDIANA
OFFICE OF THE GOVERNOR
State House, Second Floor
Indianapolis, Indiana 46204

Eric J. Holcomb
Governor

January 3, 2025

Indiana State Ethics Commission
c/o Office of Inspector General
315 W. Ohio Street, Room 104
Indianapolis, Indiana 46204

Re: Designation Letter; Waiver Request for Michael Smith

To Whom It May Concern:

I am the Chief of Staff for Governor Eric J. Holcomb, and, accordingly, the appointing authority for Indiana Department of Transportation Commissioner Michael Smith. Enclosed herewith, I am submitting a post-employment waiver for Commissioner Smith.

While I will be unable to attend the Ethics Commission's meeting on January 9, 2025, I hereby designate Joseph R. Heerens, General Counsel & Ethics Officer for the Governor, to file and present the enclosed waiver on my behalf. Accordingly, you should direct any questions concerning this filing to Mr. Heerens. Further, I also designate Kate Shelby, General Counsel & Ethics Officer for the Indiana Department of Transportation, to assist in presenting the enclosed waiver.

Sincerely,

A handwritten signature in dark ink, appearing to read "Earl A. Goode".

Earl A. Goode
Chief of Staff

JAN 06 2025

INDIANA STATE
ETHICS COMMISSION

Name (last) Smith	Name (first) Michael	Name (middle) J.
Name of office or agency INDOT	Job title Commissioner	
Address of office (number and street) 100 N. Senate Ave. Room N758	City Indianapolis	ZIP code 46204
Office telephone number (855) 463-6848	Office e-mail address (required) michael.smith@indot.in.gov	

Describe the conflict of interest:
Michael Smith is the Commissioner of INDOT. Mr. Smith is in negotiations with HNTB to accept a position as a National Practice Consultant. HNTB is an INDOT vendor. Mr. Smith does not sign contracts in his current role. Mr. Smith is seeking a waiver of post-employment restrictions at the upcoming State Ethics Commission Meeting. Until the State Ethics Commission provides a decision, Mr. Smith has agreed to and executed a formal screen. Said screen prohibits Mr. Smith from working with HNTB in his capacity as an INDOT employee, including exercising any of his official duties or otherwise participating in any decision, vote, or matter related to such decision or vote, related to HNTB or for which HNTB has any interest. Mr. Smith has agreed to be further screened from assisting any future employer, including HNTB, with any matter in which he personally and substantially participated while employed at INDOT. This screen can be revised, as needed, after the State Ethics Commission issues its decision. This disclosure was provided to Michael Smith's appointing authority for purposes of this matter on January 6, 2024. Evidence of said disclosure to the appointing authority was executed and filed with the State Ethics Commission.

Describe the screen established by your ethics officer: (Attach additional pages as needed.)

AFFIRMATION

Your signature below affirms that your disclosures on this form are true, complete, and correct to the best of your knowledge and belief. In addition to this form, you have attached a copy of your written disclosure to your agency appointing authority and ethics officer.

Signature of state officer, employee or special state appointee

Mr. J. Smith

Date signed (month, day, year)

1/6/2025

Printed full name of state officer, employee or special state appointee

Michael J. Smith

FOR ETHICS OFFICER USE ONLY

Your signature below affirms that you have reviewed this disclosure form and that it is true, complete, and correct to the best of your knowledge and belief. You also attest that your agency has implemented the screen described above.

Signature of ethics officer

Kate Shelby

Date signed (month, day, year)

1/6/2025

Printed full name of ethics officer

Kate Shelby

MS
1/6/2025

CONFLICT OF INTEREST SCREEN FOR MICHAEL J. SMITH

I. RECITALS

WHEREAS, Michael J. Smith is the Commissioner for the Indiana Department of Transportation ("INDOT" or "Department"); and

WHEREAS, Smith is considering potential employment with HNTB, an engineering consulting firm, and

WHEREAS, HNTB has business relationship with INDOT, including active contracts; and

WHEREAS, as Commissioner for INDOT, it is possible that Smith could possibly participate in matters in which HNTB has an interest as part of his regular duties; and

WHEREAS, Smith's employment negotiations with HNTB created a potential decision and voting conflict of interest under IC 4-2-6-9 requiring disclosure and a formal screen; and

WHEREAS, pending final decision by the State Ethics Commission, Smith is subject to the particular matter restriction (IC 4-2-6-11(a)) and cannot assist future employers, including HNTB, with any matter he personally and substantially participated in for INDOT; and

WHEREAS, Smith obtained confidential information in the course of his employment with INDOT and has an affirmative duty to protect such information from disclosure and to refrain from relying on such information for the benefit of himself or future employers.¹

NOW THEREFORE, Smith, for his remaining tenure with INDOT, or until he discontinues employment negotiations with HNTB, agrees to in all ways follow, adhere to, and satisfy the terms of the following Conflict of Interest Screen. Smith must adhere to terms three (3) and four (4) regarding the particular matter restriction and confidential information in perpetuity.

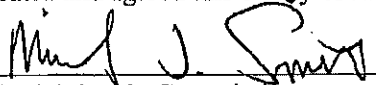
II. CONFLICT OF INTEREST SCREEN

1. Michael J. Smith shall not participate in any decision or vote, or any matter related to such decision or vote, in which HNTB has a financial interest.
2. Michael J. Smith is screened from participating in any present or future contract or other matter involving HNTB.
3. Michael J. Smith shall not assist any future employers, including HNTB, with any matter he personally and substantially participated in while employed by INDOT. This restriction applies in perpetuity, for the life of the particular matter.
4. Pursuant to his duty under Ind. Code §5-14-3-10, Michael J. Smith shall not disclose or otherwise rely upon information classified as confidential under Ind. Code §5-14-3-4. This restriction applies in perpetuity, so long as the subject information is deemed confidential.

III. EMPLOYEE AFFIRMATION

I have read and understand the terms of the foregoing Conflict of Interest Screen, and will in all ways follow, adhere to, and satisfy the above stated restrictions on my participation in any decision or vote in which HNTB has a financial interest. I understand that the first two (2) terms of this screen terminate upon my leaving the Department or the discontinuation of negotiations with HNTB, whichever occurs first. I further understand that terms three (3) and four (4) regarding particular matters and confidential information respectively, apply in perpetuity, for the life of each matter and so long as the subject information is deemed confidential. I have shared and discussed this Conflict of Interest Screen and its requirements with the appointing authority for my position.

Executed and agreed this 6th day of January, by:



Michael J. Smith, Commissioner
Indiana Department of Transportation

¹ State employees have an affirmative duty under Ind. Code §5-14-3-10 to protect from disclosure and to refrain from relying upon information defined as confidential under Ind. Code §5-14-3-4.

1/4/25

From: [Shelby, Kate](#)
To: [Heerens, Joe](#)
Subject: notification of official screen for Mike Smith
Date: Monday, January 6, 2025 1:11:00 PM
Attachments: [image001.png](#)
[INDOT Commissioner Smith disclosure and screen executed January 2025.pdf](#)

Joe,

This email is to notify you, as delegated appointing authority, of a conflict of interest disclosure and screen filed for Michael J. Smith, INDOT Commissioner, related to HNTB. These documents will be filed with the State Ethics Commission shortly.

Thank you,

Kate

Kate Shelby

Deputy Commissioner and Chief Legal Counsel

Indiana Department of Transportation

Central Office

Office: 855-463-6848

Email: kshelby@indot.in.gov

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