

1 HB155
2 115436-1
3 By Representative Black
4 RFD: Judiciary
5 First Read: 12-JAN-10

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8 SYNOPSIS: Under existing law, lobbyists must register
9 and file certain reports with the State Ethics
10 Commission.

11 This bill would include within the
12 definition of lobbyist and lobbying persons who
13 attempt to influence contracts for the purchase or
14 lease of supplies, services, or materials which are
15 not competitively bid with any executive department
16 or agency.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Section 36-25-1, Code of Alabama 1975,
23 relating to the definitions for purposes of the State Ethics
24 Law, to include within the definition of lobbyist and lobbying
25 persons who attempt to influence contracts for the purchase or
26 lease of supplies, services, or materials which are not
27 competitively bid with any executive department or agency.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 36-25-1, Code of Alabama 1975, is
3 amended to read as follows:

4 "§36-25-1.

5 "Whenever used in this chapter, the following words
6 and terms shall have the following meanings:

7 "(1) BUSINESS. Any corporation, partnership,
8 proprietorship, firm, enterprise, franchise, association,
9 organization, self-employed individual, or any other legal
10 entity.

11 "(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED.
12 Any business of which the person or a member of his or her
13 family is an officer, owner, partner, board of director
14 member, employee, or holder of more than five percent of the
15 fair market value of the business.

16 "(3) CANDIDATE. This term as used in this chapter
17 shall have the same meaning ascribed to it in Section
18 17-22A-2.

19 "(4) COMMISSION. The State Ethics Commission.

20 "(5) COMPLAINT. Written allegation or allegations
21 that a violation of this chapter has occurred.

22 "(6) COMPLAINANT. A person who alleges a violation
23 or violations of this chapter by filing a complaint against a
24 respondent.

25 "(7) CONFIDENTIAL INFORMATION. A complaint filed
26 pursuant to this chapter, together with any statement,
27 conversations, knowledge of evidence, or information received

1 from the complainant, witness, or other person related to such
2 complaint.

3 "(8) CONFLICT OF INTEREST. A conflict on the part of
4 a public official or public employee between his or her
5 private interests and the official responsibilities inherent
6 in an office of public trust. A conflict of interest involves
7 any action, inaction, or decision by a public official or
8 public employee in the discharge of his or her official duties
9 which would materially affect his or her financial interest or
10 those of his or her family members or any business with which
11 the person is associated in a manner different from the manner
12 it affects the other members of the class to which he or she
13 belongs. A conflict of interest shall not include any of the
14 following:

15 "a. A loan or financial transaction made or
16 conducted in the ordinary course of business.

17 "b. An occasional nonpecuniary award publicly
18 presented by an organization for performance of public
19 service.

20 "c. Payment of or reimbursement for actual and
21 necessary expenditures for travel and subsistence for the
22 personal attendance of a public official or public employee at
23 a convention or other meeting at which he or she is scheduled
24 to meaningfully participate in connection with his or her
25 official duties and for which attendance no reimbursement is
26 made by the state.

1 "d. Any campaign contribution, including the
2 purchase of tickets to, or advertisements in journals, for
3 political or testimonial dinners, if the contribution is
4 actually used for political purposes and is not given under
5 circumstances from which it could reasonably be inferred that
6 the purpose of the contribution is to substantially influence
7 a public official in the performance of his or her official
8 duties.

9 "(9) DAY. Calendar day.

10 "(10) DEPENDENT. Any person, regardless of his or
11 her legal residence or domicile, who receives 50 percent or
12 more of his or her support from the public official or public
13 employee or his or her spouse or who resided with the public
14 official or public employee for more than 180 days during the
15 reporting period.

16 "(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
17 spouse or a dependent of the public employee.

18 "(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
19 spouse, a dependent, an adult child and his or her spouse, a
20 parent, a spouse's parents, a sibling and his or her spouse,
21 of the public official.

22 "(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
23 Public or private corporations and authorities, including but
24 not limited to, hospitals or other health care corporations,
25 established pursuant to state law by state, county or
26 municipal governments for the purpose of carrying out a
27 specific governmental function. Notwithstanding the foregoing,

1 all employees, including contract employees, of hospitals or
2 other health care corporations and authorities are exempt from
3 the provisions of this chapter.

4 "(14) HOUSEHOLD. The public official, public
5 employee, and his or her spouse and dependents.

6 "(15) LAW ENFORCEMENT OFFICER. A full-time employee
7 of a governmental unit responsible for the prevention or
8 investigation of crime who is authorized by law to carry
9 firearms, execute search warrants, and make arrests.

10 "(16) LEGISLATIVE BODY. The Senate of Alabama, the
11 House of Representatives of Alabama, a county commission, city
12 council, city commission, town council, or municipal council
13 or commission, and any committee or subcommittee thereof.

14 "(17) LOBBYING. The practice of promoting, opposing,
15 or in any manner influencing or attempting to influence the
16 introduction, defeat, or enactment of legislation before any
17 legislative body; opposing or in any manner influencing the
18 executive approval, veto, or amendment of legislation; or the
19 practice of promoting, opposing, or in any manner influencing
20 or attempting to influence the enactment, promulgation,
21 modification, or deletion of regulations before any regulatory
22 body; or promoting, opposing, or in any manner influencing or
23 attempting to influence the awarding of a grant or contract
24 which is not required to be competitively bid with any
25 executive department or agency, excluding contracts for
26 utility services where no competition exists or where the
27 rates are set by law, regulation, or ordinance; provided,

1 however, that providing public testimony before a legislative
2 body or regulatory body or any committee thereof shall not be
3 deemed lobbying.

4 "(18) LOBBYIST.

5 "a. The term lobbyist includes any of the following:

6 "1. A person who receives compensation or
7 reimbursement from another person, group, or entity to lobby.

8 "2. A person who lobbies as a regular and usual part
9 of employment, whether or not any compensation in addition to
10 regular salary and benefits is received.

11 "3. A person who expends in excess of one hundred
12 dollars (\$100) for a thing of value, not including funds
13 expended for travel, subsistence expenses, and literature,
14 buttons, stickers, publications, or other acts of free speech,
15 during a calendar year to lobby.

16 "4. A consultant to the state, county, or municipal
17 levels of government or their instrumentalities, in any manner
18 employed to influence legislation or regulation, regardless
19 whether the consultant is paid in whole or part from state,
20 county, municipal, or private funds.

21 "5. An employee, a paid consultant, or a member of
22 the staff of a lobbyist, whether or not he or she is paid, who
23 regularly communicates with members of a legislative body
24 regarding pending legislation and other matters while the
25 legislative body is in session.

26 "6. Any person who promotes, opposes, or in any
27 manner influences or attempts to influence the awarding of a

1 grant or contract which is not required to be competitively
2 bid with any executive department or agency, excluding
3 contracts for utility services where no competition exists or
4 where the rates are set by law, regulation, or ordinance.

5 "b. The term lobbyist does not include any of the
6 following:

7 "1. A member of a legislative body on a matter which
8 involves that person's official duties.

9 "2. A person or attorney rendering professional
10 services in drafting bills or in advising clients and in
11 rendering opinions as to the construction and effect of
12 proposed or pending legislation, executive action, or rules or
13 regulations, where those professional services are not
14 otherwise connected with legislative, executive, or regulatory
15 action.

16 "3. Reporters and editors while pursuing normal
17 reportorial and editorial duties.

18 "4. Any citizen not expending funds as set out above
19 in paragraph a.3. or not lobbying for compensation who
20 contacts a member of a legislative body, a member of the
21 executive branch of government, or gives public testimony on a
22 particular issue or on particular legislation, or for the
23 purpose of influencing legislation or the awarding of grants
24 or unbid contracts and who is merely exercising his or her
25 constitutional right to communicate with members of a
26 legislative body.

1 "5. A person who appears before a legislative body,
2 a regulatory body, or an executive agency to either sell or
3 purchase goods or services.

4 "6. A person whose primary duties or
5 responsibilities do not include lobbying, but who may, from
6 time to time, organize social events for members of a
7 legislative body to meet and confer with members of
8 professional organizations and who may have only irregular
9 contacts with members of a legislative body when the body is
10 not in session or when the body is in recess.

11 "(19) MINOR VIOLATION. Any violation of this chapter
12 in which the public official or public employee receives an
13 economic gain in an amount less than two hundred fifty dollars
14 (\$250) or the governmental entity has an economic loss of less
15 than two hundred fifty dollars (\$250).

16 "(20) PERSON. A business, individual, corporation,
17 partnership, union, association, firm, committee, club, or
18 other organization or group of persons.

19 "(21) PRINCIPAL. A person or business which employs,
20 hires, or otherwise retains a lobbyist. Nothing in this
21 chapter shall be deemed to prohibit a principal from
22 simultaneously serving as his or her own lobbyist.

23 "(22) PROBABLE CAUSE. A finding that the allegations
24 are more likely than not to have occurred.

25 "(23) PUBLIC EMPLOYEE. Any person employed at the
26 state, county, or municipal level of government or their
27 instrumentalities, including governmental corporations and

1 authorities, but excluding employees of hospitals or other
2 health care corporations including contract employees of those
3 hospitals or other health care corporations, who is paid in
4 whole or in part from state, county or municipal funds. For
5 purposes of this chapter, a public employee does not include a
6 person employed on a part-time basis whose employment is
7 limited to providing professional services other than
8 lobbying, the compensation for which constitutes less than 50
9 percent of the part-time employee's income.

10 "(24) PUBLIC OFFICIAL. Any person elected to public
11 office, whether or not that person has taken office, by the
12 vote of the people at state, county, or municipal level of
13 government or their instrumentalities, including governmental
14 corporations, and any person appointed to a position at the
15 state, county, or municipal level of government or their
16 instrumentalities, including governmental corporations. For
17 purposes of this chapter, a public official includes the
18 chairs and vice-chairs or the equivalent offices of each state
19 political party as defined in Section 17-16-2.

20 "(25) REGULATORY BODY. A state agency which issues
21 regulations in accordance with the Alabama Administrative
22 Procedure Act or a state, county, or municipal department,
23 agency, board, or commission which controls, according to rule
24 or regulation, the activities, business licensure, or
25 functions of any group, person, or persons.

1 "(26) REPORTING PERIOD. The reporting official's or
2 employee's fiscal tax year as it applies to his or her United
3 States personal income tax return.

4 "(27) REPORTING YEAR. The reporting official's or
5 employee's fiscal tax year as it applies to his or her United
6 States personal income tax return.

7 "(28) RESPONDENT. A person alleged to have violated
8 a provision of this chapter and against whom a complaint has
9 been filed with the commission.

10 "(29) STATEMENT OF ECONOMIC INTERESTS. A financial
11 disclosure form made available by the commission which shall
12 be completed and filed with the commission prior to April 30
13 of each year covering the preceding calendar year by certain
14 public officials and public employees.

15 "(30) SUPERVISOR. Any person having authority to
16 hire, transfer, suspend, lay off, recall, promote, discharge,
17 assign, or discipline other public employees, or any person
18 responsible to direct them, or to adjust their grievances, or
19 to recommend personnel action, if, in connection with the
20 foregoing, the exercise of the authority is not of a merely
21 routine or clerical nature but requires the use of independent
22 judgment.

23 "(31) THING OF VALUE.

24 "a. Any gift, benefit, favor, service, gratuity,
25 tickets or passes to an entertainment, social or sporting
26 event offered only to public officials, unsecured loan, other

1 than those loans made in the ordinary course of business,
2 reward, promise of future employment, or honoraria.

3 "b. The term, thing of value, does not include any
4 of the following, provided that no particular course of action
5 is required as a condition to the receipt thereof:

6 "1. Campaign contribution.

7 "2. Seasonal gifts of an insignificant economic
8 value of less than one hundred dollars (\$100) if the aggregate
9 value of such gifts from any single donor is less than two
10 hundred fifty dollars (\$250) during any one calendar year.

11 "3. Hospitality extended to a public official,
12 public employee, and his or her respective household as a
13 social occasion in the form of food and beverages where the
14 provider is present, lodging in the continental United States
15 and Alaska incidental to the social occasion, and tickets to
16 social or sporting events if the hospitality does not extend
17 beyond three consecutive days and is not continuous in nature
18 and the aggregate value of such hospitality in excess of two
19 hundred fifty dollars (\$250) within a calendar day is reported
20 to the commission by the provider provided that the reporting
21 requirement contained in this section shall not apply where
22 the expenditures are made to or on behalf of an organization
23 to which a federal income tax deduction is permitted under
24 subparagraph (A) of paragraph (1) of subsection (b) of Section
25 170 of the Internal Revenue Code of 1986, as amended, or any
26 charitable, education or eleemosynary cause of Section 501 of
27 Title 26 of the U.S. Code, and where the public official or

1 public employee does not receive any direct financial benefit.
2 The reporting shall include the name or names of the recipient
3 or recipients, the value of the entire expenditure, the date
4 or dates of the expenditure, and the type of expenditure.

5 "4. Reasonable transportation, food and beverages
6 where the provider is present, and lodging expenses in the
7 continental United States and Alaska which are provided in
8 conjunction with an educational or informational purpose,
9 together with any hospitality associated therewith; provided,
10 that such hospitality is less than 50 percent of the time
11 spent at such event, and provided further that if the
12 aggregate value of such transportation, lodging, food,
13 beverages, and any hospitality provided to such public
14 employee, public official, and his or her respective household
15 is in excess of two hundred fifty dollars (\$250) within a
16 calendar day the total amount expended shall be reported to
17 the commission by the provider. The reporting shall include
18 the name or names of the recipient or recipients, the value of
19 the entire expenditure, the date or dates of the expenditure,
20 and the type of expenditure.

21 "5. Payment of or reimbursement for actual and
22 necessary expenditures for travel and subsistence of a public
23 official or public employee in connection with an economic
24 development research or trade mission, or for attendance at a
25 mission or meeting in which he or she is scheduled to
26 meaningfully participate, or regarding matters related to his
27 or her official duties, and for which attendance no

1 reimbursement is made by the state; provided, that any
2 hospitality in the form of entertainment, recreation, or
3 sporting events shall constitute less than 25% of the time
4 spent in connection with the event. If the aggregate value of
5 any such hospitality extended to the public employee, public
6 official, and his or her respective household is in excess of
7 two hundred fifty dollars (\$250) within a calendar day, the
8 total amount expended for that day shall be reported to the
9 commission by the provider. The reporting shall include the
10 name or names of the recipient or recipients, the value of
11 such expenditures, the date or dates of the expenditure, and
12 the type of expenditure.

13 "6. Promotional items commonly distributed to the
14 general public and food or beverages of a nominal value.

15 "c. Nothing in this chapter shall be deemed to
16 limit, prohibit, or otherwise require the disclosure of a
17 personal gift made to a public official or public employee
18 from a spouse, intended spouse, dependent, adult child,
19 sibling, parent, grandparent, uncle, aunt, nephews, nieces or
20 cousins of the public official or public employee, except as
21 otherwise provided by law.

22 "d. Nothing in this chapter shall be deemed to
23 limit, prohibit, or otherwise require the disclosure of gifts
24 through inheritance received by a public employee or public
25 official.

26 "(32) VALUE. The fair market price of a like item if
27 purchased by a private citizen."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.