

Representative Wayne A. Harper proposes the following substitute bill:

STATE AGENCY - LOBBYIST RESTRICTION

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies statutory provisions governing lobbying by state agencies. This act requires certain state government employees to register as agency lobbyists. This act requires that certain information about lobbyists be reported to the Legislature and authorizes the Legislature to penalize state agencies that hire a lobbyist.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

36-11-102, as last amended by Chapter 13, Laws of Utah 1998

36-11-103, as last amended by Chapter 338, Laws of Utah 2000

36-11-106, as last amended by Chapter 317, Laws of Utah 2002

63-38-3.1, as enacted by Chapter 267, Laws of Utah 2001

ENACTS:

36-11-103.1, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **36-11-102** is amended to read:

36-11-102. Definitions.

As used in this chapter:

(1) (a) "Agency lobbyist" means an officer or employee of the executive or judicial branches of state government whose job responsibilities include lobbying the Legislature.

(b) "Agency lobbyist" includes each employee of a higher education institution whose job responsibilities include lobbying the Legislature.



26 [~~1~~] (2) "Aggregate daily expenditures" means the total expenditures made within a
27 24-hour period.

28 [~~2~~] (3) "Executive action" means:

29 (a) nominations and appointments by the governor;

30 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any
31 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

32 (c) agency ratemaking proceedings.

33 [~~3~~] (4) (a) "Expenditure" means any of the items listed in this subsection when given
34 to or for the benefit of a public official or his immediate family:

35 (i) a purchase, payment, distribution, loan, gift, advance, deposit, subscription,
36 forbearance, services, or goods, unless consideration of equal or greater value is received; and

37 (ii) a contract, promise, or agreement, whether or not legally enforceable, to provide
38 any of the items listed in Subsection [~~3~~] (4)(a)(i).

39 (b) "Expenditure" does not mean:

40 (i) a commercially reasonable loan made in the ordinary course of business;

41 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,

42 Corrupt Practices in Elections;

43 (iii) printed informational material;

44 (iv) a devise or inheritance;

45 (v) any item listed in Subsection [~~3~~] (4)(a) if given by a relative;

46 (vi) a modest item of food or refreshment such as a beverage or pastry offered other
47 than as part of a meal;

48 (vii) a greeting card or other item of little intrinsic value that is intended solely for
49 presentation;

50 (viii) plaques, commendations, or awards; or

51 (ix) reimbursement of reasonable expenses for or providing travel, lodging, or meals to
52 a public official when:

53 (A) those expenses are directly related to the public official's attendance and
54 participation in a regularly scheduled meeting of an organization, association, or group; and

55 (B) that organization, association, or group pays or provides those expenses.

56 [~~4~~] (5) (a) "Government officer" means:

57 (i) an individual elected to a position in state or local government, when acting within
58 his official capacity; or

59 (ii) an individual appointed to or employed in a full-time position by state or local
60 government, when acting within the scope of his employment.

61 (b) "Government officer" does not mean a member of the legislative branch of state
62 government.

63 ~~[(5)]~~ (6) "Immediate family" means a spouse, a child residing in the household, or an
64 individual claimed as a dependent for tax purposes.

65 ~~[(6)]~~ (7) "Interested person" means an individual defined in Subsections ~~[(9)]~~
66 ~~(10)(b)(ii)~~ and (viii).

67 ~~[(7)]~~ (8) "Legislative action" means:

68 (a) bills, resolutions, amendments, nominations, and other matters pending or proposed
69 in either house of the Legislature or its committees or requested by a legislator; and

70 (b) the action of the governor in approving or vetoing legislation.

71 ~~[(8)]~~ (9) "Lobbying" means communicating with a public official for the purpose of
72 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

73 ~~[(9)]~~ (10) (a) "Lobbyist" means an individual who is employed by a principal or who
74 contracts for economic consideration, other than reimbursement for reasonable travel expenses,
75 with a principal to lobby a public official.

76 (b) "Lobbyist" does not include:

77 (i) a public official while acting in his official capacity on matters pertaining to his
78 office or a state employee while acting within the scope of his employment;

79 (ii) any person appearing at, or providing written comments to, a hearing conducted in
80 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act or Title 63,
81 Chapter 46b, Administrative Procedures Act;

82 (iii) any person participating on or appearing before an advisory or study task force,
83 commission, board, or committee, constituted by the Legislature or any agency or department
84 of state government, except legislative standing, appropriation, or interim committees;

85 (iv) a representative of a political party;

86 (v) an individual representing a bona fide church solely for the purpose of protecting
87 the right to practice the religious doctrines of the church unless the individual or church makes

88 an expenditure that confers a benefit on a public official;

89 (vi) a newspaper, television station or network, radio station or network, periodical of
90 general circulation, or book publisher for the purpose of publishing news items, editorials,
91 other comments, or paid advertisements that directly or indirectly urge legislative or executive
92 action;

93 (vii) an elected official of a local government while acting within the scope of his
94 official capacity on matters pertaining to his office or an employee of a local government while
95 acting within the scope of his employment; or

96 (viii) an individual who appears on his own behalf before a committee of the
97 Legislature or an executive branch agency solely for the purpose of testifying in support of or
98 in opposition to legislative or executive action.

99 [~~(10)~~] (11) "Person" includes individuals, bodies politic and corporate, partnerships,
100 associations, and companies.

101 [~~(11)~~] (12) "Principal" means a person who employs a lobbyist either as an employee
102 or as an independent contractor.

103 [~~(12)~~] (13) "Public official" means:

104 (a) a member of the Legislature;

105 (b) an individual elected to a position in the executive branch; or

106 (c) an individual appointed to or employed in the executive or legislative branch if that
107 individual:

108 (i) occupies a policymaking position or makes purchasing or contracting decisions;

109 (ii) drafts legislation or makes rules;

110 (iii) determines rates or fees; or

111 (iv) makes adjudicative decisions.

112 [~~(13)~~] (14) "Related person" means any person, or agent or employee of a person, who
113 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

114 [~~(14)~~] (15) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
115 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
116 spouse of any of these individuals.

117 Section 2. Section **36-11-103** is amended to read:

118 **36-11-103. Licensing requirements.**

119 (1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the
120 lieutenant governor by completing the form required by this section.

121 (b) The lieutenant governor shall issue licenses to qualified lobbyists.

122 (c) The lieutenant governor shall prepare a Lobbyist License Application Form that
123 includes:

124 (i) a place for the lobbyist's name and business address;

125 (ii) a place for the name and business address of each principal for whom the lobbyist
126 works or is hired as an independent contractor;

127 (iii) a place for the name and address of the person who paid or will pay the lobbyist's
128 registration fee, if the fee is not paid by the lobbyist;

129 (iv) a place for the lobbyist to disclose any elected or appointed position that the
130 lobbyist holds in state or local government, if any;

131 (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist
132 will be reimbursed; and

133 (vi) a certification to be signed by the lobbyist that certifies that the information
134 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and
135 belief.

136 (2) Each lobbyist who obtains a license under this section shall update the licensure
137 information when the lobbyist accepts employment for lobbying by a new client.

138 (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a
139 lobbying license to an applicant who:

140 (i) files an application with the lieutenant governor that contains the information
141 required by this section; and

142 (ii) pays a \$25 filing fee.

143 (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals
144 and expires on December 31 of each even-numbered year.

145 (4) (a) The lieutenant governor may disapprove an application for a lobbying license:

146 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,
147 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

148 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304
149 within one year before the date of the lobbying license application;

150 (iii) for the term of any suspension imposed under Section 36-11-401; or
151 (iv) if, within one year before the date of the lobbying license application, the applicant
152 has been found to have willingly and knowingly:

153 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,
154 36-11-304, 36-11-305, or 36-11-403; or

155 (B) filed a document required by this chapter that the lobbyist knew contained
156 materially false information or omitted material information.

157 (b) An applicant may appeal the disapproval in accordance with the procedures
158 established by the lieutenant governor under this chapter and Title 63, Chapter 46b,
159 Administrative Procedures Act.

160 (5) The lieutenant governor shall deposit license fees in the General Fund.

161 (6) A principal need not obtain a license under this section, but if the principal makes
162 expenditures to benefit a public official without using a lobbyist as an agent to confer those
163 benefits, the principal shall disclose those expenditures as required by Sections 36-11-201.

164 (7) Government officers need not obtain a license under this section, but shall:

165 (a) register as agency lobbyists under Section 36-11-103.1; and

166 (b) disclose any expenditures made to benefit public officials as required by Sections
167 36-11-201.

168 (8) The lieutenant governor shall provide information about lobbyists and their clients
169 to the Legislature as required by Section 63-38-3.1 and by legislative rule.

170 Section 3. Section **36-11-103.1** is enacted to read:

171 **36-11-103.1. Registration requirements -- Agency lobbyists.**

172 (1) Before engaging in any lobbying, an agency lobbyist shall register with the
173 lieutenant governor's office by completing the form required by this section.

174 (2) The lieutenant governor shall prepare an Agency Lobbyist Registration Form that
175 includes:

176 (a) a place for the agency lobbyist's name and business address;

177 (b) the agency or higher education institution for whom the agency lobbyist works;

178 (c) a place for the lobbyist to disclose any elected or appointed position that the
179 lobbyist holds in state or local government, if any; and

180 (d) a certification to be signed by the lobbyist that certifies that the information

181 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and
182 belief.

183 Section 4. Section **36-11-106** is amended to read:

184 **36-11-106. Reports are public documents.**

185 (1) Any person may:

186 (a) without charge, inspect a license application or financial report filed with the
187 lieutenant governor in accordance with this chapter; and

188 (b) make a copy of a report after paying for the actual costs of the copy.

189 (2) The lieutenant governor shall make financial reports filed in accordance with this
190 chapter available for viewing on the Internet at the lieutenant governor's website within seven
191 calendar days after the report is received by the lieutenant governor.

192 (3) No later than the first day of the annual general session of the Legislature, the
193 lieutenant governor shall provide to the secretary of the Senate and the chief clerk of the
194 House:

195 (a) a list containing the name of each licensed lobbyist and their clients; and

196 (b) a list containing the name of each agency lobbyist and the agency or higher
197 education institution for whom the agency lobbyist works.

198 Section 5. Section **63-38-3.1** is amended to read:

199 **63-38-3.1. Restrictions on agency expenditures of monies -- Lobbyists.**

200 (1) As used in this section:

201 (a) (i) "Agency" means each department, commission, board, council, agency,
202 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
203 unit, bureau, panel, or other administrative unit of the state.

204 (ii) "Agency" includes the legislative branch, the judicial branch, the Board of Regents,
205 the board of trustees of each higher education institution, each higher education institution, or a
206 public education entity.

207 (b) "Executive action" means action undertaken by the governor, including signing or
208 vetoing legislation, and action undertaken by any official in the executive branch of
209 government.

210 (c) "Legislative action" means action undertaken by the Utah Legislature or any part of
211 it.

212 (d) "Lobbyist" means a person who is not an employee of an agency who is hired as an
213 independent contractor by the agency to communicate with legislators or the governor for the
214 purpose of influencing the passage, defeat, amendment, or postponement of legislative or
215 executive action.

216 (2) A state agency or entity to which monies are appropriated by the Legislature may
217 not expend any monies to pay a lobbyist.

218 (3) (a) No later than the first day of the annual general session, the lieutenant governor
219 shall report the names of each agency that is identified by a lobbyist as the lobbyist's client to:

220 (i) the Legislative Fiscal Analyst;

221 (ii) the speaker of the House;

222 (iii) the president of the Senate;

223 (iv) the House and Senate minority leaders; and

224 (v) the chairs of the Executive Appropriations Committee.

225 (b) The Legislature may reduce any General Fund, Uniform School Fund, or
226 Transportation Fund appropriation made to an agency that violates this section by up to twice
227 the amount paid to the lobbyist.