

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) "Agency lobbyist" means a full time or part time officer or employee of the executive or judicial branch of government or a full time or part time employee of a higher education institution whose job description or responsibilities include public information, public relations, fundraising, or hosting public officials.



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~~] Campaign and Financial Reporting Requirements;

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 (6) "Hosting" means establishing, sponsoring, or arranging social events, activities, or
64 entertainment events for public officials with the intent of developing relationships to further
65 the legislative, fiscal, or development interests of the agency or higher education institution that
66 employs the agency lobbyist.

67 [~~5~~] (7) "Immediate family" means a spouse, a child residing in the household, or an
68 individual claimed as a dependent for tax purposes.

69 [~~6~~] (8) "Interested person" means an individual defined in Subsections [~~9~~]
70 (10)(b)(ii) and (viii).

71 [~~7~~] (9) "Legislative action" means:

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

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

75 [~~8~~] (10) "Lobbying" means communicating with a public official for the purpose of
76 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

77 [~~9~~] (11) (a) "Lobbyist" means an individual who is employed by a principal or who
78 contracts for economic consideration, other than reimbursement for reasonable travel expenses,
79 with a principal to lobby a public official.

80 (b) "Lobbyist" does not include:

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

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

86 (iii) any person participating on or appearing before an advisory or study task force,
87 commission, board, or committee, constituted by the Legislature or any agency or department

88 of state government, except legislative standing, appropriation, or interim committees;

89 (iv) a representative of a political party;

90 (v) an individual representing a bona fide church solely for the purpose of protecting
91 the right to practice the religious doctrines of the church unless the individual or church makes
92 an expenditure that confers a benefit on a public official;

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

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

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

103 [~~(10)~~] (12) "Person" includes individuals, bodies politic and corporate, partnerships,
104 associations, and companies.

105 [~~(11)~~] (13) "Principal" means a person who employs a lobbyist either as an employee
106 or as an independent contractor.

107 [~~(12)~~] (14) "Public official" means:

108 (a) a member of the Legislature;

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

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

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

113 (ii) drafts legislation or makes rules;

114 (iii) determines rates or fees; or

115 (iv) makes adjudicative decisions.

116 [~~(13)~~] (15) "Related person" means any person, or agent or employee of a person, who
117 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

118 [~~(14)~~] (16) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,

119 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
120 spouse of any of these individuals.

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

122 **36-11-103. Licensing requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,
151 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

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

154 (iii) for the term of any suspension imposed under Section 36-11-401; or

155 (iv) if, within one year before the date of the lobbying license application, the applicant
156 has been found to have willingly and knowingly:

157 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,
158 36-11-304, 36-11-305, or 36-11-403; or

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

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

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

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

168 (7) Government officers need not obtain a license under this section, but shall disclose
169 any expenditures made to benefit public officials as required by Sections 36-11-201.

170 (8) Agency lobbyists shall register according to the requirements of Section
171 36-11-103.1.

172 (9) The lieutenant governor shall provide information about lobbyists and their clients
173 to the Legislature as required by Section 63-38-3.1.

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

175 **36-11-103.1. Registration requirements -- Agency lobbyists.**

176 (1) Before engaging in any lobbying, an agency lobbyist shall:

177 (a) register with the lieutenant governor's office by completing the form required by
178 this section; or

179 (b) renew the registration by completing the form required by this section if the
180 registration has expired according to the requirements of Subsection (2).

181 (2) The registration required by this section expires on the January 1st of each odd-
182 numbered year that is at least 12 months after the date the agency lobbyist registers with the
183 lieutenant governor's office.

184 (3) The lieutenant governor shall prepare an Agency Lobbyist Registration Form that
185 includes:

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

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

188 (c) a place for the lobbyist to disclose any elected or appointed position that the

189 lobbyist holds in state or local government, if any; and

190 (d) a certification to be signed by the lobbyist that certifies that the information
191 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and
192 belief.

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

194 **36-11-106. Reports are public documents.**

195 (1) Any person may:

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

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

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

202 (3) No later than the first day of the annual general session of the Legislature, the
203 lieutenant governor shall provide to the secretary of the Senate and the chief clerk of the House
204 or Representatives:

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

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

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

209 **63-38-3.1. Restrictions on agency expenditures of monies -- Lobbyists.**

210 (1) As used in this section:

211 (a) (i) "Agency" means each department, commission, board, council, agency,

212 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
213 unit, bureau, panel, or other administrative unit of the state.

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

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

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

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

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

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

230 (i) the Legislative Fiscal Analyst;

231 (ii) the speaker of the House;

232 (iii) the president of the Senate;

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

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

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