

Senator Carlene M. Walker proposes the following substitute bill:

1                                   **STATE AGENCY LOBBYIST AMENDMENTS**

2   2003 GENERAL SESSION

3   STATE OF UTAH

4                                   **Sponsor: Wayne A. Harper**

5   **This act modifies statutory provisions governing lobbying by state agencies. This act**  
6   **requires certain state government employees to be designated as and to register as agency**  
7   **lobbyists. This act requires that certain information about lobbyists be reported to the**  
8   **Legislature and authorizes the Legislature to penalize state agencies that hire a lobbyist**  
9   **who is not a state employee.**

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

11 AMENDS:

12           **36-11-102**, as last amended by Chapter 13, Laws of Utah 1998

13           **36-11-103**, as last amended by Chapter 338, Laws of Utah 2000

14           **36-11-106**, as last amended by Chapter 317, Laws of Utah 2002

15           **63-38-3.1**, as enacted by Chapter 267, Laws of Utah 2001

16 ENACTS:

17           **36-11-103.1**, Utah Code Annotated 1953

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

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

20           **36-11-102. Definitions.**

21           As used in this chapter:

22           (1) "Agency lobbyist" means the person designated by an agency as required by Section  
23 36-11-103.1 whose job description or responsibilities include hosting public officials.

24           [(+) (2) "Aggregate daily expenditures" means the total expenditures made within a  
25 24-hour period.



26           ~~[(2)]~~ (3) "Executive action" means:

27           (a) nominations and appointments by the governor;

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

30           (c) agency ratemaking proceedings.

31           ~~[(3)]~~ (4) (a) "Expenditure" means any of the items listed in this Subsection (4) when  
32 given to or for the benefit of a public official or his immediate family:

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

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

37           (b) "Expenditure" does not mean:

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

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

40 ~~[Corrupt Practices in Elections]~~ Campaign and Financial Reporting Requirements;

41           (iii) printed informational material;

42           (iv) a devise or inheritance;

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

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

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

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

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

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

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

54           ~~[(4)]~~ (5) (a) "Government officer" means:

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

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

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

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

65 [~~5~~] (7) "Immediate family" means a spouse, a child residing in the household, or an  
66 individual claimed as a dependent for tax purposes.

67 [~~6~~] (8) "Interested person" means an individual defined in Subsections [~~9~~]  
68 (11)(b)(ii) and (viii).

69 [~~7~~] (9) "Legislative action" means:

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

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

73 [~~8~~] (10) "Lobbying" means communicating with a public official for the purpose of  
74 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

75 [~~9~~] (11) (a) "Lobbyist" means an individual who is employed by a principal or who  
76 contracts for economic consideration, other than reimbursement for reasonable travel expenses,  
77 with a principal to lobby a public official.

78 (b) "Lobbyist" does not include:

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

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

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

87 (iv) a representative of a political party;

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

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

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

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

101 [~~(10)~~] (12) "Person" includes individuals, bodies politic and corporate, partnerships,  
102 associations, and companies.

103 [~~(11)~~] (13) "Principal" means a person who employs a lobbyist either as an employee  
104 or as an independent contractor.

105 [~~(12)~~] (14) "Public official" means:

106 (a) a member of the Legislature;

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

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

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

111 (ii) drafts legislation or makes rules;

112 (iii) determines rates or fees; or

113 (iv) makes adjudicative decisions.

114 [~~(13)~~] (15) "Related person" means any person, or agent or employee of a person, who  
115 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

116 [~~(14)~~] (16) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,  
117 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or  
118 spouse of any of these individuals.

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

120 **36-11-103. Licensing requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,  
149 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

- 150 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304  
151 within one year before the date of the lobbying license application;
- 152 (iii) for the term of any suspension imposed under Section 36-11-401; or  
153 (iv) if, within one year before the date of the lobbying license application, the applicant  
154 has been found to have willingly and knowingly:
- 155 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,  
156 36-11-304, 36-11-305, or 36-11-403; or  
157 (B) filed a document required by this chapter that the lobbyist knew contained  
158 materially false information or omitted material information.
- 159 (b) An applicant may appeal the disapproval in accordance with the procedures  
160 established by the lieutenant governor under this chapter and Title 63, Chapter 46b,  
161 Administrative Procedures Act.
- 162 (5) The lieutenant governor shall deposit license fees in the General Fund.
- 163 (6) A principal need not obtain a license under this section, but if the principal makes  
164 expenditures to benefit a public official without using a lobbyist as an agent to confer those  
165 benefits, the principal shall disclose those expenditures as required by Sections 36-11-201.
- 166 (7) Government officers need not obtain a license under this section, but shall disclose  
167 any expenditures made to benefit public officials as required by Sections 36-11-201.
- 168 (8) Agency lobbyists shall register according to the requirements of Section  
169 36-11-103.1.
- 170 (9) The lieutenant governor shall provide information about lobbyists and their clients  
171 to the Legislature as required by Section 63-38-3.1.
- 172 Section 3. Section **36-11-103.1** is enacted to read:
- 173 **36-11-103.1. Registration requirements -- Agency lobbyists.**
- 174 (1) (a) Each state executive or judicial branch agency and each higher education  
175 institution shall, by January 1 of each even-numbered year:
- 176 (i) submit the name of a full-time or part-time employee whose job description or  
177 responsibilities will include acting as the agency's or institution's primary contact and liaison  
178 for all events that involve the hosting of public officials; and
- 179 (ii) cause that person to register as an agency lobbyist under this section.
- 180 (b) An agency or institution may submit more than one name.

181 (2) By January 1 of each even-numbered year, each agency lobbyist designated as  
182 required by this section shall register with the lieutenant governor's office by completing the  
183 form required by this section.

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 of 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.