

**LOBBYING ACTIVITIES BY STATE AND LOCAL
GOVERNMENT AGENCIES**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Lobbyist Disclosure and Regulation Act by amending provisions to require disclosure of lobbying for or by a state or local governmental entity.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a principal that is a governmental entity to disclose the amount of compensation paid by the principal to a lobbyist;
- ▶ requires a principal that is an association of which a governmental entity is a member to disclose:
 - the amount paid by the governmental entity to be a member of the association;
- and
 - the amount of compensation paid by the principal to a lobbyist;
- ▶ requires a lobbyist for a principal that is a governmental entity to disclose the lobbyist's compensation;
- ▶ requires a government officer who lobbies to file a report with the lieutenant governor on a quarterly basis that includes the number of hours the government officer lobbied and the value of those hours; and
- ▶ makes technical changes.



Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:****36-11-102**, as last amended by Laws of Utah 2010, Chapter 325**36-11-103**, as last amended by Laws of Utah 2010, Chapter 325**36-11-201**, as last amended by Laws of Utah 2010, Chapter 325

*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) "Aggregate daily expenditures" means:

(a) for a single lobbyist, principal, or government officer, the total of all expenditures made within a calendar day by the lobbyist, principal, or government officer for the benefit of an individual public official;

(b) for an expenditure made by a member of a lobbyist group, the total of all expenditures made within a calendar day by every member of the lobbyist group for the benefit of an individual public official; or

(c) for a multiclient lobbyist, the total of all expenditures made by the multiclient lobbyist within a calendar day for the benefit of an individual public official, regardless of whether the expenditures were attributed to different clients.

(2) "Approved meeting or activity" means a meeting or activity:

(a) to which a legislator is invited; and

(b) attendance at which is approved by:

(i) the speaker of the House of Representatives, if the public official is a member of the House of Representatives; or

(ii) the president of the Senate, if the public official is a member of the Senate.

(3) "Capitol hill" means the grounds, monuments, parking areas, and buildings within

the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.

~~[(3)]~~ (4) (a) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, given, donated, or transferred to an individual for the provision of services or ownership before any withholding required by federal or state law.

(b) "Compensation" includes:

(i) a salary or commission;

(ii) a bonus;

(iii) a benefit;

(iv) a contribution to a retirement program or account;

(v) a payment includable in gross income, as defined in Section 62, Internal Revenue Code, and subject to Social Security deductions, including a payment in excess of the maximum amount subject to deduction under Social Security law;

(vi) an amount that the individual authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; or

(vii) income based on an individual's ownership interest.

~~[(4)]~~ (5) "Compensation payor" means a person who pays compensation to a public official in the ordinary course of business:

(a) because of the public official's ownership interest in the compensation payor; or

(b) for services rendered by the public official on behalf of the compensation payor.

~~[(5)]~~ (6) "Executive action" means:

(a) a nomination or appointment by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) agency ratemaking proceedings; or

(d) an adjudicative proceeding of a state agency.

~~[(6)]~~ (7) (a) "Expenditure" means any of the items listed in this Subsection ~~[(6)]~~ (7)(a) when given to or for the benefit of a public official unless consideration of equal or greater value is received:

(i) a purchase, payment, or distribution;

(ii) a loan, gift, or advance;

- 90 (iii) a deposit, subscription, or forbearance;
91 (iv) services or goods;
92 (v) money;
93 (vi) real property;
94 (vii) a ticket or admission to a sporting, recreational, or artistic event; or
95 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide
96 any item listed in Subsections [~~6~~] (7)(a)(i) through (vii).
97 (b) "Expenditure" does not mean:
98 (i) a commercially reasonable loan made in the ordinary course of business;
99 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
100 Campaign and Financial Reporting Requirements;
101 (iii) printed informational material that is related to the performance of the recipient's
102 official duties;
103 (iv) a devise or inheritance;
104 (v) any item listed in Subsection [~~6~~] (7)(a) if:
105 (A) given by a relative;
106 (B) given by a compensation payor for a purpose solely unrelated to the public
107 official's position as a public official; or
108 (C) (I) the item has a value of less than \$10; and
109 (II) the aggregate daily expenditures do not exceed \$10;
110 (vi) food or beverage that is provided at an event to which the following are invited:
111 (A) all members of the Legislature;
112 (B) all members of a standing or interim committee;
113 (C) all members of an official legislative task force;
114 (D) all members of a party caucus; or
115 (E) all members of a group described in Subsections [~~6~~] (7)(b)(vi)(A) through (D)
116 who are attending a meeting of a national organization whose primary purpose is addressing
117 general legislative policy;
118 (vii) food or beverage that is provided at an event to a public official who is:
119 (A) giving a speech at the event;
120 (B) participating in a panel discussion at the event; or

- 121 (C) presenting or receiving an award at the event;
- 122 (viii) a plaque, commendation, or award presented in public and having a cash value
- 123 not exceeding \$50;
- 124 (ix) admission to or attendance at an event, the primary purpose of which is:
- 125 (A) to solicit contributions reportable under:
- 126 (I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or
- 127 (II) 2 U.S.C. Sec. 434; or
- 128 (B) charitable solicitation, as defined in Section 13-22-2;
- 129 (x) travel to, lodging at, food or beverage served at, and admission to an approved
- 130 meeting or activity; or
- 131 (xi) sponsorship of an official event or official entertainment of an approved meeting
- 132 or activity.
- 133 ~~[(7)]~~ (8) (a) "Government officer" means:
- 134 (i) an individual elected to a position in state or local government, when acting within
- 135 the government officer's official capacity; or
- 136 (ii) an individual appointed to or employed in a full-time position by state or local
- 137 government, when acting within the scope of the individual's employment.
- 138 (b) "Government officer" does not mean a member of the legislative branch of state
- 139 government.
- 140 (9) "Governmental entity" means:
- 141 (a) an entity that is part of the executive or judicial branch of state government; or
- 142 (b) a political subdivision or an entity that is part of a political subdivision.
- 143 ~~[(8)]~~ (10) "Immediate family" means:
- 144 (a) a spouse;
- 145 (b) a child residing in the household; or
- 146 (c) an individual claimed as a dependent for tax purposes.
- 147 ~~[(9)]~~ (11) "Legislative action" means:
- 148 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or
- 149 proposed in either house of the Legislature or its committees or requested by a legislator; and
- 150 (b) the action of the governor in approving or vetoing legislation.
- 151 ~~[(10)]~~ (12) "Lobbying" means communicating with a public official for the purpose of

influencing the passage, defeat, amendment, or postponement of legislative or executive action.

~~[(11)]~~ (13) (a) "Lobbyist" means:

(i) an individual who is employed by a principal; or

(ii) an individual who contracts for economic consideration, other than reimbursement for reasonable travel expenses, with a principal to lobby a public official.

(b) "Lobbyist" does not include:

(i) a government officer;

(ii) a member or employee of the legislative branch of state government;

(iii) a person while appearing at, or providing written comments to, a hearing conducted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act or Title 63G, Chapter 4, Administrative Procedures Act;

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

(v) a representative of a political party;

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

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

(viii) an individual who appears on the individual's own behalf before a committee of the Legislature or an agency of the executive branch of state government solely for the purpose of testifying in support of or in opposition to legislative or executive action.

~~[(12)]~~ (14) "Lobbyist group" means two or more lobbyists, principals, government officers, or any combination of lobbyists, principals, and officers who each contribute a portion of an expenditure made to benefit a public official or member of the public official's immediate family.

~~[(13)]~~ (15) "Multiclient lobbyist" means a single lobbyist, principal, or government officer who represents two or more clients and divides the aggregate daily expenditure made to

benefit a public official or member of the public official's immediate family between two or more of those clients.

~~[(14)]~~ (16) "Principal" means a person that employs an individual to perform lobbying, either as an employee or as an independent contractor.

~~[(15)]~~ (17) "Public official" means:

(a) (i) a member of the Legislature;

(ii) an individual elected to a position in the executive branch of state government; or

(iii) an individual appointed to or employed in a position in the executive or legislative branch of state government if that individual:

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

(B) drafts legislation or makes rules;

(C) determines rates or fees; or

(D) makes adjudicative decisions; or

(b) an immediate family member of a person described in Subsection ~~[(15)]~~ (17)(a).

~~[(16)]~~ (18) "Public official type" means a notation to identify whether a public official is:

(a) (i) a member of the Legislature;

(ii) an individual elected to a position in the executive branch of state government;

(iii) an individual appointed to or employed in a position in the legislative branch of state government who meets the definition of public official under Subsection ~~[(15)]~~

(17)(a)(iii); or

(iv) an individual appointed to or employed in a position in the executive branch of state government who meets the definition of public official under Subsection ~~[(15)]~~

(17)(a)(iii); or

(b) an immediate family member of a person described in Subsection ~~[(15)]~~ (17)(b).

~~[(17)]~~ (19) "Quarterly reporting period" means the three-month period covered by each financial report required under Subsection 36-11-201(2)(a).

~~[(18)]~~ (20) "Related person" means a person, agent, or employee who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

~~[(19)]~~ (21) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or

spouse of any of these individuals.

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

36-11-103. Licensing requirements.

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

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

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

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

(ii) a place for the following information for each principal for whom the lobbyist works or is hired as an independent contractor:

(A) the principal's name;

(B) the principal's business address;

(C) the name of each public official that the principal employs and the nature of the employment with the public official; ~~and~~

(D) the general purposes, interests, and nature of the principal; and

(E) if the principal is a governmental entity, the amount of compensation received annually by the lobbyist;

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

(iv) a place for the lobbyist to disclose:

(A) any elected or appointed position that the lobbyist holds in state or local government, if any; and

(B) the name of each public official that the lobbyist employs and the nature of the employment with the public official, if any;

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

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

(2) Each lobbyist who obtains a license under this section shall update the licensure

information when the lobbyist accepts employment for lobbying by a new client.

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

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

(ii) pays a \$100 filing fee.

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

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

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

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

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

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

(A) violated this section or Section 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403; or

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

(v) if the applicant is prohibited from becoming a lobbyist under Title 67, Chapter 24, Lobbying Restrictions Act.

(b) An applicant may appeal the disapproval in accordance with the procedures established by the lieutenant governor under this chapter and Title 63G, Chapter 4, Administrative Procedures Act.

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

(6) A principal need not obtain a license under this section, but ~~[if the principal makes expenditures to benefit a public official without using a lobbyist as an agent to confer those benefits, the principal shall disclose those expenditures]~~ shall file a financial report as required by Section 36-11-201.

(7) Government officers need not obtain a license under this section, but shall ~~[disclose~~

any expenditures made to benefit public officials] file a financial report as required by Section 36-11-201.

(8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the reports by Section 36-11-201.

Section 3. Section **36-11-201** is amended to read:

36-11-201. Lobbyist, principal, and government officer financial reporting requirements -- Prohibition for related person to make expenditures.

(1) (a) (i) A lobbyist shall file financial reports with the lieutenant governor on or before the due dates specified in Subsection (2).

(ii) If a lobbyist has not made an expenditure during the quarterly reporting period, the lobbyist shall file a financial report listing the amount of expenditures as "none."

(b) A ~~[government officer or]~~ principal ~~[that makes an expenditure during any of the quarterly reporting periods under Subsection (2)(a)]~~ shall file a financial report with the lieutenant governor on or before the date that a report for that quarter is due~~[-]~~, if during any of the quarterly reporting periods under Subsection (2)(a), the principal:

(i) makes an expenditure without using a lobbyist as an agent to confer the expenditure;

(ii) (A) is an association of which a governmental entity is a member; and

(B) pays compensation to a lobbyist; or

(iii) (A) is a governmental entity; and

(B) pays compensation to a lobbyist.

(c) A government officer who makes an expenditure or engages in lobbying shall file a financial report with the lieutenant governor on or before the date that a financial report is due for the quarter in which the expenditure or lobbying occurs.

(2) (a) A financial report is due quarterly on the following dates:

(i) April 10, for the period of January 1 through March 31;

(ii) July 10, for the period of April 1 through June 30;

(iii) October 10, for the period of July 1 through September 30; and

(iv) January 10, for the period of October 1 through December 31 of the previous year.

(b) If the due date for a financial report falls on a Saturday, Sunday, or legal holiday, the report is due on the next succeeding business day.

(c) A financial report is timely filed if it is filed electronically before the close of regular office hours on or before the due date.

(3) A financial report shall contain:

(a) the total amount of expenditures made to benefit any public official during the quarterly reporting period;

(b) the total amount of expenditures made, by the type of public official, during the quarterly reporting period;

(c) for the financial report due on January 10:

(i) the total amount of expenditures made to benefit any public official during the last calendar year; and

(ii) the total amount of expenditures made, by the type of public official, during the last calendar year;

(d) a disclosure of each expenditure made during the quarterly reporting period to reimburse or pay for travel or lodging for a public official, including:

(i) each travel destination and each lodging location;

(ii) the name of each public official who benefitted from the expenditure on travel or lodging;

(iii) the public official type of each public official named;

(iv) for each public official named, a listing of the amount and purpose of each expenditure made for travel or lodging; and

(v) the total amount of expenditures listed under Subsection (3)(d)(iv);

(e) a disclosure of aggregate daily expenditures greater than \$10 made during the quarterly reporting period including:

(i) the date and purpose of the expenditure;

(ii) the location of the expenditure;

(iii) the name of any public official benefitted by the expenditure;

(iv) the type of the public official benefitted by the expenditure; and

(v) the total monetary worth of the benefit that the expenditure conferred on any public official;

(f) for each public official who was employed by the lobbyist, principal, or government officer, a list that provides:

- 338 (i) the name of the public official; and
- 339 (ii) the nature of the employment with the public official;
- 340 (g) each bill or resolution, by number and short title, on behalf of which the lobbyist,
- 341 principal, or government officer made an expenditure to a public official;
- 342 (h) a description of each executive action on behalf of which the lobbyist, principal, or
- 343 government officer made an expenditure to a public official;
- 344 (i) for each government officer:
- 345 (i) the number of hours the government officer spent:
- 346 (A) engaged in lobbying;
- 347 (B) on capitol hill for the purpose of lobbying; and
- 348 (C) traveling to and from capitol hill for the purpose of lobbying; and
- 349 (ii) the cost of lobbying which is an amount equal to the product of:
- 350 (A) the number of the hours described in Subsection (3)(i)(i); and
- 351 (B) the hourly rate of pay for the government officer;
- 352 (j) for each principal described in Subsection (1)(b)(ii):
- 353 (i) (A) the amount a governmental entity pays to be a member; and
- 354 (B) the name of each governmental entity member; and
- 355 (ii) the amount of compensation the principal pays to a lobbyist who is employed by
- 356 the principal or with whom the principal has a contract;
- 357 (k) for each principal described in Subsection (1)(b)(iii), the amount of compensation
- 358 the principal pays to a lobbyist with whom the principal has a contract;
- 359 ~~[(+)]~~ (l) the general purposes, interests, and nature of the entities that the lobbyist,
- 360 principal, or government officer filing the report represents; and
- 361 ~~[(j)]~~ (m) for a lobbyist, a certification that the information provided in the report is true,
- 362 accurate, and complete to the lobbyist's best knowledge and belief.
- 363 (4) A related person may not, while assisting a lobbyist, principal, or government
- 364 officer in lobbying, make an expenditure that benefits a public official under circumstances that
- 365 would otherwise fall within the disclosure requirements of this chapter if the expenditure was
- 366 made by the lobbyist, principal, or government officer.
- 367 (5) The lieutenant governor shall:
- 368 (a) (i) develop a preprinted form for a financial report required by this section; and

369 (ii) make copies of the form available to a lobbyist, principal, or government officer
370 who requests a form; and

371 (b) provide a reporting system that allows a lobbyist, principal, or government officer
372 to submit a financial report required by this chapter via the Internet.

373 (6) (a) A lobbyist and a principal shall continue to file a financial report required by
374 this section until the lobbyist or principal files a statement with the lieutenant governor that:

375 (i) states:

376 (A) for a lobbyist, that the lobbyist has ceased lobbying activities; or

377 (B) for a principal, that the principal no longer employs an individual as a lobbyist;

378 (ii) in the case of a lobbyist, states that the lobbyist is surrendering the lobbyist's
379 license;

380 (iii) contains a listing, as required by this section, of all previously unreported
381 expenditures that have been made through the date of the statement; and

382 (iv) states that the lobbyist or principal will not make any additional expenditure that is
383 not disclosed on the statement unless the lobbyist or principal complies with the disclosure and
384 licensing requirements of this chapter.

385 (b) A person that fails to renew the lobbyist's license or otherwise ceases to be licensed
386 is required to file a financial report quarterly until the person files the statement required by
387 Subsection (6)(a).

Legislative Review Note
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Office of Legislative Research and General Counsel