

Senator Todd Weiler proposes the following substitute bill:

LOBBYIST DISCLOSURE AND REGULATION ACT

AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill amends Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes and clarifies the difference between an event, a tour, and a meeting;
- ▶ describes reporting and other requirements relating to an event, a tour, and a meeting;
- ▶ requires a lobbyist or principal, that provides donated time to an individual who is seeking to fill a midterm vacancy for an elective office in the executive or legislative branch of state government, to file certain reports with the lieutenant governor in relation to the donated time;
- ▶ provides penalties for a lobbyist or principal that fails to comply with the reporting requirements described in the preceding paragraph;
- ▶ addresses public posting requirements for reports described in this bill; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **36-11-102**, as last amended by Laws of Utah 2011, Chapter 212

32 **36-11-103**, as last amended by Laws of Utah 2010, Chapter 325

33 **36-11-304**, as repealed and reenacted by Laws of Utah 2010, Chapter 325

34 **36-11-401**, as last amended by Laws of Utah 2011, Chapter 389

35 ENACTS:

36 **36-11-203**, Utah Code Annotated 1953



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

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

40 **36-11-102. Definitions.**

41 As used in this chapter:

42 (1) "Aggregate daily expenditures" means:

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

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

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

52 (2) "Approved [~~meeting or~~] activity" means a tour or a meeting [~~or activity~~]:

53 (a) (i) to which a legislator is invited; and

54 (ii) attendance at which is approved by:

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

57 (B) the president of the Senate, if the public official is a member of the Senate; or

58 (b) (i) to which a public official who holds a position in the executive branch of state
59 government is invited; and

60 (ii) attendance at which is approved by the governor or the lieutenant governor.

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

64 (b) "Compensation" includes:

65 (i) a salary or commission;

66 (ii) a bonus;

67 (iii) a benefit;

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

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

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

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

75 (4) "Compensation payor" means a person who pays compensation to a public official
76 in the ordinary course of business:

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

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

79 (5) ~~Ĥ→~~ (a) ~~←Ĥ~~ "Donated time" means ~~Ĥ→~~ , **except as provided in**

79a **Subsection (5)(b), ←Ĥ** the time provided by a principal or lobbyist, or by an
80 employee or independent contractor of a principal or lobbyist at the direction of the principal or
81 lobbyist, without charge or at a reduced rate for the benefit of a prospective appointee.

81a ~~Ĥ→~~ (b) **"Donated time" does not include time provided without charge by a principal or a**
81b **lobbyist in the principal's or lobbyist's capacity as a private citizen and not in the capacity of a**
81c **principal or lobbyist. ←Ĥ**

82 [~~5~~] (6) "Executive action" means:

83 (a) a nomination or appointment by the governor;

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

86 (c) agency ratemaking proceedings; or

87 (d) an adjudicative proceeding of a state agency.

88 (7) "Event" means entertainment, a performance, a contest, or a recreational activity
89 that an individual participates in or is a spectator at, including a sporting event, an artistic
90 event, a play, a movie, dancing, or singing.

91 ~~[(6)]~~ (8) (a) "Expenditure" means any of the items listed in this Subsection ~~[(6)]~~ (8)(a)
92 when given to or for the benefit of a public official unless consideration of equal or greater
93 value is received:

- 94 (i) a purchase, payment, or distribution;
- 95 (ii) a loan, gift, or advance;
- 96 (iii) a deposit, subscription, or forbearance;
- 97 (iv) services or goods;
- 98 (v) money;
- 99 (vi) real property;
- 100 (vii) a ticket or admission to ~~[a sporting, recreational, or artistic]~~ an event; or
- 101 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide
102 any item listed in Subsections ~~[(6)]~~ (8)(a)(i) through (vii).

- 103 (b) "Expenditure" does not mean:
- 104 (i) a commercially reasonable loan made in the ordinary course of business;
 - 105 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
106 Campaign and Financial Reporting Requirements;
 - 107 (iii) printed informational material that is related to the performance of the recipient's
108 official duties;
 - 109 (iv) a devise or inheritance;

- 110 (v) any item listed in Subsection ~~[(6)]~~ (8)(a) if:
- 111 (A) given by a relative;
 - 112 (B) given by a compensation payor for a purpose solely unrelated to the public
113 official's position as a public official; or
 - 114 (C) (I) the item has a value of less than \$10; and
115 (II) the aggregate daily expenditures do not exceed \$10;
 - 116 (vi) food or beverage that is provided at an event, a tour, or a meeting to which the
117 following are invited:

- 118 (A) all members of the Legislature;

- 119 (B) all members of a standing or interim committee;
- 120 (C) all members of an official legislative task force;
- 121 (D) all members of a party caucus; or
- 122 (E) all members of a group described in Subsections ~~[(6)]~~ (8)(b)(vi)(A) through (D)
- 123 who are attending a meeting of a national organization whose primary purpose is addressing
- 124 general legislative policy;
- 125 (vii) food or beverage that is provided at an event, a tour, or a meeting to a public
- 126 official who is:
- 127 (A) giving a speech at the event;
- 128 (B) participating in a panel discussion at the event; or
- 129 (C) presenting or receiving an award at the event;
- 130 (viii) a plaque, commendation, or award presented in public and having a cash value
- 131 not exceeding \$50;
- 132 (ix) admission to or attendance at an event, a tour, or a meeting, the primary purpose of
- 133 which is:
- 134 (A) to solicit contributions reportable under:
- 135 (I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or
- 136 (II) 2 U.S.C. Sec. 434; or
- 137 (B) charitable solicitation, as defined in Section 13-22-2;
- 138 (x) travel to, lodging at, food or beverage served at, and admission to an approved
- 139 ~~[meeting or]~~ activity;
- 140 (xi) sponsorship of an ~~[official event or official entertainment of]~~ event that is an
- 141 approved ~~[meeting or]~~ activity;
- 142 (xii) notwithstanding Subsection ~~[(6)]~~ (8)(a)(vii), admission to or attendance at an
- 143 event, a tour, or a meeting:
- 144 (A) that is sponsored by a governmental entity; or
- 145 (B) that is widely attended and related to a governmental duty of a public official; or
- 146 (xiii) travel to a widely attended ~~[event]~~ tour or meeting related to a governmental duty
- 147 of a public official if that travel results in a financial savings to the state.
- 148 ~~[(7)]~~ (9) (a) "Government officer" means:
- 149 (i) an individual elected to a position in state or local government, when acting within

150 the government officer's official capacity; or

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

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

155 [~~8~~] (10) "Immediate family" means:

156 (a) a spouse;

157 (b) a child residing in the household; or

158 (c) an individual claimed as a dependent for tax purposes.

159 [~~9~~] (11) "Legislative action" means:

160 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or
161 proposed in either house of the Legislature or its committees or requested by a legislator; and

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

163 [~~10~~] (12) "Lobbying" means communicating with a public official for the purpose of
164 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

165 [~~11~~] (13) (a) "Lobbyist" means:

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

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

169 (b) "Lobbyist" does not include:

170 (i) a government officer;

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

172 (iii) a person $\hat{H} \rightarrow$ or principal $\leftarrow \hat{H}$ while appearing at, or providing written comments to,
172a a hearing

173 conducted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act or
174 Title 63G, Chapter 4, Administrative Procedures Act;

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

178 (v) a representative of a political party;

179 (vi) an individual representing a bona fide church solely for the purpose of protecting
180 the right to practice the religious doctrines of the church, unless the individual or church makes

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

182 (vii) a newspaper, television station or network, radio station or network, periodical of
183 general circulation, or book publisher for the purpose of publishing news items, editorials,
184 other comments, or paid advertisements that directly or indirectly urge legislative or executive
185 action; ~~Ĥ→ [or] ←Ĥ~~

186 (viii) an individual who appears on the individual's own behalf before a committee of
187 the Legislature or an agency of the executive branch of state government solely for the purpose
188 of testifying in support of or in opposition to legislative or executive action ~~Ĥ→ [; or~~

188a **(ix) an individual representing a business or industry, who:**

188b **(A) interacts with public officials, in their capacity as public officials, less than seven**
188c **days per year, while accompanied by a registered lobbyist; and**

188d **(B) does not make an expenditure for, or on behalf of, a public official in relation to the**
188e **interaction or during the period of interaction.** ~~←Ĥ~~

189 ~~[(12)]~~ (14) "Lobbyist group" means two or more lobbyists, principals, government
190 officers, or any combination of lobbyists, principals, and officers who each contribute a portion
191 of an expenditure made to benefit a public official or member of the public official's immediate
192 family.

193 (15) "Meeting" means a gathering of people to discuss an issue, receive instruction, or
194 make a decision, including a conference, seminar, or summit.

195 ~~[(13)]~~ (16) "Multiclient lobbyist" means a single lobbyist, principal, or government
196 officer who represents two or more clients and divides the aggregate daily expenditure made to
197 benefit a public official or member of the public official's immediate family between two or
198 more of those clients.

199 (17) "Prospective appointee" means an individual who is seeking to fill a midterm
200 vacancy for an elective office in the executive or legislative branch of state government.

201 ~~[(14)]~~ (18) "Principal" means a person that employs an individual to perform lobbying,
202 either as an employee or as an independent contractor.

203 ~~[(15)]~~ (19) "Public official" means:

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

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

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

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

209 (B) drafts legislation or makes rules;

210 (C) determines rates or fees; or

211 (D) makes adjudicative decisions; or

212 (b) an immediate family member of a person described in Subsection ~~[(15)]~~ (19)(a).
 213 ~~[(16)]~~ (20) "Public official type" means a notation to identify whether a public official
 214 is:

215 (a) (i) a member of the Legislature;
 216 (ii) an individual elected to a position in the executive branch of state government;
 217 (iii) an individual appointed to or employed in a position in the legislative branch of
 218 state government who meets the definition of public official under Subsection ~~[(15)]~~
 219 (19)(a)(iii); or

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

223 (b) an immediate family member of a person described in Subsection ~~[(15)]~~ (19)(b).
 224 ~~[(17)]~~ (21) "Quarterly reporting period" means the three-month period covered by each
 225 financial report required under Subsection 36-11-201(2)(a).

226 ~~[(18)]~~ (22) "Related person" means a person, agent, or employee who knowingly and
 227 intentionally assists a lobbyist, principal, or government officer in lobbying.

228 ~~[(19)]~~ (23) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
 229 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
 230 spouse of any of these individuals.

231 (24) "Tour" means visiting a location, for a purpose relating to the duties of a public
 232 official, and not \hat{S} → primarily ← \hat{S} for entertainment, including:

233 (a) viewing a facility;
 234 (b) viewing the sight of a natural disaster; or
 235 (c) assessing a circumstance in relation to which a public official may need to take
 236 action within the scope of the public official's duties.

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

238 **36-11-103. Licensing requirements.**

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

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

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

243 includes:

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

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

247 (A) the principal's name;

248 (B) the principal's business address;

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

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

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

254 (iv) a place for the lobbyist to disclose:

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

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

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

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

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

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

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

270 (ii) pays a \$100 filing fee.

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

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

- 274 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,
275 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;
276 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304
277 within one year before the date of the lobbying license application;
278 (iii) for the term of any suspension imposed under Section 36-11-401;
279 (iv) if, within one year before the date of the lobbying license application, the applicant
280 has been found to have willingly and knowingly:
- 281 (A) violated this section or Section 36-11-201, 36-11-301, 36-11-302, 36-11-303,
282 36-11-304, 36-11-305, or 36-11-403; or
 - 283 (B) filed a document required by this chapter that the lobbyist knew contained
284 materially false information or omitted material information; or
 - 285 (v) if the applicant is prohibited from becoming a lobbyist under Title 67, Chapter 24,
286 Lobbying Restrictions Act.
- 287 (b) An applicant may appeal the disapproval in accordance with the procedures
288 established by the lieutenant governor under this chapter and Title 63G, Chapter 4,
289 Administrative Procedures Act.
- 290 (5) The lieutenant governor shall deposit license fees in the General Fund as a
291 dedicated credit to be used by the lieutenant governor to administer the licensing program
292 described in this section.
- 293 (6) A principal need not obtain a license under this section, but if the principal makes
294 expenditures to benefit a public official without using a lobbyist as an agent to confer those
295 benefits, the principal shall disclose those expenditures as required by Section 36-11-201.
- 296 (7) Government officers need not obtain a license under this section, but shall disclose
297 any expenditures made to benefit public officials as required by Section 36-11-201.
- 298 (8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the
299 lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the
300 reports by Section 36-11-201.

301 Section 3. Section 36-11-203 is enacted to read:

302 **36-11-203. Reporting requirements for donated time to benefit prospective**
303 **appointee.**

304 **(1) Within one business day after the earlier of the day on which a lobbyist or principal**

305 agrees to provide, or the day on which the lobbyist or principal begins to provide, donated time
306 to a prospective appointee, the lobbyist or principal shall file an electronic report with the
307 lieutenant governor that includes:

- 308 (a) the name, address, and telephone number of the lobbyist or principal;
309 (b) the name of the prospective appointee;
310 (c) the elective office for which the prospective appointee is seeking to be appointed;

311 and

- 312 (d) a statement that the lobbyist or principal has agreed to provide or begun to provide
313 donated time to the prospective appointee.

314 (2) A lobbyist or principal described in Subsection (1) shall, within three business days
315 after the day on which the lobbyist or principal provides donated time to a prospective
316 appointee, file an electronic report with the lieutenant governor that includes:

- 317 (a) the name, address, and telephone number of the lobbyist or principal;
318 (b) the name of the prospective appointee;
319 (c) the elective office for which the prospective appointee is seeking to be appointed;
320 (d) the number of hours of donated time, per day, that:

321 (i) the lobbyist or principal has provided to the prospective appointee; and

322 (ii) were not included in a previous report filed under this Subsection (2); and

323 (e) a description of the services provided to the prospective appointee during the
324 donated time.

325 (3) The lieutenant governor shall:

326 (a) post each report described in this section on the lieutenant governor's website
327 within one business day after the day on which the lieutenant governor receives the report; and

328 (b) ensure that an individual may view a report described in Subsection (3)(a) by
329 searching for the prospective appointee's name from the same location on the lieutenant
330 governor's website that an individual uses to search for the name of a reporting entity, as
331 defined in Section [20A-11-101](#), in order to view a financial statement filed by the reporting
332 entity.

333 Section 4. Section **36-11-304** is amended to read:

334 **36-11-304. Expenditures over \$10 prohibited -- Exceptions.**

335 (1) Except as provided in Subsection (2), a lobbyist, principal, or government officer

336 may not make or offer to make aggregate daily expenditures that exceed \$10.

337 (2) A lobbyist, principal, or government officer may make aggregate daily expenditures
338 that exceed \$10:

339 (a) for the following items, if the expenditure is reported in accordance with Section
340 36-11-201:

341 (i) food;

342 (ii) beverage;

343 (iii) travel;

344 (iv) lodging; or

345 (v) admission to or attendance at a tour or meeting [~~or activity~~] that is not an approved
346 [~~meeting or~~] activity; or

347 (b) if the expenditure is made for a purpose solely unrelated to the public official's
348 position as a public official.

349 Section 5. Section 36-11-401 is amended to read:

350 **36-11-401. Penalties.**

351 (1) Any person who willfully and knowingly violates Section 36-11-103, 36-11-201,
352 36-11-203, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403, is subject
353 to the following penalties:

354 (a) an administrative penalty of up to \$1,000 for each violation; and

355 (b) for each subsequent violation of that same section within 24 months, either:

356 (i) an administrative penalty of up to \$5,000; or

357 (ii) suspension of the violator's lobbying license for up to one year, if the person is a
358 lobbyist.

359 (2) Any person who willfully and knowingly fails to file a financial report required by
360 this chapter, omits material information from a license application form or financial report, or
361 files false information on a license application form or financial report, is subject to the
362 following penalties:

363 (a) an administrative penalty of up to \$1,000 for each violation; or

364 (b) suspension of the violator's lobbying license for up to one year, if the person is a
365 lobbyist.

366 (3) Any person who willfully and knowingly fails to file a financial report required by

367 this chapter on the date that it is due shall, in addition to the penalties, if any, imposed under
368 Subsection (1) or (2), pay a penalty of up to \$50 per day for each day that the report is late.

369 (4) (a) When a lobbyist is convicted of violating Section 76-8-103, 76-8-107, 76-8-108,
370 or 76-8-303, the lieutenant governor shall suspend the lobbyist's license for up to five years
371 from the date of the conviction.

372 (b) When a lobbyist is convicted of violating Section 76-8-104 or 76-8-304, the
373 lieutenant governor shall suspend a lobbyist's license for up to one year from the date of
374 conviction.

375 (5) (a) Any person who willfully and knowingly violates Section 36-11-301,
376 36-11-302, or 36-11-303 is guilty of a class B misdemeanor.

377 (b) The lieutenant governor shall suspend the lobbyist license of any person convicted
378 under any of these sections for up to one year.

379 (c) The suspension shall be in addition to any administrative penalties imposed by the
380 lieutenant governor under this section.

381 (d) Any person with evidence of a possible violation of this chapter may submit that
382 evidence to the lieutenant governor for investigation and resolution.

383 (6) A lobbyist who does not complete the training required by Section 36-11-307 is
384 subject to the following penalties:

385 (a) an administrative penalty of up to \$1,000 for each failure to complete the training
386 required by Section 36-11-307; and

387 (b) for two or more failures to complete the training required by Section 36-11-307
388 within 24 months, suspension of the lobbyist's lobbying license.

389 (7) Nothing in this chapter creates a third-party cause of action or appeal rights.