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3 SB250 HOUSE JUDICIARY COMMITTEE ENGROSSED SUBSTITUTE
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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 To amend Section 36-25-1, Code of Alabama 1975,
14 relating to the definition of lobbyist, to expand the
15 definition to include a person seeking to obtain a contract
16 with a governmental entity on behalf of a third party.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 36-25-1, Code of Alabama 1975, is
19 amended to read as follows:

20 "§36-25-1.

21 "Whenever used in this chapter, the following words
22 and terms shall have the following meanings:

23 "(1) BUSINESS. Any corporation, partnership,
24 proprietorship, firm, enterprise, franchise, association,
25 organization, self-employed individual, or any other legal
26 entity.

1 "(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED.
2 Any business of which the person or a member of his or her
3 family is an officer, owner, partner, board of director
4 member, employee, or holder of more than five percent of the
5 fair market value of the business.

6 "(3) CANDIDATE. This term as used in this chapter
7 shall have the same meaning ascribed to it in Section
8 17-22A-2.

9 "(4) COMMISSION. The State Ethics Commission.

10 "(5) COMPLAINT. Written allegation or allegations
11 that a violation of this chapter has occurred.

12 "(6) COMPLAINANT. A person who alleges a violation
13 or violations of this chapter by filing a complaint against a
14 respondent.

15 "(7) CONFIDENTIAL INFORMATION. A complaint filed
16 pursuant to this chapter, together with any statement,
17 conversations, knowledge of evidence, or information received
18 from the complainant, witness, or other person related to such
19 complaint.

20 "(8) CONFLICT OF INTEREST. A conflict on the part of
21 a public official or public employee between his or her
22 private interests and the official responsibilities inherent
23 in an office of public trust. A conflict of interest involves
24 any action, inaction, or decision by a public official or
25 public employee in the discharge of his or her official duties
26 which would materially affect his or her financial interest or
27 those of his or her family members or any business with which

1 the person is associated in a manner different from the manner
2 it affects the other members of the class to which he or she
3 belongs. A conflict of interest shall not include any of the
4 following:

5 "a. A loan or financial transaction made or
6 conducted in the ordinary course of business.

7 "b. An occasional nonpecuniary award publicly
8 presented by an organization for performance of public
9 service.

10 "c. Payment of or reimbursement for actual and
11 necessary expenditures for travel and subsistence for the
12 personal attendance of a public official or public employee at
13 a convention or other meeting at which he or she is scheduled
14 to meaningfully participate in connection with his or her
15 official duties and for which attendance no reimbursement is
16 made by the state.

17 "d. Any campaign contribution, including the
18 purchase of tickets to, or advertisements in journals, for
19 political or testimonial dinners, if the contribution is
20 actually used for political purposes and is not given under
21 circumstances from which it could reasonably be inferred that
22 the purpose of the contribution is to substantially influence
23 a public official in the performance of his or her official
24 duties.

25 "(9) DAY. Calendar day.

26 "(10) DEPENDENT. Any person, regardless of his or
27 her legal residence or domicile, who receives 50 percent or

1 more of his or her support from the public official or public
2 employee or his or her spouse or who resided with the public
3 official or public employee for more than 180 days during the
4 reporting period.

5 "(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
6 spouse or a dependent of the public employee.

7 "(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
8 spouse, a dependent, an adult child and his or her spouse, a
9 parent, a spouse's parents, a sibling and his or her spouse,
10 of the public official.

11 "(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
12 Public or private corporations and authorities, including but
13 not limited to, hospitals or other health care corporations,
14 established pursuant to state law by state, county or
15 municipal governments for the purpose of carrying out a
16 specific governmental function. Notwithstanding the foregoing,
17 all employees, including contract employees, of hospitals or
18 other health care corporations and authorities are exempt from
19 the provisions of this chapter.

20 "(14) HOUSEHOLD. The public official, public
21 employee, and his or her spouse and dependents.

22 "(15) LAW ENFORCEMENT OFFICER. A full-time employee
23 of a governmental unit responsible for the prevention or
24 investigation of crime who is authorized by law to carry
25 firearms, execute search warrants, and make arrests.

26 "(16) LEGISLATIVE BODY. The Senate of Alabama, the
27 House of Representatives of Alabama, a county commission, city

1 council, city commission, town council, or municipal council
2 or commission, and any committee or subcommittee thereof.

3 "(17) LOBBYING. The practice of promoting, opposing,
4 or in any manner influencing or attempting to influence the
5 introduction, defeat, or enactment of legislation before any
6 legislative body; opposing or in any manner influencing the
7 executive approval, veto, or amendment of legislation; or the
8 practice of promoting, opposing, or in any manner influencing
9 or attempting to influence the enactment, promulgation,
10 modification, or deletion of regulations before any regulatory
11 body; provided, however, that providing public testimony
12 before a legislative body or regulatory body or any committee
13 thereof shall not be deemed lobbying.

14 "(18) LOBBYIST.

15 "a. The term lobbyist includes any of the following:

16 "1. A person who receives compensation or
17 reimbursement from another person, group, or entity to lobby.

18 "2. A person who lobbies as a regular and usual part
19 of employment, whether or not any compensation in addition to
20 regular salary and benefits is received.

21 "3. A person who expends in excess of one hundred
22 dollars (\$100) for a thing of value, not including funds
23 expended for travel, subsistence expenses, and literature,
24 buttons, stickers, publications, or other acts of free speech,
25 during a calendar year to lobby.

26 "4. A consultant to the state, county, or municipal
27 levels of government or their instrumentalities, in any manner

1 employed to influence legislation or regulation, regardless
2 whether the consultant is paid in whole or part from state,
3 county, municipal, or private funds.

4 "5. An employee, a paid consultant, or a member of
5 the staff of a lobbyist, whether or not he or she is paid, who
6 regularly communicates with members of a legislative body
7 regarding pending legislation and other matters while the
8 legislative body is in session.

9 "6. A person seeking to obtain a contract with
10 state, county, or municipal levels of government or their
11 instrumentalities on behalf of a third person, *excluding*
12 *contracts for utility services where no competition exists or*
13 *where the rates are set by law, regulation, or ordinance.*

14 "b. The term lobbyist does not include any of the
15 following:

16 "1. A member of a legislative body on a matter which
17 involves that person's official duties.

18 "2. A person or attorney rendering professional
19 services in drafting bills or in advising clients and in
20 rendering opinions as to the construction and effect of
21 proposed or pending legislation, executive action, or rules or
22 regulations, where those professional services are not
23 otherwise connected with legislative, executive, or regulatory
24 action.

25 "3. Reporters and editors while pursuing normal
26 reportorial and editorial duties.

1 "4. Any citizen not expending funds as set out above
2 in paragraph a.3. or not lobbying for compensation who
3 contacts a member of a legislative body, or gives public
4 testimony on a particular issue or on particular legislation,
5 or for the purpose of influencing legislation and who is
6 merely exercising his or her constitutional right to
7 communicate with members of a legislative body.

8 "5. A person who appears before a legislative body,
9 a regulatory body, or an executive agency to either sell or
10 purchase goods or services.

11 "6. A person whose primary duties or
12 responsibilities do not include lobbying, but who may, from
13 time to time, organize social events for members of a
14 legislative body to meet and confer with members of
15 professional organizations and who may have only irregular
16 contacts with members of a legislative body when the body is
17 not in session or when the body is in recess.

18 "(19) MINOR VIOLATION. Any violation of this chapter
19 in which the public official or public employee receives an
20 economic gain in an amount less than two hundred fifty dollars
21 (\$250) or the governmental entity has an economic loss of less
22 than two hundred fifty dollars (\$250).

23 "(20) PERSON. A business, individual, corporation,
24 partnership, union, association, firm, committee, club, or
25 other organization or group of persons.

26 "(21) PRINCIPAL. A person or business which employs,
27 hires, or otherwise retains a lobbyist. Nothing in this

1 chapter shall be deemed to prohibit a principal from
2 simultaneously serving as his or her own lobbyist.

3 "(22) PROBABLE CAUSE. A finding that the allegations
4 are more likely than not to have occurred.

5 "(23) PUBLIC EMPLOYEE. Any person employed at the
6 state, county, or municipal level of government or their
7 instrumentalities, including governmental corporations and
8 authorities, but excluding employees of hospitals or other
9 health care corporations including contract employees of those
10 hospitals or other health care corporations, who is paid in
11 whole or in part from state, county or municipal funds. For
12 purposes of this chapter, a public employee does not include a
13 person employed on a part-time basis whose employment is
14 limited to providing professional services other than
15 lobbying, the compensation for which constitutes less than 50
16 percent of the part-time employee's income.

17 "(24) PUBLIC OFFICIAL. Any person elected to public
18 office, whether or not that person has taken office, by the
19 vote of the people at state, county, or municipal level of
20 government or their instrumentalities, including governmental
21 corporations, and any person appointed to a position at the
22 state, county, or municipal level of government or their
23 instrumentalities, including governmental corporations. For
24 purposes of this chapter, a public official includes the
25 chairs and vice-chairs or the equivalent offices of each state
26 political party as defined in Section 17-16-2.

1 "(25) REGULATORY BODY. A state agency which issues
2 regulations in accordance with the Alabama Administrative
3 Procedure Act or a state, county, or municipal department,
4 agency, board, or commission which controls, according to rule
5 or regulation, the activities, business licensure, or
6 functions of any group, person, or persons.

7 "(26) REPORTING PERIOD. The reporting official's or
8 employee's fiscal tax year as it applies to his or her United
9 States personal income tax return.

10 "(27) REPORTING YEAR. The reporting official's or
11 employee's fiscal tax year as it applies to his or her United
12 States personal income tax return.

13 "(28) RESPONDENT. A person alleged to have violated
14 a provision of this chapter and against whom a complaint has
15 been filed with the commission.

16 "(29) STATEMENT OF ECONOMIC INTERESTS. A financial
17 disclosure form made available by the commission which shall
18 be completed and filed with the commission prior to April 30
19 of each year covering the preceding calendar year by certain
20 public officials and public employees.

21 "(30) SUPERVISOR. Any person having authority to
22 hire, transfer, suspend, lay off, recall, promote, discharge,
23 assign, or discipline other public employees, or any person
24 responsible to direct them, or to adjust their grievances, or
25 to recommend personnel action, if, in connection with the
26 foregoing, the exercise of the authority is not of a merely

1 routine or clerical nature but requires the use of independent
2 judgment.

3 "(31) THING OF VALUE.

4 "a. Any gift, benefit, favor, service, gratuity,
5 tickets or passes to an entertainment, social or sporting
6 event offered only to public officials, unsecured loan, other
7 than those loans made in the ordinary course of business,
8 reward, promise of future employment, or honoraria.

9 "b. The term, thing of value, does not include any
10 of the following, provided that no particular course of action
11 is required as a condition to the receipt thereof:

12 "1. Campaign contribution.

13 "2. Seasonal gifts of an insignificant economic
14 value of less than one hundred dollars (\$100) if the aggregate
15 value of such gifts from any single donor is less than two
16 hundred fifty dollars (\$250) during any one calendar year.

17 "3. Hospitality extended to a public official,
18 public employee, and his or her respective household as a
19 social occasion in the form of food and beverages where the
20 provider is present, lodging in the continental United States
21 and Alaska incidental to the social occasion, and tickets to
22 social or sporting events if the hospitality does not extend
23 beyond three consecutive days and is not continuous in nature
24 and the aggregate value of such hospitality in excess of two
25 hundred fifty dollars (\$250) within a calendar day is reported
26 to the commission by the provider provided that the reporting
27 requirement contained in this section shall not apply where

1 the expenditures are made to or on behalf of an organization
2 to which a federal income tax deduction is permitted under
3 subparagraph (A) of paragraph (1) of subsection (b) of Section
4 170 of the Internal Revenue Code of 1986, as amended, or any
5 charitable, education or eleemosynary cause of Section 501 of
6 Title 26 of the U.S. Code, and where the public official or
7 public employee does not receive any direct financial benefit.
8 The reporting shall include the name or names of the recipient
9 or recipients, the value of the entire expenditure, the date
10 or dates of the expenditure, and the type of expenditure.

11 "4. Reasonable transportation, food and beverages
12 where the provider is present, and lodging expenses in the
13 continental United States and Alaska which are provided in
14 conjunction with an educational or informational purpose,
15 together with any hospitality associated therewith; provided,
16 that such hospitality is less than 50 percent of the time
17 spent at such event, and provided further that if the
18 aggregate value of such transportation, lodging, food,
19 beverages, and any hospitality provided to such public
20 employee, public official, and his or her respective household
21 is in excess of two hundred fifty dollars (\$250) within a
22 calendar day the total amount expended shall be reported to
23 the commission by the provider. The reporting shall include
24 the name or names of the recipient or recipients, the value of
25 the entire expenditure, the date or dates of the expenditure,
26 and the type of expenditure.

1 "5. Payment of or reimbursement for actual and
2 necessary expenditures for travel and subsistence of a public
3 official or public employee in connection with an economic
4 development research or trade mission, or for attendance at a
5 mission or meeting in which he or she is scheduled to
6 meaningfully participate, or regarding matters related to his
7 or her official duties, and for which attendance no
8 reimbursement is made by the state; provided, that any
9 hospitality in the form of entertainment, recreation, or
10 sporting events shall constitute less than 25% of the time
11 spent in connection with the event. If the aggregate value of
12 any such hospitality extended to the public employee, public
13 official, and his or her respective household is in excess of
14 two hundred fifty dollars (\$250) within a calendar day, the
15 total amount expended for that day shall be reported to the
16 commission by the provider. The reporting shall include the
17 name or names of the recipient or recipients, the value of
18 such expenditures, the date or dates of the expenditure, and
19 the type of expenditure.

20 "6. Promotional items commonly distributed to the
21 general public and food or beverages of a nominal value.

22 "c. Nothing in this chapter shall be deemed to
23 limit, prohibit, or otherwise require the disclosure of a
24 personal gift made to a public official or public employee
25 from a spouse, intended spouse, dependent, adult child,
26 sibling, parent, grandparent, uncle, aunt, nephews, nieces or

1 cousins of the public official or public employee, except as
2 otherwise provided by law.

3 "d. Nothing in this chapter shall be deemed to
4 limit, prohibit, or otherwise require the disclosure of gifts
5 through inheritance received by a public employee or public
6 official.

7 "(32) VALUE. The fair market price of a like item if
8 purchased by a private citizen."

9 Section 2. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.