

1 SB82  
2 135218-1  
3 By Senators Brewbaker and Fielding  
4 RFD: Education  
5 First Read: 07-FEB-12  
6 PFD: 12/20/2011

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8 SYNOPSIS: Under existing law, each person employed by  
9 a local school board is subject to the provisions  
10 of the Alabama Code of Ethics.

11 This bill would further define the term  
12 "public employee" to provide that a person employed  
13 by a local school board at a school within the  
14 board's jurisdiction in a capacity other than as a  
15 principal or administrator at the school shall not  
16 be considered a public employee under the Alabama  
17 Code of Ethics.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

23 To amend Section 36-25-1, Code of Alabama 1975, as  
24 amended by Act 2010-764 of the 2010 First Special Session,  
25 relating to ethics; to define the term "public employee" to  
26 provide that a person employed by a local school board at a  
27 school within the board's jurisdiction in a capacity other

1 than as a principal or administrator at the school shall not  
2 be considered a public employee under the Alabama Code of  
3 Ethics.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§36-25-1.

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

10 "(1) BUSINESS. Any corporation, partnership,  
11 proprietorship, firm, enterprise, franchise, association,  
12 organization, self-employed individual, or any other legal  
13 entity.

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

19 "(3) CANDIDATE. This term as used in this chapter  
20 shall have the same meaning ascribed to it in Section  
21 17-22A-2.

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

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

25 "(6) COMPLAINANT. A person who alleges a violation  
26 or violations of this chapter by filing a complaint against a  
27 respondent.

1           "(7) CONFIDENTIAL INFORMATION. A complaint filed  
2 pursuant to this chapter, together with any statement,  
3 conversations, knowledge of evidence, or information received  
4 from the complainant, witness, or other person related to such  
5 complaint.

6           "(8) CONFLICT OF INTEREST. A conflict on the part of  
7 a public official or public employee between his or her  
8 private interests and the official responsibilities inherent  
9 in an office of public trust. A conflict of interest involves  
10 any action, inaction, or decision by a public official or  
11 public employee in the discharge of his or her official duties  
12 which would materially affect his or her financial interest or  
13 those of his or her family members or any business with which  
14 the person is associated in a manner different from the manner  
15 it affects the other members of the class to which he or she  
16 belongs. A conflict of interest shall not include any of the  
17 following:

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

20           "b. An occasional nonpecuniary award publicly  
21 presented by an organization for performance of public  
22 service.

23           "c. Payment of or reimbursement for actual and  
24 necessary expenditures for travel and subsistence for the  
25 personal attendance of a public official or public employee at  
26 a convention or other meeting at which he or she is scheduled  
27 to meaningfully participate in connection with his or her

1 official duties and for which attendance no reimbursement is  
2 made by the state.

3 "d. Any campaign contribution, including the  
4 purchase of tickets to, or advertisements in journals, for  
5 political or testimonial dinners, if the contribution is  
6 actually used for political purposes and is not given under  
7 circumstances from which it could reasonably be inferred that  
8 the purpose of the contribution is to substantially influence  
9 a public official in the performance of his or her official  
10 duties.

11 "(9) DAY. Calendar day.

12 "(10) DEPENDENT. Any person, regardless of his or  
13 her legal residence or domicile, who receives 50 percent or  
14 more of his or her support from the public official or public  
15 employee or his or her spouse or who resided with the public  
16 official or public employee for more than 180 days during the  
17 reporting period.

18 "(11) ECONOMIC DEVELOPMENT FUNCTION. Any function  
19 reasonably and directly related to the advancement of a  
20 specific, good-faith economic development or trade promotion  
21 project or objective.

22 "(12) EDUCATIONAL FUNCTION. A meeting, event, or  
23 activity held within the State of Alabama, or if the function  
24 is predominantly attended by participants from other states,  
25 held within the continental United States, which is organized  
26 around a formal program or agenda of educational or  
27 informational speeches, debates, panel discussions, or other

1 presentations concerning matters within the scope of the  
2 participants' official duties or other matters of public  
3 policy, including social services and community development  
4 policies, economic development or trade, ethics, government  
5 services or programs, or government operations, and which,  
6 taking into account the totality of the program or agenda,  
7 could not reasonably be perceived as a subterfuge for a purely  
8 social, recreational, or entertainment function.

9 "(13) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The  
10 spouse or a dependent of the public employee.

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

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

24 "(16) HOUSEHOLD. The public official, public  
25 employee, and his or her spouse and dependents.

26 "(17) LAW ENFORCEMENT OFFICER. A full-time employee  
27 of a governmental unit responsible for the prevention or

1 investigation of crime who is authorized by law to carry  
2 firearms, execute search warrants, and make arrests.

3 "(18) LEGISLATIVE BODY. The Senate of Alabama, the  
4 House of Representatives of Alabama, a county commission, city  
5 council, city commission, town council, or municipal council  
6 or commission, and any committee or subcommittee thereof.

7 "(19) LOBBY or LOBBYING. The practice of promoting,  
8 opposing, or in any manner influencing or attempting to  
9 influence the introduction, defeat, or enactment of  
10 legislation before any legislative body; opposing or in any  
11 manner influencing the executive approval, veto, or amendment  
12 of legislation; or the practice of promoting, opposing, or in  
13 any manner influencing or attempting to influence the  
14 enactment, promulgation, modification, or deletion of  
15 regulations before any regulatory body. The term does not  
16 include providing public testimony before a legislative body  
17 or regulatory body or any committee thereof.

18 "(20) LOBBYIST.

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

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

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

25 "3. A consultant to the state, county, or municipal  
26 levels of government or their instrumentalities, in any manner  
27 employed to influence legislation or regulation, regardless

1 whether the consultant is paid in whole or part from state,  
2 county, municipal, or private funds.

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

8 "b. The term lobbyist does not include any of the  
9 following:

10 "1. An elected official on a matter which involves  
11 that person's official duties.

12 "2. A person or attorney rendering professional  
13 services in drafting bills or in advising clients and in  
14 rendering opinions as to the construction and effect of  
15 proposed or pending legislation, executive action, or rules or  
16 regulations, where those professional services are not  
17 otherwise connected with legislative, executive, or regulatory  
18 action.

19 "3. Reporters and editors while pursuing normal  
20 reportorial and editorial duties.

21 "4. Any citizen not lobbying for compensation who  
22 contacts a member of a legislative body, or gives public  
23 testimony on a particular issue or on particular legislation,  
24 or for the purpose of influencing legislation and who is  
25 merely exercising his or her constitutional right to  
26 communicate with members of a legislative body.



1           "5. A person who appears before a legislative body,  
2 a regulatory body, or an executive agency to either sell or  
3 purchase goods or services.

4           "6. A person whose primary duties or  
5 responsibilities do not include lobbying, but who may, from  
6 time to time, organize social events for members of a  
7 legislative body to meet and confer with members of  
8 professional organizations and who may have only irregular  
9 contacts with members of a legislative body when the body is  
10 not in session or when the body is in recess.

11           "7. A person who is a member of a business,  
12 professional, or membership organization by virtue of the  
13 person's contribution to or payment of dues to the  
14 organization even though the organization engages in lobbying  
15 activities.

16           "8. A state governmental agency head or his or her  
17 designee who provides or communicates, or both, information  
18 relating to policy or positions, or both, affecting the  
19 governmental agencies which he or she represents.

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

25           "(22) PERSON. A business, individual, corporation,  
26 partnership, union, association, firm, committee, club, or  
27 other organization or group of persons.

1           "(23) PRINCIPAL. A person or business which employs,  
2 hires, or otherwise retains a lobbyist. A principal is not a  
3 lobbyist but is not allowed to give a thing of value.

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

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

21           "(26) PUBLIC OFFICIAL. Any person elected to public  
22 office, whether or not that person has taken office, by the  
23 vote of the people at state, county, or municipal level of  
24 government or their instrumentalities, including governmental  
25 corporations, and any person appointed to a position at the  
26 state, county, or municipal level of government or their  
27 instrumentalities, including governmental corporations. For

1 purposes of this chapter, a public official includes the  
2 chairs and vice-chairs or the equivalent offices of each state  
3 political party as defined in Section 17-13-40.

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

10 "(28) REPORTING PERIOD. 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 "(29) REPORTING YEAR. The reporting official's or  
14 employee's fiscal tax year as it applies to his or her United  
15 States personal income tax return.

16 "(30) RESPONDENT. A person alleged to have violated  
17 a provision of this chapter and against whom a complaint has  
18 been filed with the commission.

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

24 "(32) SUPERVISOR. Any person having authority to  
25 hire, transfer, suspend, lay off, recall, promote, discharge,  
26 assign, or discipline other public employees, or any person  
27 responsible to direct them, or to adjust their grievances, or

1 to recommend personnel action, if, in connection with the  
2 foregoing, the exercise of the authority is not of a merely  
3 routine or clerical nature but requires the use of independent  
4 judgment.

5 "(33) THING OF VALUE.

6 "a. Any gift, benefit, favor, service, gratuity,  
7 tickets or passes to an entertainment, social or sporting  
8 event, unsecured loan, other than those loans and forbearances  
9 made in the ordinary course of business, reward, promise of  
10 future employment, or honoraria or other item of monetary  
11 value.

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

15 "1. A contribution reported under Chapter 5 of Title  
16 17 or a contribution to an inaugural or transition committee.

17 "2. Anything given by a family member of the  
18 recipient under circumstances which make it clear that it is  
19 motivated by a family relationship.

20 "3. Anything given by a friend of the recipient  
21 under circumstances which make it clear that it is motivated  
22 by a friendship and not given because of the recipient's  
23 official position. Relevant factors include whether the  
24 friendship preexisted the recipient's status as a public  
25 employee, public official, or candidate and whether gifts have  
26 been previously exchanged between them.

1           "4. Greeting cards, items, services with little  
2 intrinsic value which are intended solely for presentation,  
3 such as plaques, certificates, and trophies, promotional items  
4 commonly distributed to the general public, and items or  
5 services of de minimis value.

6           "5. Loans from banks and other financial  
7 institutions on terms generally available to the public.

8           "6. Opportunities and benefits, including favorable  
9 rates and commercial discounts, available to the public or to  
10 a class consisting of all government employees.

11           "7. Rewards and prizes given to competitors in  
12 contests or events, including random drawings, which are open  
13 to the public.

14           "8. Anything that is paid for by a governmental  
15 entity or an entity created by a governmental entity to  
16 support the governmental entity or secured by a governmental  
17 entity under contract, except for tickets to a sporting event  
18 offered by an educational institution to anyone other than  
19 faculty, staff, or administration of the institution.

20           "9. Anything for which the recipient pays full  
21 value.

22           "10. Compensation and other benefits earned from a  
23 non-government employer, vendor, client, prospective employer,  
24 or other business relationship in the ordinary course of  
25 employment or non-governmental business activities under  
26 circumstances which make it clear that the thing is provided

1 for reasons unrelated to the recipient's public service as a  
2 public official or public employee.

3 "11. Any assistance provided or rendered in  
4 connection with a safety or a health emergency.

5 "12. Payment of or reimbursement for actual and  
6 necessary transportation and lodging expenses, as well as  
7 waiver of registration fees and similar costs, to facilitate  
8 the attendance of a public official or public employee, and  
9 the spouse of the public official or public employee, at an  
10 educational function or widely attended event of which the  
11 person is a primary sponsor. This exclusion applies only if  
12 the public official or public employee meaningfully  
13 participates in the event as a speaker or a panel participant,  
14 by presenting information related to his or her agency or  
15 matters pending before his or her agency, or by performing a  
16 ceremonial function appropriate to his or her official  
17 position; or if the public official's or public employee's  
18 attendance at the event is appropriate to the performance of  
19 his or her official duties or representative function.

20 "13. Payment of or reimbursement for actual and  
21 necessary transportation and lodging expenses to facilitate a  
22 public official's or public employee's participation in an  
23 economic development function.

24 "14. Hospitality, meals, and other food and  
25 beverages provided to a public official or public employee,  
26 and the spouse of the public official or public employee, as  
27 an integral part of an educational function, economic

1 development function, work session, or widely attended event,  
2 such as a luncheon, banquet, or reception hosted by a civic  
3 club, chamber of commerce, charitable or educational  
4 organization, or trade or professional association.

5 "15. Any function or activity pre-certified by the  
6 Director of the Ethics Commission as a function that meets any  
7 of the above criteria.

8 "16. Meals and other food and beverages provided to  
9 a public official or public employee in a setting other than  
10 any of the above functions not to exceed for a lobbyist  
11 twenty-five dollars (\$25) per meal with a limit of one hundred  
12 fifty dollars (\$150) per year; and not to exceed for a  
13 principal fifty dollars (\$50) per meal with a limit of two  
14 hundred fifty dollars (\$250) per year. Notwithstanding the  
15 foregoing, the lobbyist's limits herein shall not count  
16 against the principal's limits and likewise, the principal's  
17 limits shall not count against the lobbyist's limits.

18 "17. Anything either (i) provided by an association  
19 or organization to which the state or, in the case of a local  
20 government official or employee, the local government pays  
21 annual dues as a membership requirement or (ii) provided by an  
22 association or organization to a public official who is a  
23 member of the association or organization and, as a result of  
24 his or her service to the association or organization, is  
25 deemed to be a public official. Further included in this  
26 exception is payment of reasonable compensation by a  
27 professional or local government association or corporation to

1 a public official who is also an elected officer or director  
2 of the professional or local government association or  
3 corporation for services actually provided to the association  
4 or corporation in his or her capacity as an officer or  
5 director.

6 "18. Any benefit received as a discount on  
7 accommodations, when the discount is given to the public  
8 official because the public official is a member of an  
9 organization or association whose entire membership receives  
10 the discount.

11 "c. Nothing in this chapter shall be deemed to  
12 limit, prohibit, or otherwise require the disclosure of gifts  
13 through inheritance received by a public employee or public  
14 official.

15 "(34) VALUE. The fair market price of a like item if  
16 purchased by a private citizen. In the case of tickets to  
17 social and sporting events and associated passes, the value is  
18 the face value printed on the ticket.

19 "(35) WIDELY ATTENDED EVENT. A gathering, dinner,  
20 reception, or other event of mutual interest to a number of  
21 parties at which it is reasonably expected that more than 12  
22 individuals will attend and that individuals with a diversity  
23 of views or interest will be present."

24 Section 2. This act shall become effective on the  
25 first day of the third month following its passage and  
26 approval by the Governor, or its otherwise becoming law.