

House Bill 1105

By: Representatives Smith of the 168th, Black of the 174th, Sims of the 169th, Hatfield of the 177th, Oliver of the 83rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics
2 in government, so as to substantially revise the "Ethics in Government Act"; to rename the
3 Georgia Government Transparency and Campaign Finance Commission as the State Ethics
4 Commission; to change provisions relating to public officials' conduct and lobbyist
5 disclosure; to change provisions relating to postemployment restrictions on public officers;
6 to amend Title 45 of the Official Code of Georgia Annotated, relating to public officers and
7 employees, so as to conform certain cross-references; to provide for related matters; to
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 I.
11 Election Reform.

12 **SECTION 1.**

13 Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics in
14 government, is amended by revising Code Section 21-5-70, relating to definitions for
15 provisions relating to public officials' conduct and lobbyist disclosure, as follows:

16 "(1) 'Expenditure':

17 (A) Means a purchase, payment, distribution, loan, advance, deposit, or conveyance
18 of money or anything of value made ~~for the purpose of influencing the actions of any~~
19 ~~public officer~~, specifically including any such transaction which is made on behalf of
20 or for the benefit of a public employee for the purpose of influencing a public officer;

21 (B) Includes any other form of payment when such can be reasonably construed as
22 designed to encourage or influence a public officer;

23 (B.1) Includes reimbursement or payment of actual and reasonable expenses provided
24 to a public officer for transportation, travel, lodging, registration, food, beverages, and

25 other activities related to attending a meeting or conference so as to permit such public
 26 officer's participation in such meeting or conference;

27 (C) Includes any gratuitous transfer, payment, subscription, advance, or deposit of
 28 money, services, or anything of value, unless consideration of equal or greater value is
 29 received;

30 (D) Notwithstanding division (x) of subparagraph (E) of this paragraph, includes food
 31 or beverage consumed at a single meal or event by a public officer or public employee
 32 or a member of the family of such public officer or public employee; ~~and~~

33 (D.1) Includes any such transaction or expenditure as provided in subparagraph (A),
 34 (B), (B.1), or (C) of this paragraph made to a family member of a public officer or
 35 made to an employee or staff member of such officer who works in support of the
 36 public office in which such officer serves; and

37 (E) The term shall not include:

38 (i) The value of personal services performed by persons who serve voluntarily
 39 without compensation from any source;

40 (ii) A gift received from a member of the public officer's family;

41 (iii) Legal compensation or expense reimbursement provided to public employees
 42 and to public officers in the performance of their duties;

43 (iv) Promotional items generally distributed to the general public or to public officers
 44 and food and beverages produced in Georgia;

45 (v) An award, plaque, certificate, memento, or similar item given in recognition of
 46 the recipient's civic, charitable, political, professional, or public service;

47 (vi) Legitimate salary, benefits, fees, commissions, or expenses associated with a
 48 recipient's nonpublic business, employment, trade, or profession;

49 (vii) Food, beverages, and registration at group events to which all members of an
 50 agency, as defined in paragraph (1) of subsection (a) of Code Section 21-5-30.2, are
 51 invited. An agency shall include the Georgia House of Representatives, the Georgia
 52 Senate, committees and subcommittees of such bodies, and the governing body of
 53 each political subdivision of this state;

54 (viii) Campaign contributions or expenditures reported as required by Article 2 of
 55 this chapter;

56 (ix) A commercially reasonable loan made in the ordinary course of business;

57 (x) Food, beverage, or expenses afforded public officers, members of their immediate
 58 families, or others that are associated with normal and customary business or social
 59 functions or activities; or

60 (xi) Transportation unless a lobbyist arranges for or participates in such
 61 transportation.

62 (2) 'Filed' means the delivery to the commission, as specified in this article, of a
 63 document that satisfies the requirements of this article. A document is considered
 64 delivered when it is electronically delivered to the commission or placed in the United
 65 States mail within the required filing time, properly addressed to the commission, as
 66 specified in this article, with adequate postage affixed.

67 (3) 'Identifiable group of public officers' means a description that is specifically
 68 determinable by available public records.

69 (4) 'Lobbying' means the activity of a lobbyist while acting in that capacity and shall not
 70 include activity of persons who are not lobbyists and who make an expenditure for
 71 reasons unrelated to the promotion or passage of legislation or to influence a public
 72 officer.

73 (5) 'Lobbyist' means, subject to the qualifications at the end of this paragraph:

74 (A) Any natural person who, either individually or as an employee of another person,
 75 is compensated specifically for undertaking to promote or oppose the passage of any
 76 legislation by the General Assembly, or any committee thereof, or the approval or veto
 77 of legislation by the Governor;

78 (B) Any natural person who makes a total expenditure of more than \$1,000.00 in a
 79 calendar year, not including the person's own travel, food, lodging expenses, or
 80 informational material, to promote or oppose the passage of any legislation by the
 81 General Assembly, or any committee thereof, or the approval or veto of legislation by
 82 the Governor;

83 (C) Any natural person who as an employee of the executive branch or judicial branch
 84 of state government engages in any activity covered under subparagraph (A) of this
 85 paragraph;

86 (D) Any natural person who, either individually or as an employee of another person,
 87 is compensated specifically for undertaking to promote or oppose the passage of any
 88 ordinance or resolution by a public officer specified under subparagraph (F) or (G) of
 89 paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the
 90 approval or veto of any such ordinance or resolution;

91 (E) Any natural person who makes a total expenditure of more than \$1,000.00 in a
 92 calendar year, not including the person's own travel, food, lodging expenses, or
 93 informational material, to promote or oppose the passage of any ordinance or resolution
 94 by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code
 95 Section 21-5-3, or any committee of such public officers, or the approval or veto of any
 96 such ordinance or resolution;

97 (F) Any natural person who as an employee of the executive branch or judicial branch
 98 of local government engages in any activity covered under subparagraph (D) of this
 99 paragraph;

100 (G) Any natural person who, for compensation, either individually or as an employee
 101 of another person, is hired specifically to undertake influencing a public officer or state
 102 agency in the selection of a vendor to supply any goods or services to any state agency
 103 but does not include any employee or independent contractor of the vendor solely on
 104 the basis that such employee or independent contractor participates in soliciting a bid
 105 or in preparing a written bid, written proposal, or other document relating to a potential
 106 sale to a state agency and shall not include a bona fide salesperson who sells to or
 107 contracts with a state agency for goods or services and who does not otherwise engage
 108 in activities described in subparagraphs (A) through (F) or (H) through (J) of this
 109 paragraph;

110 (H) Any natural person who, either individually or as an employee of another person,
 111 is compensated specifically for undertaking to promote or oppose the passage of any
 112 rule or regulation of any state agency;

113 (I) Any natural person who, either individually or as an employee of another person,
 114 is compensated specifically for undertaking to promote or oppose any matter before the
 115 State Transportation Board; or

116 (J) Any natural person who makes a total expenditure of more than \$1,000.00 in a
 117 calendar year, not including the person's own travel, food, lodging expenses, or
 118 informational material, to promote or oppose any matter before the State Transportation
 119 Board.

120 The provisions of subparagraphs (A), (C), (D), (F), (G), (H), and (I) of this paragraph
 121 shall apply only where the person in question spends more than 10 percent of his or her
 122 working hours engaged in the activities described in one or more of those subparagraphs.
 123 In the case of a person who is employed by a single employer, the 10 percent test shall
 124 be applied to all time worked for that employer. In the case of a person who is employed
 125 by more than one employer or retained by more than one client, the 10 percent test shall
 126 be applied separately with respect to time spent working for each employer and each
 127 client. A person who spends less than 10 percent of his or her time working for an
 128 employer or client engaged in such activities shall not be required to register as or be
 129 subject to regulation as a lobbyist for that employer or client. In applying the 10 percent
 130 test, time spent in planning, researching, or preparing for activities described in
 131 subparagraphs (A), (C), (D), (F), (G), (H), and (I) of this paragraph shall be counted as
 132 time engaged in such activities. When registration is required, the time of registration
 133 shall be as provided in Code Section 21-5-71.

134 (6) 'Public officer' means a member of the State Transportation Board and those public
 135 officers specified under paragraph (22) of Code Section 21-5-3, except as otherwise
 136 provided in this article and also includes any public officer or employee who has any
 137 discretionary authority over, or is a member of a public body which has any discretionary
 138 authority over, the selection of a vendor to supply any goods or services to any state
 139 agency.

140 (7) 'State agency' means any branch of state government or any agency, authority,
 141 department, board, bureau, commission, council, corporation, entity, or instrumentality
 142 of this state or of a local political subdivision of this state.

143 (8) 'Vendor' means any person who sells to or contracts with any state agency for the
 144 provision of any goods or services."

145 **SECTION 2.**

146 Said chapter is further amended by revising subsection (f) of Code Section 21-5-71, relating
 147 to registration of lobbyists, applications for registration, supplemental registration,
 148 expiration, docket, fees, identification cards, public rosters, and exemptions, as follows:

149 "(f)(1) Each person registering under this Code section shall pay the registration fees set
 150 forth in paragraph (2) of this subsection; provided, however, that a person who represents
 151 any state, county, municipal, or public agency, department, commission, or authority
 152 shall be exempted from payment of such registration fees.

153 (2) The commission shall collect the following fees:

154 (A) Annual lobbyist registration or renewal filed pursuant to
 155 this Code section ~~\$300.00~~ \$150.00

156 (B) Lobbyist supplemental registration filed pursuant to
 157 this Code section ~~10.00~~ 50.00

158 (C) Each copy of a lobbyist identification card issued pursuant to
 159 this Code section 20.00

160 (D)(i) For reports filed when the General Assembly is not in session, in addition to
 161 other penalties provided under this chapter, a late fee of \$275.00 shall be imposed for
 162 each report that is filed late. In addition, a late fee of \$1,000.00 shall be imposed on
 163 the fifteenth day after the due date for such report if the report has not been filed. A
 164 late fee of \$10,000.00 shall be imposed on the forty-fifth day after the due date for
 165 such report if the report has not been filed.

166 (ii) The commission shall retain \$25.00 of the first late fee received for processing
 167 pursuant to the provisions of Code Section 45-12-92.1.

168 (E)(i) For reports filed when the General Assembly is in session, in addition to other
 169 penalties provided under this chapter, a late fee of \$275.00 shall be imposed for each

170 report that is filed late. In addition, a late fee of \$1,000.00 shall be imposed on the
 171 seventh day after the due date for such report if the report has not been filed. A late
 172 fee of \$10,000.00 shall be imposed on the twenty-first day after the due date for such
 173 report if the report has not been filed.

174 (ii) The commission shall retain \$25.00 of the first late fee received for processing
 175 pursuant to the provisions of Code Section 45-12-92.1."

176 **SECTION 3.**

177 Said chapter is further amended by revising subsection (a) of Code Section 21-5-73, relating
 178 to disclosure reports, as follows:

179 "(a)(1) Except as provided in this paragraph, no lobbyist shall make any expenditure to
 180 a public officer, an employee or a staff member of a public officer who works in support
 181 of the public office in which such officer serves, or a member of the family of a public
 182 officer in an amount exceeding \$100.00 within a 24 hour period; provided, however, that,
 183 except as provided in paragraph (2) of this subsection, any reimbursement or payment of
 184 actual and reasonable expenses provided to a public officer or a family member,
 185 employee, or staff member of a public officer for transportation, travel, lodging,
 186 registration, food, beverages, and other activities related to attending a meeting or
 187 conference so as to permit a public officer's participation in such meeting or conference
 188 shall be limited to not more than \$2,000.00 per event.

189 (2) A person working for a business, corporation, association, organization, or similar
 190 group or entity where such group or entity provides compensation to a lobbyist shall be
 191 prohibited from making an expenditure as provided in paragraph (1) of this subsection.

192 (3) There is created a Joint Accountability Review Committee within the General
 193 Assembly consisting of five members of the House of Representatives to be appointed
 194 by the Speaker of the House of Representatives, one of whom shall be an administrative
 195 floor leader of the House of Representatives, and five members of the Senate to be
 196 appointed by the Lieutenant Governor, one of whom shall be an administrative floor
 197 leader of the Senate. The Speaker of the House of Representatives shall appoint from the
 198 members of the committee a person to serve as chairperson of the committee in
 199 even-numbered years, and the Lieutenant Governor shall appoint from the members of
 200 the committee a person to serve as chairperson of the committee in odd-numbered years.
 201 The purpose of the committee shall be to review requests by public officers or their
 202 public staff members or employees for reimbursement or payment of actual expenses
 203 provided for transportation, travel, lodging, registration, food, beverages, and other
 204 activities related to attending a meeting or conference where such expenses exceed
 205 \$2,000.00. Such reimbursements or payments shall be approved if the attendance at such

206 meeting or conference is related to education or public policy or economic or cultural
 207 development. Approval shall be given by majority vote of the members of the
 208 committee. The members' votes may be taken by telephone as provided by committee
 209 rule. The limitation on expenditures provided for in this subsection shall not apply to any
 210 expenditures approved by the committee.

211 (4) When calculating expenditures limited by this subsection, expenditures made to a
 212 family member shall be combined with any amounts made to a public officer; however,
 213 expenditures made to a staff member or employee shall be separately calculated.

214 (a.1) Each lobbyist registered under this article shall file disclosure reports as provided for
 215 in this Code section in the electronic format specified by the commission."

216 II.
 217 The "State Ethics Commission."

218 **SECTION 4.**

219 Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics in
 220 government, is amended by revising paragraph (5) of Code Section 21-5-3, relating to
 221 definitions for general provisions relating to ethics in government, as follows:

222 "~~(5) 'Commission' means the Georgia Government Transparency and Campaign Finance~~
 223 State Ethics Commission created under Code Section 21-5-4."

224 **SECTION 5.**

225 Said chapter is further amended by revising Code Section 21-5-4, relating to the Georgia
 226 Government Transparency and Campaign Finance Commission, membership, officers,
 227 quorum, and meetings, as follows:

228 "~~21-5-4.~~

229 (a) ~~The Georgia Government Transparency and Campaign Finance~~ State Ethics
 230 Commission shall be a successor to the State Ethics Georgia Government Transparency
 231 and Campaign Finance Commission, with such duties and powers as are set forth in this
 232 chapter. As the successor commission, it shall have all the powers and duties granted to
 233 the ~~State Ethics Georgia Government Transparency and Campaign Finance~~ Commission
 234 in all matters pending before the ~~State Ethics Georgia Government Transparency and~~
 235 Campaign Finance Commission and may continue to investigate, prosecute, and act upon
 236 all such matters.

237 (b) The commission shall be governed by five members appointed as follows: three
 238 members, not more than two of whom shall be from the same political party, shall be
 239 appointed by the Governor, two for terms of three years and one for a term of two years;

240 one member shall be appointed by the Senate Committee on Assignments for a term of four
 241 years; and one member shall be appointed by the Speaker of the House of Representatives
 242 for a term of four years. Upon the expiration of a member's term of office, a new member,
 243 appointed in the same manner as the member whose term of office expired as provided in
 244 this subsection, shall become a member of the commission and shall serve for a term of
 245 four years and until such member's successor is duly appointed and qualified. If a vacancy
 246 occurs in the membership of the commission, a new member shall be appointed to the
 247 unexpired term of office by the state official or the committee that appointed the vacating
 248 member. Members of the commission shall not serve for more than one complete term of
 249 office.

250 (c) All members of the commission shall be residents of this state.

251 (d) Any person who:

252 (1) Has qualified to run for any federal, state, or local public office within a period of
 253 five years prior to such person's appointment;

254 (2) Has held any federal, state, or local public office within a period of five years prior
 255 to such person's appointment; ~~or~~

256 (3) Serves as an officer of any political party, whether such office is elective or
 257 appointive and whether such office exists on a local, state, or national level;

258 (4) Is currently a lobbyist or has served as a lobbyist within five years of such person's
 259 appointment;

260 (5) Is receiving or has received within five years of such person's appointment
 261 compensation from a lobbyist group, organization, or firm or another lobbyist; or

262 (6) Has a family member who is currently a lobbyist

263 shall be ineligible to serve as a member of the commission.

264 (e) The commission shall elect a chairperson, a vice chairperson, and other officers as it
 265 deems necessary. The members shall not be compensated for their services but they shall
 266 be reimbursed in an amount equal to the per diem received by the General Assembly for
 267 each day or portion thereof spent in serving as members of the commission. They shall be
 268 paid their necessary traveling expenses while engaged in the business of the commission.

269 (f) A majority of the members of the commission constitutes a quorum for the transaction
 270 of business. The vote of at least a majority of the members present at any meeting at which
 271 a quorum is present is necessary for any action to be taken by the commission. No vacancy
 272 in the membership of the commission impairs the right of a quorum to exercise all rights
 273 and perform all duties of the commission.

274 (g) Meetings of the members of the commission shall be held at the call of the chairperson
 275 or whenever any two members so request."

276

SECTION 6.

277 Said chapter is further amended by revising subsection (a) of Code Section 21-5-6, relating
 278 to the powers and duties of the Georgia Government Transparency and Campaign Finance
 279 Commission, as follows:

280 "(a) The commission is vested with the following powers:

281 (1) To meet at such times and places as it may deem necessary;

282 (2) To contract with other agencies, public or private, or persons as it deems necessary
 283 for the rendering and affording of such services, facilities, studies, and reports to the
 284 commission as will best assist it to carry out its duties and responsibilities;

285 (3) To cooperate with and secure the cooperation of every department, agency, or
 286 instrumentality in the state government or its political subdivisions in the furtherance of
 287 the purposes of this chapter;

288 (4) To employ an executive secretary and such additional staff as the commission deems
 289 necessary to carry out the powers delegated to the commission by this chapter;

290 (5) To issue subpoenas to compel any person to appear, give sworn testimony, or
 291 produce documentary or other evidence;

292 (6) To institute and prosecute actions in the superior courts, in its own name, seeking to
 293 enjoin or restrain any violation or threatened violation of this chapter;

294 (7) To adopt in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
 295 Procedure Act,' such rules and regulations as are ~~specifically authorized in~~ necessary to
 296 implement the purposes and requirements of this chapter; and

297 (8) To do any and all things necessary or convenient to enable it to perform wholly and
 298 adequately its duties and to exercise the powers specifically authorized to it in this
 299 chapter."

300

SECTION 7.

301 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
 302 is amended by revising paragraph (1) of subsection (a) of Code Section 45-1-6, relating to
 303 gifts to employees by vendors, disclosure, and reports, as follows:

304 "(1) 'Commission' means the ~~Georgia Government Transparency and Campaign Finance~~
 305 State Ethics Commission created under Code Section 21-5-4."

306

SECTION 8.

307 Said title is further amended by revising Code Section 45-7-7, relating to compensation and
 308 allowances of certain officials not to be changed without giving public notice, as follows:

309 "45-7-7.

310 (a) The compensation or allowances of the officials listed in subsection (b) of this Code
 311 section shall not be changed by the governing board or body having the authority to do so
 312 unless public notice of such proposed action and amount shall have been given at least 30
 313 days prior to the date such board or body shall consider such action and unless notice of
 314 such proposed change shall have likewise been given to the Governor by the board or body
 315 at least 30 days prior to the date of such proposed change.

316 (b) Subsection (a) of this Code section shall apply to the compensation and allowances of
 317 the commissioner of community affairs, the director of the Employees' Retirement System
 318 of Georgia, the director of the State Forestry Commission, the director of the Georgia
 319 Bureau of Investigation, the executive director of the Georgia Franchise Practices
 320 Commission, the commissioner of human services, the commissioner of economic
 321 development, the commissioner of natural resources, the commissioner of public safety,
 322 the chancellor of the University System of Georgia, the president or executive director of
 323 the Georgia Student Finance Commission, the executive director of the State Soil and
 324 Water Conservation Commission, the executive secretary-treasurer of the Teachers
 325 Retirement System of Georgia, the commissioner of transportation, and the executive
 326 director of the ~~Georgia Government Transparency and Campaign Finance~~ State Ethics
 327 Commission."

328 **SECTION 9.**

329 Said title is further amended by revising subsection (a) of Code Section 45-10-26, relating
 330 to public officials and employees to file yearly disclosure statements concerning business
 331 transactions with the state and statements to be public records, as follows:

332 "(a) Except as provided in subsection (b) of this Code section, any public official or
 333 employee, whether for himself, herself, or on behalf of any business, or any business in
 334 which such public official or employee or any member of his or her family has a substantial
 335 interest who transacts business with the state or any agency thereof shall disclose such
 336 transactions. Such disclosure shall be submitted prior to January 31 each year to the
 337 ~~Georgia Government Transparency and Campaign Finance~~ State Ethics Commission on
 338 such forms as it shall prescribe and shall include an itemized list of the previous year's
 339 transactions with the dollar amount of each transaction reported and totaled. Such
 340 disclosure statements shall be public records."

341

III.

342

Conduct of public officials.

343

SECTION 10.

344 Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to ethics in
 345 government, is amended in subsection (a) of Code Section 21-5-50, relating to filing
 346 financial disclosure statements by public officers, candidates for public office, elected
 347 officials and members of the General Assembly, electronic filing, and transfer of filings from
 348 the Secretary of State to the commission, by adding a new paragraph to read as follows:

349 "(7) Any public officer or any person serving either as a member of a state board,
 350 commission, or authority or as the head or executive director of a state department,
 351 bureau, agency, authority, or other similarly designated state entity, including the
 352 members of the Board of Regents of the University System of Georgia, shall file with the
 353 commission not before the first day of January nor later than July 1 of each year in which
 354 such person holds office a financial disclosure statement for the preceding calendar year.
 355 In addition, each such public officer shall file with the commission, together with the
 356 financial disclosure statement, an affidavit confirming that he or she took no official
 357 action in the previous calendar year that had a material effect on such public officer's
 358 private financial or business interests."

359

SECTION 11.

360 Said chapter is further amended by revising Code Section 21-5-75, relating to
 361 postemployment restrictions on public officers, as follows:

362 "21-5-75.

363 (a) Except as provided in subsection (b) of this Code section, on and after ~~January 8, 2007~~
 364 July 1, 2012, persons identified in subparagraphs (A) through (D) of paragraph (22) of
 365 Code Section 21-5-3 and the executive director of each state board, commission, or
 366 authority shall be prohibited from registering as a lobbyist or engaging in lobbying under
 367 this article for a period of ~~one year~~ two years after terminating such employment or leaving
 368 such office.

369 (b) The lobbying prohibition contained in subsection (a) of this Code section shall not
 370 apply to persons who terminate such employment or leave such office but who remain
 371 employed in state government."

372

IV.

373

Effective date and repealer.

374

SECTION 12.

375

This Act shall become effective on July 1, 2012.

376

SECTION 13.

377

All laws and parts of laws in conflict with this Act are repealed.