

1 HB76
2 115302-1
3 By Representative McCutcheon
4 RFD: Government Appropriations
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

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8 SYNOPSIS: This bill provides for legislative
9 findings; prohibits public funds from being passed
10 through from one entity to another at the direction
11 of a member of the Legislature; defines
12 "pass-through" appropriations; expressly protects
13 the right of a legislator to lobby for or offer
14 support for a legal and valid program of an agency;
15 provides for reporting of grants; and provides
16 penalties for violations.

17 Amendment 621 of the Constitution of Alabama
18 of 1901, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of
20 Alabama of 1901, as amended, prohibits a general
21 law whose purpose or effect would be to require a
22 new or increased expenditure of local funds from
23 becoming effective with regard to a local
24 governmental entity without enactment by a 2/3 vote
25 unless: it comes within one of a number of
26 specified exceptions; it is approved by the
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To provide for legislative findings; to prohibit
16 public funds from being passed through from one entity to
17 another at the direction of a member of the Legislature; to
18 define "pass-through" appropriations; to expressly protect the
19 right of a legislator to lobby for or offer support for a
20 legal and valid program of an agency; to provide for reporting
21 of grants; to provide penalties for violations; and in
22 connection therewith would have as its purpose or effect the
23 requirement of a new or increased expenditure of local funds
24 within the meaning of Amendment 621 of the Constitution of
25 Alabama of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of Alabama of 1901,
27 as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited
3 as the Budget Accountability Act.

4 Section 2. The Legislature recognizes that Alabama
5 citizens demand and deserve accountability for the expenditure
6 of taxpayer funds. The Legislature further recognizes that any
7 member of the Alabama Legislature, as well as any other
8 citizen, can lobby for or offer support for a program
9 administered by an entity that receives public funds. The
10 Legislature further recognizes that while at least two
11 Executive Orders have banned pass-through appropriations, not
12 all entities are effectively included under these Executive
13 Orders.

14 Section 3. For the purposes of this act, the
15 following terms shall have the following meanings:

16 (1) AGENCY. Any recipient of State funds.

17 (2) DIRECTED, DIRECTIVE, or DIRECTION. As used in
18 this act refers to the exercise of control over the selection
19 of projects or grants for which the expenditure of funds are
20 made.

21 (3) LINE-ITEM APPROPRIATION. A separate reference in
22 an appropriation bill to a proposed expenditure, which is
23 certain as to the recipient(s), the amount, and the purpose of
24 the expenditure.

25 (4) PASS-THROUGH APPROPRIATIONS. The expenditure of
26 State funds by an agency at the explicit direction of a member
27 of the Legislature, or a person acting on behalf of such

1 member, if such expenditure is not for a purpose specified in
2 a line-item appropriation. The expenditure of funds pursuant
3 to Chapter 24 of Title 41, any federal or state grants or
4 contracts awarded under federal or state guidelines or
5 regulations, and any expenditures under Article 8 of Chapter 2
6 of Title 29 shall not be considered pass-through
7 appropriations. State Funds transferred between state entities
8 for the same program shall not be considered pass-through
9 appropriations.

10 Section 4. (a) Pass-through appropriations are
11 prohibited. An agency director, assistant director, executive
12 assistant or any similar direct subordinate performing or
13 permitting a pass-through appropriation shall be subject to
14 disciplinary action and/or dismissal by the appropriate
15 appointing authority.

16 (b) An agency director, assistant director,
17 executive assistant or any similar direct subordinate who
18 violates this section shall be guilty of a Class C misdemeanor
19 unless the agency director, assistant director, executive
20 assistant or any similar direct subordinate did not know and
21 did not have reason to know of the pass-through appropriation.
22 Acts constituting a violation of this act shall not be the
23 basis for a violation of any other criminal law by the agency
24 director, assistant director, executive assistant or any
25 similar direct subordinate or any other person.

26 Section 5. The director, assistant director,
27 executive assistant or any similar direct subordinate of any

1 agency shall have an affirmative duty to report to his
2 superior or in the case of an agency director, the Governor of
3 Alabama and the Alabama Ethics Commission any explicit
4 directives regarding a pass-through appropriation and the
5 agency director shall submit a copy of the report to the
6 legislator involved and the presiding officer of each house.

7 Section 6. Appropriations and expenditures pursuant
8 to line-item appropriations are hereby authorized and
9 permitted and funds appropriated as line-items shall not be
10 rescinded or withheld and may not be modified except in the
11 event of proration.

12 Section 7. Nothing in this act shall be deemed to
13 prohibit or discourage a member of the Legislature from
14 performing his or her duties. Those duties include the right
15 to protect and promote activities and projects with agency
16 personnel that constitute legal and valid functions of the
17 agency or department. Therefore, any member of the Legislature
18 or any citizen may lobby for or offer support for a program
19 administered by the agency without violating the provisions of
20 this act.

21 Section 8. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 9. This act shall become effective upon its
4 passage and approval by the Governor or upon its otherwise
5 becoming a law.