

1 HB826
2 121411-1
3 By Representative Ball
4 RFD: Government Operations
5 First Read: 08-APR-10

SYNOPSIS: Under existing law, campaign finance reports are required to disclose the name of any person making a contribution in excess of \$100.

This bill would require that the report also include the occupation and name of the employer of the contributor.

This bill would require a public disclosure of the names of public officials or spouses of public officials or candidates who are employed by the state or who have a contract with the state, a county, or a municipality.

Under existing law, the procurement of professional services by any agency, department, board, bureau, commission, authority, public corporation, or instrumentality of the State of Alabama is conducted through a competitive bid process; however, the Legislature and colleges and universities governed by a board of trustees or the Department of Postsecondary Education are exempt from this provision of law.

1 This bill would remove the exemption granted
2 to the Legislature and colleges and universities
3 governed by a board of trustees or the Department
4 of Postsecondary Education in the procurement of
5 professional services.

6 Current law requires the Comptroller to
7 establish and post on the Internet a database of
8 state expenditures, including contracts and grants
9 that are electronically searchable by the public.

10 This bill would also require subcontracts
11 and purchase orders to be posted on the database of
12 state expenditures.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 To amend Section 17-5-8 of the Code of Alabama 1975,
19 as amended by Act No. 2009-751, 2009 Regular Session, relating
20 to reports of contributions and expenditures of candidates and
21 political action committees; to require that the reports also
22 include the occupation and name of the employer of the
23 contributor; to add Section 36-25-5.1 to the Code of Alabama
24 1975, to require a public disclosure of the names of public
25 officials or spouses of public officials or candidates who are
26 employed by the state or who have a contract with the state, a
27 county, or a municipality; to amend Section 41-16-72 of the

1 Code of Alabama 1975, relating to procurement of professional
2 services; to remove the exemption granted to the Legislature
3 and colleges and universities governed by a board of trustees
4 or the Department of Postsecondary Education in the
5 procurement of professional services; and to amend Act
6 2009-750, 2009 Regular Session, now appearing as Section
7 41-4-65 of the Code of Alabama 1975, relating to the Internet
8 database for state expenditures; to provide further
9 requirements to be posted on the database.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 17-5-8 of the Code of Alabama
12 1975, as amended by Act 2009-751, 2009 Regular Session, is
13 amended to read as follows:

14 "§17-5-8.

15 "(a) Each principal campaign committee or political
16 action committee shall file with the Secretary of State or
17 judge of probate, as designated in Section 17-5-9, reports of
18 contributions and expenditures at the following times in any
19 year in which an election is held:

20 "(1) Regardless of whether the candidate has
21 opposition in any election, between 50 and 45 days before and
22 between 10 and five days before the date of any primary,
23 special, runoff, or general election for which a political
24 action committee or principal campaign committee receives
25 contributions or makes expenditures with a view toward
26 influencing such election's result.

1 "(2) Provided, however, that with regard to a runoff
2 election a report shall not be required except between five
3 and 10 days before the runoff election.

4 "(b) Each principal campaign committee, political
5 action committee, and elected state and local official covered
6 under the provisions of this chapter, shall annually file with
7 the Secretary of State or judge of probate, as designated in
8 Section 17-5-9, reports of contributions and expenditures made
9 during that year. The annual reports required under this
10 subsection shall be made on or before January 31 of the
11 succeeding year.

12 "(c) Each report under this section shall disclose:

13 "(1) The amount of cash or other assets on hand at
14 the beginning of the reporting period and forward until the
15 end of that reporting period and disbursements made from same.

16 "(2) The identification, including the occupation
17 and employer, of each person who has made contributions to
18 such committee or candidate within the calendar year in an
19 aggregate amount greater than one hundred dollars (\$100),
20 together with the amount and date of all such contributions;
21 provided, however, in the case of a political action committee
22 identification shall mean the name, occupation, employer, and
23 city of residence of each person who has made contributions
24 within the calendar year in an aggregate amount greater than
25 one hundred dollars (\$100).

1 "(3) The total amount of other contributions
2 received during the calendar year but not reported under
3 subdivision (c) (2) of this section.

4 "(4) Each loan to or from any person within the
5 calendar year in an aggregate amount greater than one hundred
6 dollars (\$100), together with the identification of the
7 lender, the identification of the endorsers, or guarantors, if
8 any, and the date and amount of such loans.

9 "(5) The total amount of receipts from any other
10 source during such calendar year.

11 "(6) The grand total of all receipts by or for such
12 committee during the calendar year.

13 "(7) The identification of each person to whom
14 expenditures have been made by or on behalf of such committee
15 or elected official within the calendar year in an aggregate
16 amount greater than one hundred dollars (\$100), the amount,
17 date, and purpose of each such expenditure, and, if
18 applicable, the designation of each constitutional amendment
19 or other proposition with respect to which an expenditure was
20 made.

21 "(8) The identification of each person to whom an
22 expenditure for personal services, salaries, and reimbursed
23 expenses greater than one hundred dollars (\$100) has been
24 made, and which is not otherwise reported or exempted from the
25 provisions of this chapter, including the amount, date, and
26 purpose of such expenditure.

1 "(9) The grand total of all expenditures made by
2 such committee or elected official during the calendar year.

3 "(10) The amount and nature of debts and obligations
4 owed by or to the committee or elected official, together with
5 a statement as to the circumstances and conditions under which
6 any such debt or obligation was extinguished and the
7 consideration therefor.

8 "(d) Each report required by this section shall be
9 signed and filed by the elected official or on behalf of the
10 political action committee by its chair or treasurer and, if
11 filed on behalf of a principal campaign committee, by the
12 candidate represented by such committee. There shall be
13 attached to each such report an affidavit subscribed and sworn
14 to by the official or chair or treasurer and, if filed by a
15 principal campaign committee, the candidate represented by
16 such committee, setting forth in substance that such report is
17 to the best of his or her knowledge and belief in all respects
18 true and complete, and, if made by a candidate, that he or she
19 has not received any contributions or made any expenditures
20 which are not set forth and covered by such report."

21 Section 2. Section 36-25-5.1 is added to the Code of
22 Alabama 1975, to read as follows:

23 §36-25-5.1.

24 (a) For purposes of this section, the term "state"
25 shall include the State of Alabama and any of its agencies,
26 departments, political subdivisions, counties, colleges and
27 universities and technical schools, the Legislature, the

1 appellate courts, district courts, circuit courts, and
2 municipal courts, municipal corporations, and city and county
3 school systems.

4 (b) Each public official and the spouse of each
5 public official and each candidate who is employed by the
6 state or who has a contract with the state shall notify the
7 commission of the employment or contract by filing within 30
8 days of employment or the date of the beginning of the
9 contract and shall provide the information specified in this
10 section. Such filings are public record.

11 (c) The filing with the commission shall include all
12 of the following:

13 (1) The name of the public official.

14 (2) The name of the spouse of the public official,
15 when applicable.

16 (3) The name of the candidate.

17 (4) The name of the spouse of the candidate.

18 (5) The department or agency or county or
19 municipality with which he or she is employed or with which he
20 or she has a contract.

21 (6) The exact job description.

22 (7) A description of the state contract.

23 (8) The beginning and ending dates of employment or
24 of the contract, if applicable.

25 (9) The compensation received by the public official
26 and his or her spouse or the candidate or his or her spouse.

1 The compensation shall include any and all salary, allowances,
2 and fees received by the public official.

3 (d) If the terms of employment or of the contract
4 change, the public official or candidate shall provide updated
5 information concerning the change with the commission which
6 shall revise such information in its files.

7 Section 3. Section 41-16-72 of the Code of Alabama
8 1975, is amended to read as follows:

9 "§41-16-72.

10 "Any other provision of law notwithstanding, the
11 procurement of professional services by any agency,
12 department, board, bureau, commission, authority, public
13 corporation, or instrumentality of the State of Alabama shall
14 be conducted through the following selection process:

15 "(1)a. Except as otherwise provided herein,
16 attorneys retained to represent the state in litigation shall
17 be appointed by the Attorney General in consultation with the
18 Governor from a listing of attorneys maintained by the
19 Attorney General. All attorneys interested in representing the
20 State of Alabama may apply and shall be included on the
21 listing. The selection of the attorney or law firm shall be
22 based upon the level of skill, experience, and expertise
23 required in the litigation and the fees charged by the
24 attorney or law firm shall be taken into consideration so that
25 the State of Alabama receives the best representation for the
26 funds paid. Fees shall be negotiated and approved by the
27 Governor in consultation with the Attorney General. Maximum

1 fees paid for legal representation may be established by
2 executive order of the Governor.

3 "Nothing in this article and nothing in Chapter 15
4 of Title 36 modifies or repeals the exclusive authority of the
5 governing boards of the public institutions of higher
6 education to direct and control litigation involving their
7 respective universities and to employ and retain legal counsel
8 of their own choice, consistent with their broad powers of
9 management and control set forth in Chapters 47-56 of Title 16
10 and in the constitution. Provided further, nothing in this
11 article modifies or repeals the authority of the Attorney
12 General to direct and control litigation involving the state
13 or any agency, department, or instrumentality of the state, or
14 the authority of the Governor to appear in civil cases in
15 which the state is interested.

16 "b. Attorneys retained by any state purchasing
17 entity to render nonlitigation legal services shall be
18 selected by such entity from a listing of attorneys maintained
19 by the Legal Advisor to the Governor. All attorneys interested
20 in representing any purchasing state entity may apply and
21 shall be included on the listing. The selection of the
22 attorney or law firm shall be based upon the level of skill,
23 experience, and expertise required for the services, but the
24 fees charged by the attorney or law firm shall be taken into
25 consideration so that such state entity shall receive the best
26 representation for the funds paid. Fees for such services
27 shall be negotiated by the state entity requiring the services

1 and shall be subject to the review and approval of the
2 Governor or the Director of Finance when so designated by the
3 Governor.

4 "c. This article shall not apply to the appointment
5 by a court of attorneys or experts.

6 "d. This article shall not apply to the retention of
7 experts by the state for the purposes of litigation, or
8 avoidance of litigation.

9 "e. Nothing in this article shall be construed as
10 altering or amending the Governor's authority to retain
11 attorneys pursuant to Section 36-13-2, however, the Governor
12 shall select such attorneys from three proposals received from
13 attorneys included on the listing maintained by the Attorney
14 General.

15 "(2) Physicians retained to provide medical services
16 to the state shall be selected by the purchasing state entity
17 from a list of qualified physicians maintained by the Alabama
18 Medical Licensure Commission. All physicians interested in
19 providing medical services to the State of Alabama may apply
20 and shall be included on the listing.

21 "(3) Professional services of architects, landscape
22 architects, engineers, land surveyors, geoscience, and other
23 similar professionals shall be procured in accordance with
24 competitive, qualification-based selection policies and
25 procedures. Selection shall be based on factors to be
26 developed by the procuring state entity which may include,
27 among others, the following:

1 "a. Specialized expertise, capabilities, and
2 technical competence, as demonstrated by the proposed approach
3 and methodology to meet project requirements.

4 "b. Resources available to perform the work,
5 including any specialized services within the specified time
6 limits for the project.

7 "c. Record of past performance, quality of work,
8 ability to meet schedules, cost control, and contract
9 administration.

10 "d. Availability to and familiarity with the project
11 locale.

12 "e. Proposed project management techniques.

13 "f. Ability and proven history in handling special
14 project contracts.

15 "Notice of need for professional services shall be
16 widely disseminated to the professional community in a full
17 and open manner. Procuring state entities shall evaluate such
18 professionals that respond to the notice of need based on such
19 state entity's qualification-based selection process criteria.
20 Any such procuring state entity shall then make a good faith
21 effort to negotiate a contract for professional services from
22 the selected professional after first discussing and refining
23 the scope of services for the project with such professional.
24 Where the Alabama Building Commission has set a fee schedule
25 for the professional services sought, fees shall not exceed
26 the schedule without approval of the Director of the Alabama
27 Building Commission and the Governor.

1 "(4) The Director of Finance, through the Division
2 of Purchasing of the Department of Finance, shall establish
3 and maintain lists of professional service providers, other
4 than those specifically named in this section, which may be
5 required from time to time by any state agency, department,
6 board, bureau, commission, authority, public corporation, or
7 instrumentality. When such professional services are needed,
8 the purchasing state entity shall solicit proposals from the
9 professional service providers desiring to receive requests
10 for proposals. The purchasing state entity shall select the
11 professional service provider that best meets the needs of the
12 purchasing entity as expressed in the request for proposals.
13 Price shall be taken into consideration. In the event the fees
14 paid to the selected professional service provider exceed by
15 10 percent the professional service fee offered by the lowest
16 qualified proposal, the reasons for selecting a professional
17 service provider must be stated in writing, signed by the
18 director of the purchasing state entity, and made a part of
19 the selection record.

20 "(5) Contracts for professional services shall be
21 limited only to that portion of a contract relating to the
22 professional service provided. Goods purchased by the state in
23 conjunction with the contract for professional services shall
24 be purchased pursuant to Section 41-16-20.

25 "(6) Should an emergency affecting the public
26 health, safety, convenience, or the economic welfare of the
27 State of Alabama so declared in writing under oath to the

1 Governor and the Attorney General by the state entity
2 requiring the professional services arise, the professional
3 services required to alleviate the emergency situation may be
4 procured from any qualified professional service provider
5 without following the process or procedure required by this
6 article.

7 "(7) The process set forth herein for the selection
8 of professional service providers shall not apply to ~~the~~
9 ~~Legislature, the Alabama State Port Authority, or to colleges~~
10 ~~and universities governed by a board of trustees or by the~~
11 ~~Department of Postsecondary Education. The State Department of~~
12 ~~Education shall not be subject to the provisions of this~~
13 ~~article, requiring the process set forth herein for the~~
14 ~~selection of professional service providers, except for the~~
15 ~~future acquisition of professional services in support of~~
16 ~~computer technology on a statewide basis which exceeds the~~
17 ~~amount of expenditures set forth within this chapter. However,~~
18 ~~if a state agency or department is able to provide the~~
19 ~~necessary computer networking services, then the services~~
20 ~~shall be provided by the agency or department without being~~
21 ~~contracted to an outside provider. In the event the State~~
22 ~~Department of Education has intervened into the financial~~
23 ~~operations of a local board of education, the State Department~~
24 ~~of Education shall follow the provisions of law applicable to~~
25 ~~local boards of education for services related to the local~~
26 ~~board of education subject to intervention.~~

1 "(8) Under any contract letting process in this
2 section, all requests for proposals from any state entity
3 purchasing professional services shall be sent to all
4 professional service providers regardless of race that have
5 notified the state of their interest in receiving state
6 business.

7 "(9) Under any contract letting process in this
8 section, all lists containing professional service providers
9 and contractors for contracts under the provisions of this
10 article shall seek the racial and ethnic diversity of the
11 state."

12 Section 4. Act 2009-751, 2009 Regular Session, now
13 appearing as Section 41-4-65 of the Code of Alabama 1975, is
14 amended to read as follows:

15 "§41-4-65.

16 "(a) In this section, state entity shall mean, the
17 State of Alabama, a political subdivision, an agency, board,
18 commission, or department of the state, the State Board of
19 Education, a public college or trade school, or a public
20 university, except that the term shall not mean a county, a
21 municipal corporation, a county board of education, a city
22 board of education, or a professional licensure agency board
23 that is self-sustaining by its own revenues and fees.

24 "(b) The Comptroller shall establish and post on the
25 Internet a database of state expenditures, including
26 contracts, subcontracts, purchase orders, and grants, that are
27 electronically searchable by the public, except as provided by

1 subsection (d). The database shall include all of the
2 following:

3 "(1) The amount, date, payor, and payee of
4 expenditures.

5 "(2) A listing of state expenditures by each of the
6 following:

7 "a. The object of the expense with links to the
8 warrant or check register level.

9 "b. To the extent maintained by the state entity
10 accounting systems in a reportable format, class and item
11 levels.

12 "(c) To the extent possible, the Comptroller shall
13 present information in the database established under this
14 section in a manner that is searchable and intuitive to users.
15 The Comptroller shall enhance and organize the presentation of
16 the information through the use of graphical representations,
17 such as pie charts, as the Comptroller considers appropriate.
18 At a minimum, the database shall allow users to:

19 "(1) Search state funding by any element of the
20 information.

21 "(2) Ascertain through a single search the total
22 amount of state funding awarded to a person by a state entity.

23 "(3) Download information yielded by a search of the
24 database.

25 "(d) The Comptroller may not allow public access
26 under this section to a payee's address, except that the
27 Comptroller may allow public access under this section to

1 information identifying the county in which the payee is
2 located. The Comptroller may not allow public access under
3 this section to information that is identified by a state
4 entity as excepted from required disclosure as confidential.
5 The Comptroller, or an officer or employee of the
6 Comptroller's office, shall be immune from any civil liability
7 for posting confidential information under this section if the
8 Comptroller, officer, or employee posted the information in
9 reliance on a determination made by a state entity about the
10 confidentiality of information relating to the expenditures of
11 the agency.

12 "(e) To the extent any information required to be in
13 the database is already being collected or maintained by a
14 state entity, the state entity shall provide that information
15 to the Comptroller for inclusion in the database.

16 "(f) The Comptroller may not charge a fee to the
17 public to access the database.

18 "(g) Except as provided by subsection (h), a state
19 entity shall cooperate with and provide information to the
20 Comptroller as necessary to implement and administer this
21 section.

22 "(h) This section does not require a state entity to
23 record information or expend resources for the purpose of
24 computer programming or other additional actions necessary to
25 make information reportable under this section.

26 "(i) The Alabama Department of Finance, after
27 consultation with the Comptroller, shall prominently include a

1 link to the database established under this section on the
2 public home page of the State of Alabama.

3 "(j) Each state entity that maintains a generally
4 accessible Internet site or for which a generally accessible
5 Internet site is maintained shall include a link on the
6 entity's Internet site to the state expenditure database
7 established by this section.

8 "(k) The Comptroller shall establish procedures and
9 adopt rules to implement and administer this section.

10 "(l) Any vendor, contractor, or other supplier to
11 any state entity may notify the Comptroller in writing that
12 its prices or costs, or both, should be held confidential.
13 Upon receipt of such written notification, the Comptroller
14 shall not post the prices or costs, or both, specified in the
15 notification unless and until the Comptroller shall
16 investigate whether the prices or costs, or both, claimed in
17 the notification to be confidential should be protected from
18 posting. Such investigation shall include a hearing where the
19 vendor, contractor, or other supplier can present
20 justification for holding the information confidential. The
21 Comptroller's ruling on confidentiality shall be based on a
22 standard of reasonableness. The Comptroller's ruling shall be
23 subject to review by the courts."

24 Section 5. This act shall become effective on
25 October 1, 2010, following its passage and approval by the
26 Governor, or its otherwise becoming law.