MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Zuber

To: Accountability, Efficiency, Transparency; Judiciary A

HOUSE BILL NO. 273

AN ACT TO AMEND SECTION 5-8-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "LOBBYING" TO INCLUDE ATTEMPTING TO INFLUENCE THE PROCUREMENT OF MATERIALS, SERVICES OR CONSTRUCTION BY AN AGENCY AND PROMOTING OR ATTEMPTING TO INFLUENCE THE AWARDING OF A GRANT OR CONTRACT WITH ANY DEPARTMENT OR AGENCY OF THE EXECUTIVE, LEGISLATIVE OR JUDICIAL BRANCH OF STATE OR LOCAL GOVERNMENT; TO REVISE THE DEFINITION OF "LOBBYIST" TO INCLUDE ANY INDIVIDUAL WHO IS EMPLOYED BY OR HAS CONTRACTED WITH ANY PRIVATE ENTITY FOR THE PURPOSE OF PROVIDING ANY TYPE OF CONSULTING OR OTHER SIMILAR SERVICE BUT ALSO ENGAGES IN ANY TYPE OF LOBBYING ACTIVITIES AND TO INCLUDE ANY INDIVIDUAL WHO ATTEMPTS TO INFLUENCE ANY MEMBER OR EMPLOYEE OF A GOVERNING AUTHORITY, COUNTY BOARD OF SUPERVISORS, UTILITY DISTRICT, WATER BOARD, SEWER BOARD, OR ANY OTHER SIMILAR LOCAL BOARD; TO BRING FORWARD SECTION 5-8-7, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 5-8-3, Mississippi Code of 1972, is amended as follows:

5-8-3. The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) (i) "Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;

2. A promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money;

3. A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money;

4. A stock, bond, note or other investment interest in an entity;

5. A receipt given for the payment of money or other property;

6. A right in action;

7. A gift, tangible good, chattel or an interest in a gift, tangible good or chattel;

8. A loan or forgiveness of indebtedness;

9. A work of art, antique or collectible;

10. An automobile or other means of personal transportation;

11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;

12. An honorarium or compensation for services;

13. A rebate or discount in the price of anything of value, unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive, legislative or public official or public employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;

14. A promise or offer of employment;

15. Any other thing of value that is pecuniary or compensatory in value to a person, except as otherwise provided in subparagraph (ii) of this paragraph; or

16. A payment that directly benefits an executive, legislative or public official or public employee or a member of that person's immediate family.

(ii) "Anything of value" does not mean:

1. Informational material such as books, reports, pamphlets, calendars or periodicals informing an executive, legislative or public official or public employee of her or his official duties;

2. A certificate, plaque or other commemorative item which has little pecuniary value;

3. Food and beverages for immediate consumption provided by a lobbyist up to a value of Ten Dollars ($10.00) in the aggregate during any calendar year;

4. Campaign contributions reported in accordance with Section 23-15-801 et seq., Mississippi Code of 1972.

(b) "Commission" means the Mississippi Ethics Commission, when used in the context of Section 5-8-19.

(c) "Compensation" means:

(i) An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, including reimbursement of travel, food or lodging costs; or

(ii) A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, including reimbursement of travel, food or lodging costs, for services rendered or to be rendered.

(d) "Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by a state or local governmental entity of a rule, regulation, order, decision, determination or other quasi-legislative action or proceeding.

(e) "Executive agency" means:

(i) An agency, board, commission, governing authority or other body in the executive branch of state or local government; or

(ii) An independent body of state or local government that is not a part of the legislative or judicial branch, but which shall include county boards of supervisors.

(f) "Executive official" means:

(i) A member or employee of a state agency, board, commission, governing authority or other body in the executive branch of state or local government; or

(ii) A public official or public employee, or any employee of such person, of state or local government who takes an executive action.

(g) "Expenditure" means:

(i) A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;

(ii) A payment to a lobbyist for salary, fee, commission, compensation for expenses, or other purpose by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(iii) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct

payment of expenses incurred at the request or suggestion of the lobbyist;

(iv) A payment that directly benefits an executive, legislative or public official or a member of the official's immediate family;

(v) A payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with an executive, legislative or public official made at the direction of the employee's employer;

(vi) A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive, legislative or public official; or

(vii) A payment or reimbursement for food, beverages, travel, lodging, entertainment or sporting activities.

(h) "Gift" means anything of value to the extent that consideration of equal or greater value is not received, including a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive, legislative or public official.

(i) "Legislative action" means:

(i) Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage,

enactment, tabling, postponement, defeat or rejection of a bill, resolution, amendment, motion, report, nomination, appointment or other matter by the Mississippi State Legislature or a member or employee of the Legislature acting or purporting to act in an official capacity;

(ii) Action by the Governor in approving or vetoing a bill or other action of the Legislature;

(iii) Action by the Legislature in:

1. Overriding or sustaining a veto by the Governor; or

2. Considering, confirming or rejecting an executive appointment of the Governor.

(j) "Legislative official" means:

(i) A member, member-elect or presiding officer of the Legislature;

(ii) A member of a commission or other entity established by and responsible to either or both houses of the Legislature;

(iii) A staff member, officer or employee to a member or member-elect of the Legislature, to a member of a commission or other entity established by and responsible to either or both houses of the Legislature, or to the Legislature or any house, committee or office thereof.

(k) "Lobbying" means:

(i) Influencing or attempting to influence legislative or executive action through oral or written communication; or

(ii) Solicitation of others to influence legislative or executive action; *** * ***

(iii) Paying or promising to pay anything of value directly or indirectly related to legislative or executive action *** * ***;

(iv) Attempting to influence the procurement of materials, services or construction by an agency; or

(v) Promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative or judicial branch of state or local government.

(l) "Lobbyist" means:

(i) An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;

(ii) An individual who represents a legislative or public official or public employee, or who represents a person, organization, association or other group, for the purpose of lobbying;

(iii) A sole proprietor, owner, part owner or shareholder in a business who has a pecuniary interest in

legislative or executive action, who engages in lobbying activities; *** * ***

(iv) Any individual described in subparagraphs (i), (ii) or (iii) of this paragraph (l) who is employed by or has contracted with any agency, legislative or public official or public employee, or any other public or private entity for the purpose of providing any type of consulting or other similar service but also engages in any type of lobbying activities. Such individual shall not qualify for any exemption under Section 5-8-7 *** * ***; or

(v) Any individual described in subparagraphs (i), (ii), (iii) or (iv) of this paragraph (1) who attempts to influence any member or employee of a governing authority, county board of supervisors, utility district, water board, sewer board, or any other similar local board.

(m) "Lobbyist's client" means the person in whose behalf the lobbyist influences or attempts to influence legislative or executive action.

(n) "Local" means all entities of government at the county, county-district, multicounty district, municipal or school district level.

(o) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint-stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization or group of persons acting in concert.

(p) "Public employee" means an individual appointed to a position, including a position created by statute, whether compensated or not, in state or local government and includes any employee of the public employee. The term includes a member of the board of trustees, chancellor, vice chancellor or the equivalent thereof in the state university system or the state community and junior college system, and a president of a state college or university.

(q) "Public official" means an individual elected to a state or local office, or an individual who is appointed to fill a vacancy in the office.

(r) "Value" means the retail cost or fair market worth of an item or items, whichever is greater.

SECTION 2. Section 5-8-7, Mississippi Code of 1972, is brought forward as follows:

5-8-7. Notwithstanding any other provisions of this chapter, except as otherwise provided in Section 5-8-3(l)(iv), the following person shall not be included within the definition of "lobbyist" or "lobbyist's client" under this chapter, and accordingly the registration and reporting provisions, including the payment of related fees, of this chapter do not apply to:

(a) A legislative or public official acting in an official capacity.

(b) An individual who:

(i) Represents or purports to represent only the individual;

(ii) Receives no compensation or anything of value for lobbying; and

(iii) Has no pecuniary interest in the legislative or executive action.

(c) An individual lobbying in his or her own interest, his or her own business interest, who pays, or promises to pay, offers to pay or causes to be paid to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(d) An individual lobbying on behalf of his or her employer's business interest where such lobbying is not a primary or regular function of his employment position if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on the employer's behalf to public officials, legislative officials, or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(e) An individual lobbying on behalf of an association of which he or she is a member, where such lobbying is not a primary or regular function of his or her position in the association, if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on the association's

behalf to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(f) An individual who is a shareholder, owner or part owner of a business who lobbies on behalf of such business, where such individual is not an employee of the business, if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on behalf of the business to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(g) An individual who:

(i) Limits lobbying solely to formal testimony before a public meeting of a legislative body or an executive agency, or a committee, division or department thereof; and

(ii) Registers the appearance in the records of the public body, if such records are kept.

(h) An individual who is a licensed attorney representing a client by:

(i) Drafting bills, preparing arguments thereon, and advising the client or rendering opinions as to the construction and effect of proposed or pending legislation, where such services are usual and customary professional legal services which are not otherwise connected with legislative action; or

(ii) Providing information, on behalf of the client, to an executive or public official, a public employee, or an agency, board, commission, governing authority or other body of state or local government where such services are usual and customary professional legal services including or related to a particular nonlegislative matter, case or controversy.

(i) News media and employees of the news media whose activity is limited solely to the publication or broadcast of news, editorial comments, or paid advertisements that attempt to influence legislative or executive action. For the purposes of this section, "news media" shall be construed to be bona fide radio and television stations, newspapers, journals or magazines, or bona fide news bureaus or associations which in turn furnish information solely to bona fide radio or television stations, newspapers, journals or magazines.

(j) An individual who engages in lobbying activities exclusively on behalf of a religious organization which qualifies as a tax-exempt organization under the Internal Revenue Code.

(k) An individual who is a nonattorney professional and who receives professional fees and expenses to represent clients on executive agency matters, except that if anything of value shall be paid or promised to be paid directly or indirectly on behalf of a client for the personal use or benefit of an executive or public official or public employee, then expenditures and

actions of the individual are reportable under this chapter, and the individual must register as a lobbyist.

SECTION 3. This act shall take effect and be in force from and after July 1, 2021.