

## “Cooling Off” Period for Legislators Leaving Office to Lobby

### Background

Nearly two-thirds of the states, including Alabama, place restrictions on the ability of public officials to lobby their former employer.<sup>1</sup> Alabama’s own “cooling off” statute has been in the news as more and more elected members of the House of Representatives and Senate resign to take lobbying positions. The statute presently states: “No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership.”<sup>2</sup> Passed in 1995, legislators designed the law to prevent former State officials from leaving their elected positions to immediately lobby their former colleagues.

Soon afterwards, disagreement arose regarding the term “legislative body” and whether it meant the Alabama Legislature as a whole or the individual House or Senate Chambers. In 2003, the Alabama Ethics Commission voted unanimously to define the House and Senate as two separate legislative bodies.<sup>3</sup> The ruling in effect allowed House members who recently resigned to begin lobbying the Senate immediately, and vice versa, with no cooling-off period. While the law is not explicitly violated, the Alabama Ethics Commission<sup>4</sup> and Republican leadership<sup>5</sup> have noted that the spirit of the law is being broken and the law must be strengthened. Senator Del Marsh has pre-filed a bill to amend the statute and delineate that each chamber is off limits for two years if a legislator resigns to take a lobbying position.<sup>6</sup>

### ISSUE SNAPSHOT

Currently, members of the House may resign and immediately lobby the Senate, or vice-versa, without a two year “cooling off” period.

The “Legislative Body Loophole” gives no incentive for legislators to remain in their elected position for a full term.

Rewriting the statute to ban a former member of the Legislature from lobbying the Legislature as a whole for the greater of two years or the remainder of the legislator’s term will provide for a more ethical and transparent government.

Since 2010, Alabama taxpayers have paid for nearly a dozen special elections to fill the seats of resigned lawmakers who have gone on to do lobbying work because of the “Legislative Body Loophole.”<sup>7</sup> These special elections each cost on average approximately \$60,000.<sup>8</sup>

### Policy Consideration

The chambers of the Alabama Legislature do not operate in a separate bubble where the members of the House are cut off from contact with members of the Senate. The legislative process fosters relationships among the members of each chamber. On any given day, the chambers interact in a number of ways including scheduling conference committees, local delegations shepherding local acts, and the general coordination of building support for a particular bill, to name a few.

# GUIDE TO THE ISSUES

Our system of government requires judges serving in the judiciary branch to recuse themselves from hearing a dispute even if there is a possibility that their impartiality might “reasonably be questioned.”<sup>9</sup> At the very least, a cooling off period that applies to both chambers creates a needed buffer.

Both chambers recognize this potential conflict of interest between former legislator lobbyists and members of the Legislature. Rule 1 of the General Rules of Order and Procedure for the House of Representatives explicitly prohibits former legislators from lobbying their former colleagues while on the House floor, while the Senate bans all lobbyists.<sup>10</sup> These rules, in effect, send former members of the Legislature to lobby their former colleagues in private, away from the public eye.

Voters also have an incentive to create a stronger cooling off period for legislators. Alabamians vote for a specific candidate with the idea that their views will be effectively represented during the candidate’s term. Resigning early for a higher-paying lobbying job fuels the cynicism that so often plagues the democratic process. In addition, the requisite special elections are notorious for low voter turnout, making them susceptible to heavy influence by special interests. Special elections should be held for extraordinary circumstances. Resigning to take a better paying lobbying job is not, and should not, be one of those reasons.

## Recommendation

Alabama’s elected officials must earn and preserve the public’s trust by having an open and transparent government. This can be accomplished by eliminating the ambiguous language of “Legislative Body” and clearly delineating that a former member of the Legislature must wait the greater of two years or the remainder of the legislator’s term before lobbying the Legislature as a whole.

Correcting the “Legislative Body Loophole” and strengthening the cooling-off aspect makes sense for a

number of reasons. First, such a change removes the incentive for legislators to resign at the beginning of their term. Voters will have a reasonable expectation that their representative or senator will not leave office to pursue state lobbying. Second, it would save the taxpayers of Alabama from funding multiple special elections. Third, members of the Alabama Legislature who captured super-majorities in both chambers on a platform of a more ethical government and reduced spending have another opportunity to honor their commitments by eliminating this loophole.

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<sup>1</sup> “‘Revolving Door’ Prohibitions Against Legislators Lobbying State Government After They Leave Office”, NATIONAL CONFERENCE OF STATE LEGISLATURES (December 2012), *available at* <http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx>.

<sup>2</sup> ALA. CODE § 36-25-13(a) was modified by ALA. Act. No. 95-194 (H.B. 135).

<sup>3</sup> ALA. ETHICS COMM’N, ADVISORY OPINION No. 2003-12 (February 5, 2003), *available at* <http://216.226.177.42/docs/pdf/AO2003-12ALL.pdf>.

<sup>4</sup> Catalina Trivino, *Lawmaker Concerned with Language in Lobbying Law*, WAKA MONTGOMERY (September 18, 2013), <http://www.waka.com/home/top-stories/Lawmaker-Concerned-With-Language-In-Lobbying-Law-224326921.html>.

<sup>5</sup> Mike Cason, *Speaker Mike Hubbard, Sen. Del Marsh Consider Tighter Law on Lobbying by Ex-Legislators*, AL.COM (August 15, 2013), [http://blog.al.com/wire/2013/08/speaker\\_mike\\_hubbard\\_sen\\_del\\_m.html](http://blog.al.com/wire/2013/08/speaker_mike_hubbard_sen_del_m.html).

<sup>6</sup> Brian Lyman, *Bill Aims to Discourage Lawmakers from Departing for Lobbying Positions*, MONTGOMERY ADVERTISER (Oct. 31, 2013), <http://www.montgomeryadvertiser.com/article/20131031/NEWS/310310021>

<sup>7</sup> See Trivino, *supra*, note 4.

<sup>8</sup> Ashley Thompson, *Required Special Election will Cost Taxpayers*, WAKA MONTGOMERY (July 11, 2013), <http://www.waka.com/home/top-stories/Required-Special-Election-Will-Cost-Taxpayers--215173751.html>

<sup>9</sup> ALA. CANONS OF JUDICIAL ETHICS R. 3(C)(1); Ex parte Duncan, 638 So. 2d 1332 (Ala. 1994).

<sup>10</sup> RULES OF THE ALA. HOUSE OF REPRESENTATIVES, R. 1 (2d. 2013); RULES OF THE SENATE OF THE STATE OF ALA., R. 6 (2012).