

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Review of State Entities' Use of Contract Lobbyists

In Mississippi, authority to hire contract lobbyists varies by type of state entity. State agencies must determine whether their enabling legislation contains the authority for them to hire contract lobbyists. State law and policy of the Board of Trustees of Institutions of Higher Learning require that the board determine whether contractors for individual institutions may lobby. An Attorney General's opinion allows community and junior colleges to use public funds to pay their presidents' association to hire lobbyists.

Regarding the amount of public funds state entities spent for contract lobbyists during the last five years, according to information on file at the Secretary of State's Office, state agencies and institutions of higher learning spent approximately \$1,293,586 in public funds for contract lobbyists during calendar years 2003 through 2007. However, because lobbying expenditures are self-reported and because lobbying by the community and junior college presidents' association removes those institutions from direct reporting of lobbying expenditures, all expenditures for lobbying paid with public funds are not presently being captured.

The practice of state entities' using public funds for contract lobbyists raises a stewardship concern in that state entities are using taxpayers' money to lobby when those entities' managers have the expert knowledge to respond to any information needs that the Legislature might have. In such cases, the use of a contractor to do what veteran executive-level employees should be competent to do constitutes a waste of the state's scarce resources. The money used for contract lobbyists could be used for ongoing programs and services.

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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August 12, 2008

Honorable Haley Barbour, Governor
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Members of the Mississippi State Legislature

On August 12, 2008, the PEER Committee authorized release of the report entitled **A Review of State Entities' Use of Contract Lobbyists.**



Senator Sidney Albritton, Chair

This report does not recommend increased funding or additional staff.

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A Review of State Entities' Use of Contract Lobbyists

Executive Summary

Introduction

In response to a legislative request, PEER sought to determine the extent to which Mississippi's state entities use public funds¹ to obtain the services of contract lobbyists and to assess the public policy environment governing the use of contract lobbyists in other states.

In this review, PEER included state entities (i. e., state agencies,² the institutions of higher learning, and community and junior colleges³) and set calendar years 2003 through 2007 as the review period. PEER did not review the lobbying expenditures of foundations, associations, and organizations related to state government (e. g., university foundations).

Although state law provides broad exemptions for public employees and officials regarding lobbying activities, some state employees are also registered as lobbyists. Due to this report's limitation in scope to contract lobbyists, PEER does not address the issue of state entity employees who lobby the Legislature.

¹ MISS. CODE ANN. Section 7-7-1 (1972) defines *public funds* as all funds received, collected by, or available for support or expenditure by any state department, institution or agency, whether such funds be derived from taxes or from fees collected by the entity or from some other source, although such funds may not be required by law to be deposited into the State Treasury.

² For purposes of this review, PEER defined *state agency* as any state board, commission, committee, council, department, or unit created by the Constitution or statutes if such entity or head thereof is authorized to appoint a subordinate staff that either receives a required annual funds appropriation from the Legislature or is under the purview of the State Personnel Board. This definition excludes related associations, foundations, and all local and some state governmental entities (e .g., county port authorities, levee boards, and the Mississippi Home Corporation).

³ Records of the Secretary of State's Office contained no information on registered lobbyists or expenditures for lobbyists for community or junior colleges reported during the period of 2003 through 2007.

Conclusions

What is the legal environment in Mississippi for state entities' use of contract lobbyists?

Each state agency must determine whether its enabling legislation contains authority for that agency to hire contract lobbyists. The Legislature has delegated authority to the IHL Board of Trustees to determine when and if individual institutions may lobby and the Attorney General has opined that community and junior colleges may use public funds to pay their presidents' association to hire lobbyists. State law provides for disclosure of lobbyist information and public access to such.

PEER reviewed provisions of the MISSISSIPPI CODE, policies of the Board of Trustees of Institutions of Higher Learning, and Attorney General's opinions to determine the legal authority of state agencies, institutions of higher learning, and community and junior colleges to hire contract lobbyists.

PEER determined the following regarding state entities' legal authority to hire contract lobbyists:

- Although state law does not expressly prohibit the general practice of state agencies' hiring of contract lobbyists, the Attorney General has opined that a state agency may contract for a lobbyist only when its enabling legislation contains expressed or implied authority to do so.
- Although provisions of the MISSISSIPPI CODE and bylaws of the Board of Trustees of Institutions of Higher Learning restrict universities' authority to engage in lobbying, three universities hired contract lobbyists from 2003 through 2007 in apparent contravention of these restrictions.
- The Attorney General has opined that community and junior colleges may legally expend public funds to pay the Mississippi Association of Community and Junior College Presidents to hire lobbyists.

Regarding registration and reporting requirements for lobbyists and lobbyists' clients, MISS. CODE ANN. Section 5-8-1 et seq. (1972) sets forth the state's public policy regarding disclosure of lobbyist information and provides for public access to this information. Although state law appears to exempt the State of Mississippi from filing

financial annual reports as a lobbyist client, all of the state entities that hired contract lobbyists during calendar years 2003 through 2007 filed annual reports with the Secretary of State's office detailing lobbying-related expenditures.

How much did state entities expend for contract lobbyists from public funds during the last five years?

According to information on file at the Secretary of State's Office, state agencies and institutions of higher learning spent approximately \$1,293,586 in public funds for independent contract lobbyists during calendar years 2003 through 2007. However, because applicable state laws provide for a system of self-reported information for lobbyist expenditures, PEER cannot attest to the accuracy of this amount.

PEER determined that nine contract lobbyists had contracted with state agencies or institutions of higher learning during the period of calendar years 2003 through 2007, as follows:

- six individuals lobbied for state agencies, representing \$952,193.55 in expenditures from public funds; and,
- three individuals lobbied for universities, representing \$341,392.89 in expenditures from public funds.

Thus from CY 2003 through CY 2007, state agencies and institutions of higher learning spent a total of \$1,293,586.44 in public funds for contract lobbyists and related expenditures. See the Exhibit, page x, for reported expenditures for those state agencies and institutions of higher learning that hired contract lobbyists during this period. PEER did not find expressed statutory authority for any of these state agencies or institutions of higher learning to contract with a lobbyist using public funds.

The state's system of lobbyist registration and reporting consists of self-reported information. The information is not audited or independently verified and may not be an exhaustive accounting of the cost to public funds for lobbying.

Exhibit: State Entities' Expenditures for Contract Lobbyists, Calendar Years 2003 through 2007

Number of Contract Lobbyists Used	State Entities	Number of Calendar Years Using Contract Lobbyists	Total Expenditures for Contract Lobbyists, 2003 through 2007
1	Mississippi Coast Coliseum and Convention Center Commission	2	\$33,999.76
1	Mississippi Department of Transportation	4	363,769.42
1	Mississippi Industries for the Blind	3	123,052.47
1	Mississippi State Port Authority at Gulfport	4	139,585.39
1	Division of Medicaid, Office of the Governor	1	14,400.00
1	Pearl River Valley Water Supply District	5	277,386.51
6	<i>State Agencies</i>		<i>\$952,193.55</i>
1	Delta State University	3	\$36,085.02
1	Mississippi State University	5	297,807.87
1	University of Mississippi	3	7,500.00
3	<i>Institutions of Higher Learning</i>		<i>\$341,392.89</i>
9	<i>Total</i>		<i>\$1,293,586.44</i>

SOURCE: Department of Finance and Administration, Institutions of Higher Learning, and Secretary of State Records

NOTE: In accordance with MISS. CODE ANN. Section 5-8-11 (1972), reported expenditures are to include compensation, reimbursements, overhead, support, and all expenditures that were initiated or paid by the lobbyist on behalf of each lobbyist's client.

How do other southeastern states regulate state agencies' use of contract lobbyists?

In its survey of eight other southeastern states, PEER found that only one reported that the practice of hiring contract lobbyists with public funds is expressly permitted in law. Three states in the survey reported that the practice is expressly prohibited in statute.

PEER surveyed eight other southeastern states--Alabama, Arkansas, Georgia, Florida, Louisiana, North Carolina, South Carolina, and Tennessee--concerning their oversight of lobbying and whether their state agencies are authorized in statute to use public funds to hire contract lobbyists and learned:

- three states—North Carolina, Florida, and Louisiana—prohibit the practice by law;
- four states—Alabama, Arkansas, Georgia, and Tennessee—have no statutory prohibition against hiring contract lobbyists with public funds; and,
- one state—South Carolina—has no statutory prohibition against hiring contract lobbyists with public funds and specifically authorizes such practice.

What are the public policy implications of allowing state entities to use public funds for contract lobbyists?

The expenditure of public funds for contract lobbyists raises a concern regarding state entities' stewardship.

The concern is that state entities are using taxpayers' money to lobby when that entity's managers have the expert knowledge to respond to any information needs that the Legislature might have. In such cases, the use of a contractor to do what veteran executive-level employees should be competent to do constitutes a waste of the state's scarce resources. The money used for contract lobbyists could be used for ongoing programs and services.

Recommendation

The Legislature should enact law prohibiting state agencies, institutions of higher learning, and community and junior colleges from using public funds to hire contract lobbyists.

In the event that the Legislature chooses not to enact such a ban, the Legislature should amend MISS. CODE ANN. Section 5-8-9 (7) (1972) to require all state agencies, institutions of higher learning, and community and junior colleges to file annual reports of lobbying expenditures with the Secretary of State when they use contract lobbyists.

For More Information or Clarification, Contact:

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A Review of State Entities' Use of Contract Lobbyists

Introduction

Authority

In accordance with MISS. CODE ANN. Section 5-3-51 et seq. (1972), the PEER Committee reviewed the use of contract lobbyists by state agencies, the institutions of higher learning (IHL), and community and junior colleges.

Problem Statement

In response to a legislative request, PEER sought to determine the extent to which Mississippi's state entities use public funds¹ to obtain the services of contract lobbyists and to assess the public policy environment governing the use of contract lobbyists in other states.

Scope and Purpose

In this review, PEER included state entities (i. e., state agencies,² the institutions of higher learning, and community and junior colleges) and set calendar years 2003 through 2007 as the review period.

¹ MISS. CODE ANN. Section 7-7-1 (1972) defines *public funds* as all funds received, collected by, or available for support or expenditure by any state department, institution or agency, whether such funds be derived from taxes or from fees collected by the entity or from some other source, although such funds may not be required by law to be deposited into the State Treasury.

² For purposes of this review, PEER defined *state agency* as any state board, commission, committee, council, department, or unit created by the Constitution or statutes if such entity or head thereof is authorized to appoint a subordinate staff that either receives a required annual funds appropriation from the Legislature or is under the purview of the State Personnel Board. This definition excludes related associations, foundations, and all local and some state governmental entities (e. g., county port authorities, levee boards, and the Mississippi Home Corporation).

PEER established four major objectives for the review:

- determine the legal authority each type of state entity has for hiring contract lobbyists with public funds;
- using existing information systems, for calendar years 2003 through 2007, determine the number of individual contract lobbyists receiving public funds from state agencies, institutions of higher learning, and community and junior colleges and the amount of public funds expended by each of these state entities for contract lobbyists and related expenditures;³
- determine how other states in the southeast region regulate lobbyists and the expenditure of public funds for lobbying activities; and,
- assess the public policy implications of allowing state entities to expend public funds for the services of contract lobbyists.

PEER did not review the lobbying expenditures of foundations, associations, and organizations related to state government (e. g., university foundations).

Although state law provides broad exemptions for public employees and officials regarding lobbying activities, some state employees are also registered as lobbyists. Due to this report's limitation in scope to contract lobbyists, PEER does not address the issue of state entity employees who lobby the Legislature.

Method

In conducting this review, PEER:

- analyzed state laws and opinions of the Attorney General regarding lobbying activities in the state (e. g., registration and financial reporting requirements for lobbyists and lobbyists' clients) and the authority for state agencies, institutions of higher learning, and community and junior colleges

³ Records of the Secretary of State's Office contained no information on registered lobbyists or expenditures for lobbyists for community or junior colleges reported during the period of 2003 through 2007.

to use public funds to hire independent contractors as lobbyists;

- analyzed the Secretary of State's system for reporting lobbyists' compensation and related expenditures and lobbyists' clients' expenditures, reviewed documentation of self-reported lobbyists' records, determined whether state entities filed annual lobbyist reports, and interviewed personnel at the Secretary of State's Office regarding the system used for lobbyist records;
- verified the employment status of state agency and IHL personnel who reported lobbying expenditures to determine which lobbyists were contract lobbyists and contacted officials at the Board of Trustees of Institutions of Higher Learning regarding the board's lobbying policies; and,
- surveyed eight other southeastern states regarding how lobbying activities are regulated, legal authority to hire contract lobbyists, and related issues.

Chapter 1: What is the legal environment in Mississippi for state entities' use of contract lobbyists?

Authority to hire contract lobbyists varies by type of state entity. State agencies must determine whether their enabling legislation contains the authority for them to hire contract lobbyists. The Board of Trustees of Institutions of Higher Learning's bylaws require that the board determine whether individual institutions may lobby. An Attorney General's opinion allows community and junior colleges to use public funds to pay their presidents' association to hire lobbyists. State law provides for disclosure of lobbyist information and public access to such.

State Entities' Legal Authority to Hire Contract Lobbyists

PEER reviewed provisions of the MISSISSIPPI CODE, policies of the Board of Trustees of Institutions of Higher Learning, and Attorney General's opinions to determine the legal authority of state agencies, institutions of higher learning, and community and junior colleges to hire contract lobbyists.

State Agencies

Although state law does not expressly prohibit the general practice of state agencies' hiring of contract lobbyists, the Attorney General has opined that a state agency may contract with a lobbyist only when its enabling legislation contains expressed or implied authority to do so.

State law contains no general statutory prohibition against state agencies hiring contract lobbyists. However, the MISSISSIPPI CODE does contain statutory prohibitions of this practice for a few specific agencies. For example, MISS. CODE ANN. Section 73-63-17 (d) (1972) prohibits the Board of Registered Professional Geologists from hiring contract lobbyists. In enumerating the board's powers and duties, the section states:

The board shall not provide any funds for special interest groups to lobby or otherwise promote the group's special interests.

Although PEER did not review every state agency's enabling legislation (instead, reviewing the enabling legislation of only those agencies identified as having

contracted with lobbyists during the review period; see the Exhibit, page 7), PEER found no instances in state law of expressed authority for a state agency to hire a contract lobbyist.

PEER found no instances in state law of express authority for a state agency to hire a contract lobbyist.

The Attorney General has opined that an agency has only those powers that are expressly provided by statute or “necessarily implied” (which refers to a logical necessity for carrying out an expressed power). In Opinion #2002-0679 (dated December 20, 2002), the Attorney General found no implied authority in statute for the Board of Massage Therapy to use public funds to hire a lobbyist. A portion of the board’s enabling legislation (MISS. CODE ANN. Section 73-67-9 [1972]) stated:

. . . [a] majority of the Board may elect an executive secretary and other such individuals, including an attorney, as may be necessary to implement the provisions of this chapter.

The basis for the opinion was that monies generated from fines, fees, and penalties may not be used to hire contract lobbyists because that agency’s statute did not provide expressed legal authority to use those funds for that purpose and the authority to hire a contract lobbyist could not be necessarily implied from the statute.

Even if an agency’s enabling legislation does not expressly prohibit the practice, implied authority must be read into the statute. However, in light of the above opinion, an agency with similar language in its enabling legislation would likely not have the implied authority to hire contract lobbyists.

Institutions of Higher Learning

Although provisions of the MISSISSIPPI CODE and bylaws of the Board of Trustees of Institutions of Higher Learning restrict universities’ authority to engage in lobbying, three universities hired contract lobbyists from 2003 through 2007, in apparent contravention of these restrictions.

PEER did not find either an expressed prohibition or an authorization in state law that addresses the hiring of contract lobbyists by the IHL Board or individual institutions. Also, PEER found no Attorney General’s opinions regarding any implied authority for such.

However, MISS. CODE ANN. Section 37-101-15 (d) (1972) states, in part:

All relationships and negotiations between the State Legislature and its

various committees and the institutions named herein shall be carried on through the board of trustees. No official, employee or agent representing any of the separate institutions shall appear before the Legislature or any committee thereof except upon the written order of the board or upon the request of the Legislature or a committee thereof.
[PEER emphasis added]

Bylaw #201.0606 of the IHL Board reflects this provision and prohibits lobbying of the Legislature unless university representatives are ordered or invited to appear. The IHL Board established this bylaw in September 1990, reaffirming the policy in January 1998 and again in December 2005.

The three contract lobbyists hired by IHL institutions from 2003 through 2007 were not approved or directed to appear by the IHL Board.

PEER notes that the three contract lobbyists hired by IHL institutions from 2003 through 2007 (see the Exhibit, page 7) were not approved or directed to appear by the IHL Board. Because it is most unlikely that the Legislature ordered or directed a university to hire a contract lobbyist to appear before the House, Senate, or any of its committees, it appears that the universities listed in the Exhibit used the services of contract lobbyists without first receiving a directive from the IHL Board. Thus these institutions would be out of compliance with IHL Bylaw #201.0606 and MISS. CODE ANN. Section 37-101-15 (d) (1972).

Community and Junior Colleges

The Attorney General has opined that community and junior colleges may legally expend public funds to pay the Mississippi Association of Community and Junior College Presidents to hire lobbyists.

Attorney General's Opinion #95-0493 (dated July 27, 1995) stated that Holmes Community College could pay public funds to the Mississippi Association of Community and Junior College Presidents to hire a lobbyist. The basis for the opinion was that the board of trustees has the authority to "do all things necessary to the successful operation" of the college. Since the board of trustees is a fiduciary and holds public funds in trust, the board has authority to expend funds for a contract lobbyist since the "expenditure is reasonable, necessary, and justified as being in the best interest of the district" (see Opinion #95-0493).

Exhibit: State Entities' Expenditures for Contract Lobbyists, Calendar Years 2003 through 2007

Number of Contract Lobbyists Used	State Entities	Number of Calendar Years Using Contract Lobbyists	Total Expenditures for Contract Lobbyists, 2003 through 2007
1	Mississippi Coast Coliseum and Convention Center Commission	2	\$33,999.76
1	Mississippi Department of Transportation	4	363,769.42
1	Mississippi Industries for the Blind	3	123,052.47
1	Mississippi State Port Authority at Gulfport	4	139,585.39
1	Division of Medicaid, Office of the Governor	1	14,400.00
1	Pearl River Valley Water Supply District	5	277,386.51
6	<i>State Agencies</i>		<i>\$952,193.55</i>
1	Delta State University	3	\$36,085.02
1	Mississippi State University	5	297,807.87
1	University of Mississippi	3	7,500.00
3	<i>Institutions of Higher Learning</i>		<i>\$341,392.89</i>
9	<i>Total</i>		<i>\$1,293,586.44</i>

SOURCE: Department of Finance and Administration, Institutions of Higher Learning, and Secretary of State Records

NOTE: In accordance with MISS. CODE ANN. Section 5-8-11 (1972), reported expenditures are to include compensation, reimbursements, overhead, support, and all expenditures that were initiated or paid by the lobbyist on behalf of each lobbyist's client.

Summary Regarding Legal Authority for State Entities to Hire Contract Lobbyists

Authority to hire a contract lobbyist must be expressly authorized in an agency's enabling legislation or implied as a logical necessity for carrying out an expressed power. Pursuant to Attorney General's Opinion #2002-0679, implied authority is unlikely to be read into agencies' statutes containing language similar to that of the Board of Massage Therapy (CODE Section 73-67-9). Absent an expressed prohibition regarding the practice of hiring contract lobbyists, each agency's statute must be read to determine whether implied authority exists, such as with Holmes Community College (see Attorney General's Opinion #95-0493). Otherwise, an agency does not have the legal authority to hire a contract lobbyist.

In conclusion, each state agency must determine whether its enabling legislation contains the authority to hire contract lobbyists. The Legislature has delegated authority to the IHL Board of Trustees to determine when and if individual institutions may lobby the Legislature, except in instances in which representatives of the individual institutions are invited by the Senate, House of Representatives, or a legislative committee to appear. Finally, the Attorney General has opined that the community and junior colleges may expend public funds to pay their presidents' association to hire lobbyists.

Registration and Reporting Requirements

Registration and Reporting Requirements for Lobbyists and Lobbyists' Clients

MISS. CODE ANN. Section 5-8-1 et seq. (1972) sets forth the state's public policy regarding disclosure of lobbyist information and provides for public access to this information.

Mississippi law establishes registration and reporting requirements for lobbyists and lobbyists' clients (MISS. CODE ANN. Section 5-8-1 et seq. [1972]). The Secretary of State's Office has the primary role in the state's system of lobbyist registration and reporting and its Elections Division registers lobbyists and lobbyists' clients, collects fees and financial reports, and assesses civil penalties for failure to file reports or to comply with statutory reporting requirements.

According to MISS. CODE ANN. Section 5-8-5 (1972):

. . .every lobbyist and every lobbyist's client shall file a registration statement with the Secretary of State within five (5) calendar days after becoming a lobbyist, becoming a lobbyist's client or beginning to lobby for a new client. The filing of every registration statement shall be accompanied by the payment of a registration fee of Twenty-five Dollars (\$25.00) to the Secretary of State. The lobbyist shall file the registration statement and pay the fees to the Secretary of State for each lobbyist's client whom the lobbyist represents.

MISS. CODE ANN. Section 5-8-7 (1972) provides exceptions as to who must register as a lobbyist (e. g., heads of organizations, foundations, associations).

MISS. CODE ANN. Sections 5-8-9 and 5-8-11 (1972) contain reporting requirements for lobbyists and lobbyists' clients. These requirements are:

- lobbyists' clients must file a report of expenditures no later than January 30 of each year containing all expenditures paid by the lobbyist's client during the preceding twelve months;
- lobbyists must file a separate report for each lobbyist's client specifically listing all payments received from the lobbyist's client and all expenditures initiated or paid by the lobbyist on behalf of each lobbyist's client during each reporting period; and,
- lobbying expenditures for both the lobbyist and the lobbyist's client must be reported in the following payment categories:
 - fee, retainer, salary, or other compensation;
 - the portion of office rent, utilities, supplies and compensation of support personnel attributable to lobbying activities;
 - support of lobbying activities, including expenses;
 - compensation, payment, or reimbursement for the services, time, or expenses of an employee or soliciting others for direct

communication with a public official or employee;

- reimbursements for food, beverages, travel, lodging, entertainment, or sporting activities; or,
- purchases, payments, distributions, loans or forgiveness thereof, advances, deposits, transfer of funds, promises to make payments, monetary gifts, or anything of value provided to public officials.

This report does not address the issue of state entities' employees who lobby the Legislature.

As noted on page 2, although state law provides broad exemptions for public employees and officials regarding lobbying activities, some state employees are also registered as lobbyists. Due to this report's limitation in scope to contract lobbyists, PEER does not address the issue of state entities' employees who lobby the Legislature.

Reporting Requirements for State Entities

Although state law appears to exempt the State of Mississippi from filing financial annual reports as a lobbyist client, all of the state entities that hired contract lobbyists during calendar years 2003 through 2007 filed annual reports with the Secretary of State's office detailing lobbying-related expenditures.

MISS. CODE ANN. Section 5-8-9 (1972) requires a lobbyist's client to file a report of expenditures with the Secretary of State no later than January 30 of each year. The report must contain information on all expenditures paid by the lobbyist's client during the preceding twelve calendar months. Subsection 2 of Section 5-8-9 lists seven categories by which the expenditure information must be reported to the Secretary of State. A client's annual report of lobbyists' expenditures must include a cumulative total for the calendar year for all reportable categories of expenditure.

Subsection 7 of CODE Section 5-8-9 states:

If the State of Mississippi is a lobbyist's client, the State of Mississippi shall be exempt from filing an annual report.

According to the staff of the Secretary of State's office, they leave interpretation of this section concerning filing of annual reports of lobbying expenditures up to individual state entities. Although state entities apparently have discretion in filing annual reports based

on this CODE section, records of the Secretary of State's office contain client annual reports for the nine entities listed in the Exhibit, page 7, as having incurred lobbying-related expenditures from 2003 through 2007.

By exempting state entities from filing annual reports of lobbyists' expenditures and leaving the filing of such reports to the discretion of state entities, state law may limit taxpayers' access to this information.

The state's public policy, as set forth in MISS. CODE ANN. Section 5-8-1 et seq. (1972), requires disclosure regarding individuals who lobby, their clients, amounts paid by clients for lobbying activities, and lobbying-related expenditures. Taxpayers have access to this information through annual reports filed with the Secretary of State. By exempting state entities from filing annual reports of lobbyists' expenditures and leaving the filing of such reports to the discretion of state entities, state law may limit taxpayers' access to this information.

Chapter 2: How much did state entities expend for contract lobbyists from public funds during the last five years?

According to information on file at the Secretary of State's Office, state agencies and institutions of higher learning spent approximately \$1,293,586 in public funds for independent contract lobbyists during calendar years 2003 through 2007. However, because applicable state laws provide for a system of self-reported information for lobbyist expenditures, PEER cannot attest to the accuracy of this amount.

Through reviewing state payroll and personnel records and consulting with staff of the central office of the Board of Trustees of Institutions of Higher Learning regarding the employment status of individuals listed in lobbyists' reports, PEER determined that nine contract lobbyists had contracted with state agencies or institutions of higher learning during calendar years 2003 through 2007, as follows:

- six individuals lobbied for state agencies, representing \$952,193.55 in expenditures from public funds; and,
- three individuals lobbied for universities, representing \$341,392.89 in expenditures from public funds.

Nine independent lobbyists contracted with state agencies or institutions of higher learning from 2003 through 2007.

Thus from CY 2003 through CY 2007, state agencies and institutions of higher learning spent a total of \$1,293,586.44 in public funds for lobbying. The Exhibit, page 7, shows reported expenditures for those state agencies and institutions of higher learning that hired contract lobbyists during this period. (As noted on page 2, records of the Secretary of State's Office contained no reported expenditures for lobbyists for community and junior colleges from 2003 through 2007.) As noted on page 5, PEER did not find expressed statutory authority for any of these state agencies or institutions of higher learning to contract with a lobbyist using public funds.

Because of the reporting system's design, lobbyist expenditure information provided through the Secretary of State's Office is not audited or independently verified.

As noted on page 8, the Secretary of State's Office has the primary role in the state's system of lobbyist registration and reporting. The Secretary of State's Office has a web-based public access reporting system for lobbyists and lobbyists' clients. Although state law contains registration and financial reporting requirements for lobbying (see page 8), the system is built on self-reported information.

The system is searchable by individual registered lobbyist's name or lobbyist's client name by calendar year. The records available for viewing on the website are scanned copies of the primary source documents and compensation totals by lobbyist--i. e., the sworn statements furnished on registration forms and financial reports by lobbyists and lobbyists' clients. Lobbyists' and lobbyists' clients information is reported to the Secretary of State by calendar year.

Because of the reporting system's design, lobbyist expenditure information provided through the Secretary of State's Office is not audited or independently verified and may not be an exhaustive accounting of the cost to public funds for lobbying.

Chapter 3: How do other southeastern states regulate state agencies' use of contract lobbyists?

In its survey of eight other southeastern states, PEER found that only one southeastern state reported that the practice of hiring contract lobbyists with public funds is expressly permitted in law. Three states in the survey reported that the practice is expressly prohibited in statute.

PEER surveyed eight other southeastern states concerning their oversight of lobbying: Alabama, Arkansas, Georgia, Florida, Louisiana, North Carolina, South Carolina, and Tennessee. PEER inquired as to whether state agencies are authorized in statute to use public funds to hire contract lobbyists and learned:

- three states—North Carolina, Florida, and Louisiana—prohibit the practice by law;
- four states—Alabama, Arkansas, Georgia, and Tennessee—have no statutory prohibition against hiring contract lobbyists with public funds; and,
- one state—South Carolina—has no statutory prohibition against hiring contract lobbyists with public funds and specifically authorizes such practice.

The Appendix, page 17, contains additional details on PEER's survey results.

Chapter 4: What are the public policy implications of allowing state entities to use public funds for contract lobbyists?

The expenditure of public funds for contract lobbyists raises a concern regarding state entities' stewardship.

The practice of state entities' using public funds for contract lobbyists raises a stewardship concern. The concern is that state entities are using taxpayers' money to lobby when that entity's managers have the expert knowledge to respond to any information needs that the Legislature might have. In such cases, the use of a contractor to do what veteran executive-level employees should be competent to do constitutes a waste of the state's scarce resources. The money used for contract lobbyists could be used for ongoing programs and services.

The money state entities use for contract lobbyists could be used for ongoing programs and services.

As noted previously and in the Appendix, page 17, Florida, North Carolina, and Louisiana laws prohibit the practice of using public funds for state entities to hire contract lobbyists.

Recommendation

The Legislature should enact law prohibiting state agencies, institutions of higher learning, and community and junior colleges from using public funds to hire contract lobbyists.

In the event that the Legislature chooses not to enact such a ban, the Legislature should amend MISS. CODE ANN. Section 5-8-9 (7) (1972) to require all state agencies, institutions of higher learning, and community and junior colleges to file annual reports of lobbying expenditures with the Secretary of State when they use contract lobbyists.

Appendix: Additional Detail from Survey of Southeastern States Regarding Regulation of Lobbying

As noted on page 14, PEER surveyed the states of Alabama, Arkansas, Georgia, Florida, Louisiana, North Carolina, South Carolina, and Tennessee regarding lobbying oversight; state agencies' authority to hire contract lobbyists; and waiting periods for state employees, public officials, and legislators prior to lobbying. This appendix provides additional detail on the survey results. The table on the following page summarizes the survey results.

Oversight of Lobbying

According to PEER's survey, seven of the southeastern states grant regulatory authority for lobbying to their ethics agencies.

PEER inquired of the other states about which agencies oversee lobbying activities and found that most of the states surveyed have granted oversight authority to their states' ethics agencies. PEER learned:

- seven of the eight states surveyed have granted purview over lobbying activities to their ethics agencies;
- Florida is the only state surveyed not to place lobbying oversight under its ethics agency; and,
- two of the seven states, North Carolina and Arkansas, have divided the responsibility for lobbying oversight between the ethics agency and the Secretary of State.

Florida is the only state surveyed not to place lobbying oversight under its ethics agency. Instead, lobbying activities are regulated by the Lobbyist Registration Office under the Division of Legislative Information and Office of Legislative Services. The role of the ethics agency in Florida directly related to enforcement of the state's lobbying laws is limited to investigating complaints specifically regarding the use of state funds for lobbying.

Results of PEER Survey of Southeastern States' Regulation of Lobbying by Public Entities

	<i>Does state law expressly prohibit public entities' hiring of contract lobbyists using public funds?</i>	<i>Which agency has regulatory authority over lobbying activities?</i>	<i>Does state law prohibit state employees from lobbying?</i>	<i>Does state law impose lobbying waiting periods for certain public employees, public officials, and state legislators?</i>
Mississippi	No	Secretary of State	No*	No
Alabama	No	Ethics	No	Yes
Arkansas	No	Ethics**	No	Yes
Florida	Yes	Lobbyist Registration Office	No	Yes
Georgia	No	Ethics	No	Yes
Louisiana	Yes***	Ethics	Yes****	No
North Carolina	Yes	Ethics**	No	Yes
South Carolina	No	Ethics	No	Yes
Tennessee	No	Ethics	No	Yes

*State agency employees are exempt from registering as lobbyists under certain conditions.

**Arkansas and North Carolina split authority and responsibility for lobbying oversight between the ethics agency (regulatory function) and Secretary of State (central collection of fees and registration/report depository).

*** The Louisiana Attorney General has opined that the Louisiana Constitution "prohibits the use of public funds or public employees from being involved in any lobbying activity" (Opinion No. 06-0156 on August 2, 2006). The opinion is based on Article XI, Section 4 of the Louisiana Constitution, which states: ". . .no public funds shall be used to urge any elector to vote for or against any candidate or proposition or be appropriated to a candidate or political organization."

**** The Louisiana Attorney General has opined that the Louisiana Constitution "prohibits the use of public funds or public employees from being involved in any lobbying activity" (Opinion No. 06-0156 on August 2, 2006). The Attorney General's opinion cites *Louisiana Revised Statutes* (LSA-R.S.) 24:56 (F), which provides that "No state employee in his official capacity or on behalf of his employer shall lobby for or against any matter intended to have effect of law pending before the legislature or any committee thereof. Nothing herein shall prohibit dissemination of factual information relative to any such matter."

SOURCE: PEER survey of eight southeastern states.

Alabama, Georgia, Louisiana, South Carolina, and Tennessee have granted total regulatory authority and responsibility for their lobbying activities to their ethics agencies. As noted previously, Arkansas and North Carolina have split the authority and responsibility for lobbying oversight between the ethics agency (regulatory function) and Secretary of State (central collection of fees and registration/report depository).

Authority to Use Public Funds to Hire Contract Lobbyists

Only one southeastern state reported that the practice of hiring contract lobbyists with public funds is expressly permitted in law. Three states in the survey reported that the practice is expressly prohibited in statute.

As noted on page 14, PEER found that:

- three states—North Carolina, Florida, and Louisiana—prohibit the practice by law;
- four states—Alabama, Arkansas, Georgia, and Tennessee—have no statutory prohibition against hiring contract lobbyists with public funds; and,
- one state—South Carolina—has no statutory prohibition against hiring contract lobbyists with public funds and specifically authorizes such practice.

The Louisiana Attorney General’s Office (Opinion No. 06-0156 on August 2, 2006) has interpreted Article XI, Section 4 of the *Louisiana Constitution*, which states that “no public funds shall be used to urge any elector to vote for or against any candidate or proposition or be appropriated to a candidate or political organization,” to prohibit the use of public funds from being involved in any lobbying activity.

Louisiana also statutorily prohibits state employees from lobbying. Louisiana law specifically bans state employees from “lobbying for or against any matter intended to have the effect of law pending before the legislature or any committee thereof” (see *Louisiana Revised Statutes* 24:56 [F]). Louisiana state employees may provide factual information but they cannot lobby for or against a particular matter unless specifically requested by a member of the Legislature.

South Carolina statutorily authorizes using public funds to hire contract lobbyists but places additional registering and reporting requirements on contract lobbyists.

According to the General Counsel of the Ethics Commission, South Carolina's state agencies use contract lobbyists extensively. During the state's 2007-08 legislative session, three bills were introduced in the House to prohibit the use of public funds to employ or contract with a lobbyist; these bills died in committees.

South Carolina's law places extra requirements on contract lobbyists who are not full-time employees of the state and their state agency clients (i. e., pay a registration fee). In addition, agencies that employ or contract with outside lobbyists from funds appropriated in the annual general appropriations act are required to provide copies of the disclosure statements and reports filed by the lobbyist with the Secretary of State or State Ethics Commission to each member of the board, commission, or governing body, authority, or official of the agency.

Waiting Periods for State Employees, Public Officials, and Legislators

Most states surveyed have waiting periods for public employees before they can be employed as lobbyists.

PEER also inquired as to whether waiting periods are placed on lobbying activities for certain public employees (i. e., state agency employees, state public officials, and members of the state legislature) upon leaving office or employment. PEER learned:

- seven of eight states have waiting periods directly imposed by state law; and,
- waiting periods for lobbying range from less than one year up to two years.

Thus, most of the states surveyed view waiting periods as necessary for regulating the lobbying activities of public employees.

All eight states surveyed, with the exception of Louisiana, have waiting periods for lobbying. One of the states has a waiting period of less than a year, three states have one-year waiting periods, two states have two-year waiting periods, and one state upon expiration of term or employment.

Mississippi does not impose a waiting period in state law specifically for lobbying; however, Mississippi law does require a one-year waiting period before entering into contracts. The state's ethics laws have provisions that address conflict of interest and improper use of office.

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