



**ECONOMIC DEVELOPMENT
ASSOCIATION OF ALABAMA**

To: **Mr. Othni Lathram, Director, Legislative Services Agency**

From: **Jim Searcy, Executive Director, Economic Development Association of Alabama**

Subject: **Comments for Ethics Clarification and Reform Commission January 31 Meeting**

The 500 members of the Economic Development Association of Alabama (EDAA) appreciate the opportunity to appear before the Commission to provide information regarding economic development and ethics issues – especially the economic development professional (EDP) safe harbor established by the Legislature in 2018. By enacting the safe harbor, the Legislature provided much needed confirmation and clarity for the EDPs who are critical to Alabama's nationally-recognized success in economic development in recent years.

The 2018 EDP safe harbor includes a “sunset” provision such that it expires in April. It is our hope that this provision will be removed soon. Any requirement that site selectors register as lobbyists would place Alabama at a disadvantage with respect to other states. This is due to the confidential nature of the site selection process. EDAA greatly appreciates the Legislature’s enactment of the EDP safe harbor and urges that it be renewed as soon as possible. Several site selectors have provided comments on the importance of the EDP safe harbor to their ability to consider Alabama for projects. At their request, I am forwarding you their comments for distribution to the Commission. The comments are from:

Mark Williams, President, Strategic Development Group
Didi Caldwell, Founding Principal, Global Location Strategies
Jay Garner, President, Garner Economics

While the 2018 passage of the EDP safe harbor was essential for Alabama to remain competitive in economic development, there are some technical issues and ambiguities in the original legislation that we believe should be considered moving forward. For example, employees of many municipalities, counties, and other governmental entities (e.g., IDBs) are “public employees” who are involved in ED activities and are expected to work with (and appear before) state agencies and local legislative bodies (including those governing their public employer) regarding incentives and ED projects. There are several economic developers that are dealing with this and other ambiguities who are providing comments which I have also attached at their request for the Commission:

Greg Knighton, Economic Developer for the City of Hoover
Dale Greer, Director of Economic Development, City of Cullman
Lori Huguley, Director of Economic Development, City of Opelika
Phillip Dunlap, Economic Development Director, City of Auburn
Ellen McNair, Senior Vice President, Montgomery Area Chamber of Commerce

We look forward to sharing our perspective with the Commission. Thank you in advance for your assistance in providing these comments to them.



Optimal locations. Superior service.

January 25, 2019

Code of Ethics Clarification and Code Commission
State of Alabama

Ladies and Gentlemen,

It has come to my attention that the legislation known as the Alabama Jobs Enhancement Act, which addresses the need for professional site selectors and other economic development professionals to register as lobbyist, is set to expire on April 1, 2019.

I would encourage the renewal of this legislation to preserve your state's competitiveness in recruitment efforts. As you know, recruitment of impactful industry is highly competitive and the creation of legislation which places additional red tape on the site selection process stands to costs Alabama thousands of future jobs and billions in capital investment.

I also encourage removal of the legislation's sunset provision to avoid confusion and future concerns about Alabama's readiness to compete and business friendly environment.

Best regards,

A handwritten signature in black ink that reads "Mark L. Williams".

Mark Williams
President

January 21, 2019

Mr. Greg Canfield
Secretary Alabama Department of Commerce
401 Adams Avenue Montgomery, AL 36130-4106

Dear Mr. Canfield:

It has come to my attention that there is a sunset provision in HB 317 that requires the legislation be renewed by April 1, 2019. This legislation, known as the Alabama Jobs Enhancement Act, addresses the need for site selectors and other economic development professionals to register as lobbyist in order to negotiate project agreements with the state.

Last year, the passage of HB 317 provided clarity for professionals like myself that are representing companies looking to invest billions of dollars of investment and create thousands of jobs. As you know, industrial recruitment is highly competitive and time sensitive. Our clients expect us to be able to help them determine the optimal location for their investment in ever decreasing time frames. I fear that if the legislation is not renewed it will create confusion among my contemporaries, impact our ability to serve our clients in a timely manner, and place Alabama in a less competitive position relative to other states that have no such requirement.

As Chair of the Site Selectors Guild, an organization with 51 of the most respected location strategy advisors from across the globe, I can assure you that site selection professionals, just like their clients, thrive in a business-friendly environment where the playing field is well understood and risks are minimized. We perform our duties with diligence, integrity, and as much transparency as possible given the highly confidential nature of our projects. We need experienced and equally diligent economic development professionals on the local and state side that can help us achieve our client's objectives.

The extension of HB 317 will give confidence to me and to the site selection community that Alabama continues to be a highly competitive location for business and that we will be able to represent Alabama in the best light possible.

Please do not hesitate to reach out to me if you have any further questions or concerns.

Best regards,



Didi Caldwell
President and Founding Principal

January 24, 2019

Code of Ethics Clarification and Code Commission
State of Alabama

Dear Ladies and Gentlemen:

Last year, I offered written testimony advising the Legislature that categorizing site location advisors, such as myself as lobbyists, would be detrimental to the State's efforts in business recruitment. My job, and those that have a similar focus of what I do, is to evaluate on behalf of companies the optimal locations for their potential investment.

Location advisement is a rigorous science that is very analytical in nature. I noted last year that adding another layer of unnecessary bureaucracy, such as registering to be a lobbyist (which we aren't), could cause harm in your state recruitment efforts since individuals such as myself, would normally just find another business-friendly state to do business in. I was thrilled when the Legislature did not require location advisors to register. But here we are again discussing the issue since there is a sunset provision to the legislation.

I would encourage you to make an educated decision on removing the sunset provision for this legislation so that it does not become an annual issue of concern. Please don't hesitate to call me if you have any questions.

Sincerely,

Jay Garner

Jay A. Garner, CEcD
President



City of Hoover
Office of Economic Development

January 23, 2019

Code of Ethics Clarification and Reform Commission
Office of the Attorney General of Alabama
P.O. Box 300152
Montgomery, AL 36130-0152

Dear Commission:

I am employed in a full-time capacity by the City of Hoover as its Economic Development Manager. I work daily to recruit and retain companies and jobs in the city. As an economic development professional, I write to you encouraging the renewal of HB 317 and the inclusion of additional language to further clarify several issues.

I understand that the Economic Development Professional (EDP) safe harbor is unavailable if a person seeks incentives through "legislative action." Legislative action is not defined in Alabama law but likely includes action by city councils and county commissions. Under current law, therefore, the EDP safe harbor appears to be unavailable when someone seeks approval of abatements and incentives at the city council or county commission levels. Also, local financial or in-kind support of a project requires vote by a city council or county commission under Amendment No. 772. These "772 projects" are common in the City of Hoover, possibly meaning that many people would need to be registered as lobbyists.

I understand that the EDP safe harbor currently does not apply to employees of cities and counties or other local government instrumentalities (e.g., IDBs/IDAs). As a "public employee" involved in ED activities, I am expected to work with (and appear before) local legislative bodies – including those governing the City of Hoover - regarding incentives and ED projects. I must also work with officials in Jefferson and Shelby Counties. I also must work with state agencies (Commerce, ADECA, ALDOT) regarding contracts or grants for ED projects.

I understand that the statute creates a situation where members of Hoover's Industrial Development Board, when supporting ED projects before state agencies, would need to register as lobbyists because they are influencing state contracts or grants and are not subject to the EDP safe harbor. The same situation would arise if they are working with (or appearing before) the Hoover City Council or the county commissions of Jefferson or Shelby Counties about an ED project.

I respectfully ask that you consider adding language to 1) extend the EDP safe harbor when someone seeks approval of abatements at the city council or county commission levels; 2) extend the EDP safe harbor to full time economic development professionals who are public employees; and 3) clarify that IDB/IDA Board members need not register as lobbyists when working in their appointed capacities to support ED projects.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Greg Knighton".

Greg Knighton
Economic Development Manager



CULLMAN ALABAMA
Economic Development Agency

To: Code of Ethics Clarification and Reform Commission

From: Dale Greer, Director 
Cullman Economic Development Agency
City of Cullman

Subject: Renewal of HB 317

Dear Sirs:

As an employee of a local government economic development agency, I believe it is important to revise the language in the HB 317 to insure professional economic developers working as employees of cities and counties in Alabama are not classified as lobbyists.

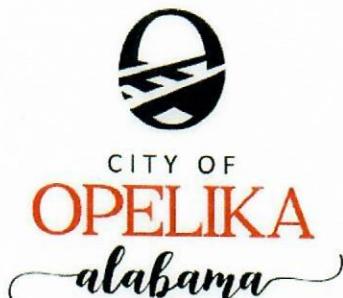
I have spent 29 years with the City of Cullman Economic Development Agency focused on attracting new industry and assisting industry to expand. Most of those successful efforts involve incentivizing the company with a goal of creating jobs and attracting capital investment to Cullman and Alabama.

Our job description includes working with the state, local governments and service agencies to seek grants and other funding sources to foster growth that improve the quality of life of our citizens. Actions taken by local governments are public.

Finally, please consider removing the "sunset" provision in HB 317. Alabama communities face a competitive disadvantage when our competition can point to the fact that our legislation has a set termination date that could negate their incentives.

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January 22, 2019

Code of Ethics Clarification and Reform Commission
Alabama Legislature

This letter is in support of renewing HB 317 and specifically asking to add some additional language regarding the question of safe harbor for City Economic Development Professionals as well as Industrial Development Board members.

I believe it may have been an oversight in the language to omit City and Industrial Development Board members from the Economic Development Professional safe harbor clause and would like to request it be inserted to clarify any confusion that City Economic Developers should be afforded the same consideration as other Economic Development Professionals.

In my role as Economic Developer for the City of Opelika, I am responsible for evaluating projects and making recommendations to the Mayor, City Council and the Industrial Development Authority. The language of HB 317 seems to inhibit my ability to effectively execute my duties. The City Council looks to me for recommendations for incentives that are in the best interest of our City. A clarification of the language will provide the coverage needed by those Economic Development Professionals who are employed by municipalities.

As far as the effectiveness of HB 317, I believe it enabled the State of Alabama to continue its impressive string of highly desirable project wins. This might not have been possible had HB 317 not been enacted to provide coverage for Site Selectors and Economic Development professionals. I hope that the Legislature will remove the sunset clause and add the additional language that provides City Economic Development professionals and Industrial Development Board members the same safe harbor as others in the State.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lori Huguley'.

Lori Huguley, CEcD
Director
Opelika Economic Development





City of Auburn

Home of Auburn University

January 18, 2019

To: Code of Ethics Clarification and Reform Commission

From: Phillip Dunlap, Director
Economic Development Department
City of Auburn

Subject: HB 317 Renewal

Gentlemen:

I am writing this memorandum as an employee of the City of Auburn who has served in the capacity of Economic Development Director for over 34 years. In my career, I have been directly involved in numerous projects that have resulted in over a billion dollars in capital investment and have resulted in thousands of jobs being created for residents of Auburn and all of east Alabama.

It is a fact that most of these investments involved some type of incentive package provided either by the State of Alabama or the City of Auburn, or both. In every case, the City of Auburn has worked diligently to ensure that such incentives were provided in an open and transparent manner and were essential to win the project in an intensely competitive arena. This brings me to the subject of this memorandum. I am aware that HB 317 is again being discussed for renewal. It is essential that HB 317 is renewed with some important changes.

- 1.) The sunset provision should be deleted.
- 2.) It is important that language be included that ensures that professional economic development employees of municipalities or counties are not considered lobbyists under HB 317. These people are expected to put together economic development packages for their governments and in no way are they functioning as lobbyists. They are employees hired to do a job. In fact, public employees are already covered under the State of Alabama ethics laws.

I appreciate your consideration of this request. The effort to recruit jobs and investment requires hard work and being able to move quickly in an extremely competitive environment. Thank you again!

MONTGOMERY
AREA CHAMBER OF COMMERCE

January 30, 2019

Alabama Ethics Clarification and Reform Commission
Office of the Attorney General of Alabama
Post Office Box 300152
Montgomery, AL 36130-0152

Subject: HB 317 Renewal

Dear Commission,

I am employed full time as Senior Vice President – Corporate Development of the Montgomery Area Chamber of Commerce. In that role, I am responsible for the recruiting of new and expanding industries in Montgomery. I have over 35 years of experience working in the field of economic development. In addition, I am a Certified Economic Developer, certified by the International Economic Development Council. Our Chamber is proud to have served a role in many successful efforts that have helped our community grow including the recruitment of Hyundai and the over 35 Hyundai suppliers that now employ over 15,000 people in our county with a \$4.8B annual statewide economic impact.

On behalf of our chamber and many other chambers across the state, we thank the members of this commission for considering this issue and for providing us with the opportunity to provide our perspective on recurring questions about how economic development efforts in this state are affected by various ethics laws and interpretations of those laws. My goal in providing these comments is to ensure that our staff and volunteers will be able to continue their efforts to help create opportunities, jobs, and prosperity in Alabama, as we have done for many decades.

Background on the Chamber's Role

Before I review any specific concerns, it may be helpful to provide some context on the economic development role that our Chamber plays in the Montgomery area, which I believe is similar to the role that many chambers play across the state.

The Chamber supports both local industries who are seeking to expand their businesses as well as companies that are considering locating a business in our community. We support businesses and other organizations (such as the U.S. military) considering locating or expanding in this area without regard to whether the group is a member of our organization. A core mission of our Chamber is to seek out and support opportunities for growth and advancement in our community and to work with the public sector to do so.

Due to the complexity involved with business development incentives and the related agreements and approvals, it is common practice for any business expanding or locating a project here to ask us for advice and assistance in understanding and seeking tax/development incentives and the associated public sector agreements and approvals for which they are eligible. The economic growth that our Chamber supports is central to the public interest and we work daily with local government officials in our economic development efforts.



Our Chamber staff and volunteers regularly participate in economic development activities and routinely work directly with the business and the government bodies with authority over incentives and other business location issues. These efforts may include working with the Department of Commerce on a project agreement, working with other state agencies on issues related to the project, or working with AIDT to assist with worker training. We also work with the City and County when they are providing monetary or in-kind support for an economic development project. Our Chamber may also work with the business and the local IDB to secure sales and property tax abatements for a prospect. Therefore, a core part of our mission is being familiar with these issues and encouraging economic development opportunities in our respective regions.

Recent Developments – EDP Safe Harbor

In 2017, economic developers sought to confirm that routine economic development activities that chambers work on every day – such as those discussed above – are not considered “lobbying” under the Ethics Act (as we have understood to be the case for many years). As we understand it, the Ethics Commission staff and Commission could not come to agreement on addressing this issue and asked the Legislature to resolve it. This lead to the 2018 enactment of the economic development professional safe harbor in House Bill 317, which is now codified in Section 36-25-1.2 of the Alabama Code.

On behalf of the Chamber and many others in the economic development field, we want to thank the Governor and legislators who supported this important confirmation of the economic development community’s longstanding understanding of how the ethics laws apply to routine economic development activities. We recognize that these are complex and easily politicized issues and appreciate your leadership in helping ensure that this State does not miss a step in pursuing growth opportunities. We continue to believe that the Legislature has never intended to include Chamber staff or volunteers as lobbyists simply because they collaborate and work with businesses on economic development projects in their community and may interact with a public official in doing so.

It is our understanding that the economic development professional safe harbor will expire on April 1, 2019 and that the Legislature will have the opportunity to consider the reauthorization of this exemption during the 2019 Legislative Session. We support this renewal as well as several technical amendments that will provide further clarity and protections to Chamber staff and volunteers.

The Continued Need for the EDP Safe Harbor

The Ethics Act defines the term “lobbying” to include the “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 government.” The Ethics Act defines the term “lobbyist” to include any person who receives compensation from a business to lobby. The economic development professional safe harbor confirms that Chamber staff and volunteers – **who are not hired by the businesses seeking these incentives and agreements and approvals** – are not considered to be lobbying and are not required to register as lobbyists, but as described in more detail below, there is some question as to whether the exemption in that bill covered Chamber representatives.

The Chamber is a general advocate for economic growth and development in our community, but we are not retained, compensated, or hired to work on economic development projects by the businesses seeking those incentives. Instead, Chambers are fulfilling a core part of their mission in championing and seeking to facilitate economic growth opportunities for their communities. This includes supporting or participating in discussions with state and local public officials to support job creation and capital investment by businesses that do not hire, retain, or compensate us. If these types of actions are classified as lobbying or if Chamber staff or volunteers are required to register as lobbyists, then we are concerned about the impact that this would have on the Chamber and our ability to support important economic development projects that help grow our region.

Chambers of Commerce such as ours, wish to continue providing support to their communities for their continued growth and prosperity. They play a unique role in the civic landscape, but they are not a compensated service provider to the businesses seeking economic development incentives. This issue is of vital importance to the regions we serve so that we can continue helping grow jobs and opportunities.

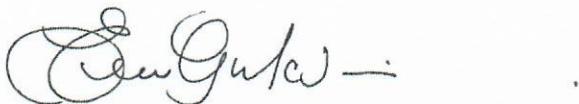
Technical Clarifications for the EDP Safe Harbor

While the provisions enacted in 2018 were essential to Alabama's continued economic growth – and we greatly appreciate the Legislature's enactment of them (and the Governor's signing this law) in response to the Ethics Commission's request – we believe there are additional technical issues to address to ensure that Chamber staff and volunteers are clearly covered by the economic development professional safe harbor. As noted above, Chamber volunteers are not "employed" by the Chamber or the economic development prospect as Section 36-25-1.2 seems to require in order to be covered by the safe harbor. In other words, the incentives are not "for" the Chamber. Instead, the incentives are "for" the economic development prospect that a Chamber hopes will grow in their area. The Chamber does not receive the incentives. They merely support economic development projects.

As a result, in the course of enacting the extension of this law, we would encourage the Legislature to consider a common sense clarification to make clear that a Chamber employee or volunteer need not be "employed" by the recipient of an economic development incentive in order to qualify for the safe harbor. It should be clear that Chamber staff and volunteers are just as eligible for this safe harbor when they support incentives that benefit their community as the employees of the business who are covered by the safe harbor.

In conclusion, we thank you for the opportunity to share our perspective and ask that you please support the renewal of the safe harbor for economic development professionals. We also ask that you please consider the aforementioned technical issues to ensure that those who work with chambers are able to continue to support economic development efforts in our regions.

Sincerely,



Ellen G. McNair, CEcD
Senior Vice President – Corporate Development