

# Economic Development Professionals Safe Harbor FAQs



## 1. Why is the EDP Safe Harbor needed?

**To protect confidentiality.** There is a significant risk that without a safe harbor, economic development professionals (EDPs) would be included in the definition of “lobbyist” and would thus have to register as a lobbyist. Doing so would eliminate confidentiality in the economic development process because EDPs will be required to disclose who they represent and information about their project. This would include disclosure of a prospect who needs to operate in a confidential setting if they are going to relocate from another state. Without this legislation, international site selectors and major prospects would simply write off Alabama to avoid publicly disclosing their intentions to make significant capital investments and relocate jobs.

## 2. Who is behind the Safe Harbor bill?

**The Economic Development Association of Alabama (EDAA).** EDAA is a membership-based organization focused on promoting economic growth in Alabama. It has more than 495 members from every county of the state. These include people in the public and private sector, chambers of commerce and universities. EDPs throughout the state, along with individuals and companies in related fields, work together with the EDAA staff and its board to support policies that encourage economic growth in the state. The bill is also supported by many other ED stakeholders.

## 3. Are EDPs seeking a complete exemption from the Ethics Act?

**No!** EDPs are not seeking an exemption from the Ethics Act. Instead, EDPs are merely seeking to confirm that they are not subject to the **lobbyist registration** requirements of the Ethics Act when they interact with the Department of Commerce (or other state agencies) on an ED project or when they work with a city council or county commission on one. The Safe Harbor bill would not exempt, limit, or weaken the common anti-corruption provisions of the Act.

## 4. Who are we talking about when we talk about EDPs?

An economic development professional, under the Act, would include many people who we want to be able to work on and support ED activities and projects. Examples of people who need this safe harbor are **chamber of commerce employees and volunteers** and **community leaders** as well as professionals who support business expansion projects such as **engineers, architects, lawyers, accountants, and others** who may interact with state agencies and local bodies as part of their regular jobs. In addition, there are **national site consultants** for ED projects and the business leaders they represent who will not want to bring projects to Alabama if the state imposes confusing and burdensome requirements *just to talk about a growth project*.

## 5. Does the Safe Harbor bill change current economic development practices?

**No.** Economic development professionals as a matter of practice have not registered as lobbyists at any time in Alabama. EDPs have never been trained or instructed by the Ethics Commission or its Staff to do so. This point was reviewed in a May 2018 article in the Alabama Lawyer entitled “*Deep Breaths...HB 317 Doesn't Actually Gut the Ethics Act.*” However, in recent years, other states seeking to compete with Alabama raised questions about Alabama’s lobbyist registration requirements. This bill would maintain the status quo and eliminate any such registration question by clarifying the law to ensure that EDPs do not have to register.

## 6. How has Alabama law traditionally treated economic development activities?

**Traditionally, the Act has always provided exceptions to promote economic development activity.** For example, the Ethics Act has an express exemption from the definition of a thing of value for economic development functions, clearly showing that the legislature intended to promote economic development activities, not restrict them. Further, the Open Meetings Act has special exceptions for discussion of confidential economic development projects. Additionally, the Jobs Act and other laws and regulations related to the Dept. of Commerce have special protections for confidentiality to promote economic development projects in a confidential manner. Thus, current law has always tried to promote economic development activity and the confidentiality of projects, not hinder such development.

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## 7. What is the big deal about classifying EDPs as “lobbyists” under the Act?

EDPs at a national and state level felt that classifying them as “lobbyists” and the requirements associated with that would put Alabama at a competitive disadvantage to other states because lobbyists are subject to: (a) registration and training obligations; (b) ongoing disclosure and reporting obligations (every three months); (c) requirements to disclose their client - with such client becoming a “principal” under the Act (which raises other obligations and questions/issues for them); (d) restrictions on being paid on a contingency basis which is common in ED; (e) restrictions on what public officials/employees can *ask them for* that can be difficult to apply at times; and (f) restrictions on *providing* “things of value” to public officials/employees (and their “family members”) that can be difficult to apply at times.

## 8. Are there other challenges to classifying EDPs as lobbyists?

**Yes!** A major challenge to EDPs being classified as lobbyists just because they work with Commerce is that the Ethics Act prohibits a public official or employee from asking a lobbyist **for anything** (other than a campaign contribution). This prohibition has been interpreted very broadly by the Ethics Commission and could mean that officials at Commerce or local officials who work on ED projects could not even ask the site consultant or the business prospect to bring their jobs and tax revenues to their community.

## 9. Will the Safe Harbor bill allow elected officials to lobby for private interests?

**No.** Elected public officials — including legislators — are expressly excluded from the safe harbor. If any legislator were to lobby any governmental entity on behalf of a private interest, they would be in violation of Section 23(a) of the Ethics Act, which is not affected in any way by the Safe Harbor bill.

## 10. Will the Safe Harbor bill allow legislators to leave the legislature and then become an EDP?

**No.** There is an express exclusion from the safe harbor, which applies the traditional two-year revolving door prohibition on legislators who seek to become EDPs after they retire from the legislature.

## 11. Will the Safe Harbor bill allow lobbyists to avoid registering as lobbyists and claim to be EDPs?

**No.** The legislation expressly excludes people who are otherwise required to register as a lobbyist. This means that only EDPs who do not engage in traditional lobbying activities will fall under the safe harbor. Those who engage in traditional lobbying will not be allowed to avail themselves of the safe harbor and will be subject to prosecution if they attempt to do so.

## 12. Could the Ethics Commission address this issue?

EDAA raised this question with the Ethics Commission in 2017 based on questions asked in national ED circles. At that time, Commission Staff argued that EDPs would be lobbyists. The Commission itself never reached a conclusion on this but asked the Legislature to address it. That is what led to the 2018 bill. It is worth noting that the Ethics Commission Chairman testified in support of that bill in the Senate.



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