

May 26, 2006

## Senate Appoints Conferees on Lobbying Reform Bill; House Appointments to Follow

### EXECUTIVE SUMMARY

On May 23 the U.S. Senate appointed conferees to resolve differences between the recently passed House and Senate lobbying reform bills.<sup>1</sup> The House is expected to follow suit by soon naming its own conferees. If House and Senate negotiators are able to overcome the differences between the bills, including the most problematic – the 527 political committee restrictions that appear in the House bill (H.R. 4975) but not the Senate bill (S. 2349) – it is possible that compromise legislation could pass both houses in June and be signed into law by President Bush before the July 4 holiday.

The Senate passed its lobbying reform bill on March 29, 2006. *See Collier Shannon Scott Lobbying Alert, April 13, 2006.*

The House of Representatives narrowly passed its bill, the Lobbying Accountability and Transparency Act of 2006, on May 3. All but eight Democrats opposed the bill, which would expand lobbying disclosure requirements but impose few new restrictions on lobbying activity.<sup>2</sup>

Notably, the House bill would require:

- Quarterly (instead of semi-annual) disclosure of lobbying reports;
- Random audits of lobbying reports (with violations referred to the U.S. Department of Justice);

- Mandatory ethics training for lobbyists and House employees;
- Disclosure of lobbyist political contributions on lobbying reports;
- Disclosure by lobbyists of gifts to House Members and employees;
- The listing of any earmark, along with the sponsor's name, in appropriations bills; and

The bill would also prohibit lobbyist travel on non-commercial aircraft owned or operated by the lobbyist's client if a House Member or employee is on the flight.

The bill is also notable for what it would not require. Specifically, the bill would not:

- Ban gifts from lobbyists;
- Ban privately funded travel by House Members or employees;
- Change the one year post-employment restriction for House Members and senior staff;
- Modify the gift limits; or
- Require lobbyists to disclose fundraising efforts.

On a related issue, the House Ethics Committee has established a new procedure whereby the sponsor of a congressional trip can receive official certification that the trip will comply with House rules. In order to obtain the certification, the new procedure requires the private sponsor to provide

<sup>1</sup> Senate Majority Leader Bill Frist (R-TN) appointed three Republicans and two Democrats to the conference committee: Sens. Trent Lott (R-MS), Mitch McConnell (R-KY), Ted Stevens (R-AK), Christopher Dodd (D-CT), and Daniel Inouye (D-HA). The conferees include the Chairman and ranking member of the Senate Rules Committee (Sens. Lott and Dodd, respectively), but do not include Sens. Susan Collins or Joseph Lieberman, the Chairwoman and ranking member of the Homeland Security and Governmental Affairs Committee, who had supported more restrictive provisions than ultimately adopted by the Senate.

<sup>2</sup>H.R. 4975 passed by a vote of 217 – 213.

detailed information regarding the trip to the ethics committee. See [http://www.house.gov/ethics/m\\_travel\\_rules\\_advisory.htm](http://www.house.gov/ethics/m_travel_rules_advisory.htm).

### **OUTLOOK FOR LOBBYING AND ETHICS REFORM**

Congressional leaders from both parties have expressed strong support for lobbying and ethics reform, and the Bush administration recently released a Statement of Administrative Policy supporting ongoing reform efforts. Support from the president and party leaders, however, is no guarantee that the House and Senate can agree on the substance of legislation. Nevertheless, the House and Senate bills contain a number of similar provisions (identified below) and, given that the Senate bill enjoyed broad bi-partisan support, we believe that these common provisions will become part of a final bill if compromise legislation emerges from conference.

The future of provisions not in both bills – such as the 527 political committee restrictions – is more uncertain. Senate Minority Leader Harry Reid (D-NV) recently expressed concern on the Senate floor that the 527 political committee provisions in the House bill could prevent the House/Senate conference from agreeing on legislation.

### **DIFFERENT RULES FOR THE HOUSE AND SENATE?**

Because the House and Senate reform bills are a combination of statutory changes and House/Senate rule changes, it is possible that different gift and travel rules could apply to Members and staff from each chamber. For instance, the Senate lobbying reform bill would amend Senate rules to prohibit lobbyists from providing gifts to Senators and Senate employees, while the House bill would

not. Each chamber is permitted to decide its own rules, so lobbyists should be cognizant of the possibility that different rules may apply depending on whether their interaction involves House or Senate Members or staff. It is, however, generally the goal of Congressional leaders to enact uniform gift and travel rules, so it can be expected that efforts will be made to reconcile these differences.

Lobbying disclosure, on the other hand, is statutory in nature and, thus, applies equally to House and Senate lobbying.

We will continue to track these issues and publish additional advisories as developments occur.

## **MAJOR PROVISIONS OF LOBBYING ACCOUNTABILITY AND TRANSPARENCY ACT**

As noted above, the House bill is primarily aimed at expanding lobbying disclosure rather than imposing new restrictions or prohibitions. The notation “(S)” next to the provision indicates that the Senate lobbying reform bill (S. 2349) contains an identical or substantially similar provision, and, therefore, the provision stands a relatively good chance of becoming part of a final bill.

Major provisions of the House bill are as follows:

### **DISCLOSURE**

The bill would lower registration thresholds for:

- Lobbying firms (or sole-practitioners) – from \$5,000 in lobbying income to \$2,500 in lobbying income in a three month period (S); and

- Organizations that employ in-house lobbyists – from \$20,000 in expenses to \$10,000 in expenses in a three month period (S).
- Prohibit registered lobbyists from traveling on flights as passengers of aircraft not licensed by the FAA to operate for compensation or hire, if a House Member or employee is a passenger or crew on such flights (the Senate bill requires disclosure of this travel rather than prohibits it).

Also, the bill would require lobbyists to:

- File disclosure reports on a quarterly basis (S);
- Report to the Senate and the House, on an annual basis, the name of each Federal candidate or officeholder, PAC, or political party committee to whom a contribution was made which is required to be reported to the Federal Election Commission (S);
- Report the date, recipient, and amount of any gift that counts towards the cumulative annual limit described in House rules given by the lobbyist or the lobbyist's employee (S);
- Disclose any funds contributed or disbursed, or arranged to be disbursed, to pay the costs of an event to (S):
  - An entity that is named for a Legislative or covered Executive Branch official; or
  - An entity established, financed, maintained, or controlled by a Legislative or covered Executive Branch official.

### TRAVEL

- Prohibit Members and staff from accepting privately-funded travel unless the private source first obtains a certification from the House ethics committee that the travel complies with House Rules;<sup>3</sup>

### GIFTS

- Amend House rules to declare that a gift of a ticket to a sporting event shall be the face value of the ticket, provided that in the case of a ticket without a face value, the ticket shall be valued at the highest cost of a ticket with a face value for the event; and
- Instruct the House ethics committee to recommend, by June 15, 2006, any other changes to House gift rules.

### ENFORCEMENT, AUDITS, AND PENALTIES

- Increase penalty for non-compliance with lobbying disclosure requirements from \$50,000 to \$100,000 (S);
- Require a lobbyist who knowingly offers a gift that is in violation of the gift ban to a House Member or employee to be subject to a civil fine of up to \$50,000; and
- Require the House Inspector General to conduct random audits of lobbyist disclosure reports.

### EMPLOYMENT

- Require Members to disclose within five days of negotiating, or having any arrangement concerning, prospective

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<sup>3</sup>The House Republican leadership also promised Republican appropriators that earmark language would be expanded during conference to include authorization and tax bills.

private employment, but only if a conflict of interest or the appearance of a conflict of interest may exist (S); and

- Prohibit taking or withholding, or threatening to take or withhold, an official act with the intent to influence, on the basis of partisan affiliation, an employment decision or employment practice of any entity (S).

### **EARMARKS**

- Require appropriations bills reported by the House Appropriations Committee to list any earmarks and the name of the House Member requesting the earmark in the report (S);
- Require conference reports accompanying appropriations bills to include a list of earmarks in the conference report or joint explanatory statement (and the name of the Member that submitted the earmark request) that were:
  - Not committed to the conference committee by either House;
  - Not in the Appropriations Committee report; and
  - Not in a report of a committee of the Senate on a companion measure (S);
- Prohibit a person from, directly or indirectly, corruptly giving, offering, or promising anything of value to any public official with the intent to influence any official act relating to an earmark; and
- Prohibit a public official from corruptly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value in return for influence in the performance of an official act relating to an earmark.

### **TRAINING**

The House bill would require:

- Mandatory ethics training for House employees and voluntary training for House Members; and
- All registered lobbyists to complete a mandatory eight hours of ethics training each Congress. Ethics training would include the code of conduct and disclosure requirements applicable to House Members and employees, including rules relating to acceptance of gifts (including travel and meals) and financial disclosure requirements under the Ethics in Government Act of 1978.

### **PENSIONS**

- The House bill would require Members to forfeit pension benefits if convicted of certain crimes such as bribery or perjury.

### **CAMPAIGN FINANCE**

The House bill would:

- Extend the prohibition on the “personal use” of campaign funds to leadership PACs;
- Require all political committees that do not engage exclusively in state or local political activity to register with the Federal Election Commission, effectively ending the raising and spending of “soft money” by these committees; these committees would now be subject to the Federal “hard dollar” contribution limits and prohibitions.

Specifically, these committees would be:

- Limited to accepting no more than \$5,000 from each contributor and limited to giving \$5,000 to each federal candidate or PAC;
- Prohibited from accepting corporate or labor union donations;
- Required to register and report to the FEC;
- Permitted to maintain a non-federal account into which an individual could contribute up to \$25,000 annually. Subject to allocation rules, these funds could be used, in combination with “hard dollars,” to finance generic party-building activities and get-out-the-vote and voter registration activities; and
- Eliminate the limit on the amount party committees can spend in coordination with Federal candidates.

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**FOR MORE INFORMATION**

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