

## Senate Passes Ethics and Lobbying Reform Bill

*On January 18, 2007, the U.S. Senate passed a comprehensive ethics and lobbying reform bill (S.1). The legislation seeks to change both Senate rules and the law, and unlike the recently passed House ethics reforms, which took effect immediately, the Senate ethics reforms will not take effect unless and until the legislation becomes law. To become law, the legislation must pass the House, be reconciled in conference committee, and then be signed into law by the President.*

*The House is expected to take up its version of the Senate bill within weeks, and most observers expect the House and Senate to agree on a final bill before the end of March. Based on the Bush Administration's statements regarding ethics reform last year, the President is expected to sign such a bill. Accordingly, we expect that most of the provisions in the Senate bill outlined herein will become law during the second quarter of this year, although certain provisions (such as the lobbying disclosure provisions) would not take effect until January 1, 2008.*

### INTRODUCTION

The Senate bill and the reform package passed by the House (H. Res. 6) earlier this month contain a number of similar provisions. The Senate bill, however, is much wider in scope. Part I of this advisory sets forth a side-by-side comparison of the House and Senate ethics reform provisions. Part II describes, in detail, the Senate bill's ethics and lobbying provisions. For a complete discussion of the House legislation, please read our January 10, 2007, advisory, "House Passes Sweeping Ethics and Lobbying Rule Changes."

### PART I

This chart compares the House and Senate ethics reform packages. The House passed its rule changes earlier this month, and except for the House travel rules (which take effect March 1, 2007), all of the House rule changes noted below are already in effect. The Senate reform provisions below will not take effect unless and until the Senate legislation becomes law.

|       | HOUSE OF REPRESENTATIVES  | SENATE  |
|-------|---|---|
| Gifts | <ul style="list-style-type: none"> <li>Bans gifts from lobbyists and private entities that retain or employ lobbyists, unless the gift falls within one of the man exceptions to the gift rule</li> </ul> | <ul style="list-style-type: none"> <li>Same as House, except:</li> <li>Includes a new exception for "bona fide constituent events" (discussed below)</li> <li>Prohibits Senators from attending a party at a national convention thrown by a lobbyist or entity that retains or employs a lobbyist</li> <li>Makes it a crime for lobbyist or entity that employs or retains a lobbyist to knowingly provide a gift in violation of House or Senate rules</li> </ul> |

|  | HOUSE OF REPRESENTATIVES   | SENATE   |
|--|--|--|
| <b>Privately Funded Travel</b>                   | <ul style="list-style-type: none"> <li>Privately funded travel must be pre-approved by ethics committee</li> <li>May not accept travel that exceeds one day from private entities that employ or retain lobbyists, <b>except from colleges and universities.</b></li> <li>Case-by-case review to allow two day trips</li> <li>Requires certification from the sponsor of the trip that a lobbyist did not plan, organize, request, finance, or arrange the travel</li> <li>Prohibits lobbyists from accompanying Members/staff on trips</li> </ul> | <ul style="list-style-type: none"> <li>Same as House, except:</li> <li>Senate bill exempts <b>pre-approved 501(c)(3) organizations</b></li> <li>No specific exception for colleges or universities</li> </ul>  |
| <b>Valuation of Tickets</b>                      | <ul style="list-style-type: none"> <li>Value of entertainment/sports tickets is the face value; if no face value, then value is the cost of a ticket with the highest face value for the event</li> </ul>  | <ul style="list-style-type: none"> <li>Same as House</li> </ul>  |
| <b>Lobbying Disclosure</b>                       | <ul style="list-style-type: none"> <li>Did not address</li> </ul>  | <ul style="list-style-type: none"> <li>Vastly expands disclosure requirements, including lobbyist political contributions, fundraisers, and “bundled” contributions</li> <li>Quarterly and electronic filing of reports</li> <li>Disclosure of some lobbying coalition or association activities</li> <li>Increases civil penalties for non-compliance to \$200,000 and criminal penalties to up to 10 years in prison</li> <li>Auditing of lobbying disclosure reports</li> </ul> |
| <b>Earmarks/ Limited Tax and Tariff Benefits</b> | <ul style="list-style-type: none"> <li>Requires public disclosure of the sponsors of earmarks, limited tax benefits, and limited tariff benefits</li> <li>Defines earmarks, limited tax benefits, and limited tariff benefits</li> <li>Prohibits trading earmarks for votes</li> </ul>   | <ul style="list-style-type: none"> <li>Same as House, except:</li> <li>Requires public disclosure 48 hours prior to consideration of a bill containing such a provision</li> <li>Prohibits a Senator from using his/her official position to request/aid in the passage of an earmark that would benefit the Senator, the Senator’s family, or Senator’s staff or staff person’s family</li> </ul>   |

|   | HOUSE OF REPRESENTATIVES  | SENATE  |
|---|---|---|
| <b>Post Employment Restrictions</b>             | <ul style="list-style-type: none"> <li>• Did not address</li> </ul>   | <ul style="list-style-type: none"> <li>• Prohibits senior Congressional staff from lobbying for a period of one year any Member or staff person of the entire house of Congress that employed them</li> <li>• Extends the ban on former members of Congress lobbying former colleagues or Congressional staff from one year to two years</li> <li>• Extends the ban from one to two years on senior Executive branch employees from engaging in communications with former colleagues and other officials with intent to influence official action</li> </ul> |
| <b>Employment Negotiations</b>                  | <ul style="list-style-type: none"> <li>• Did not address</li> </ul>   | <ul style="list-style-type: none"> <li>• Requires disclosure of employment negotiations by Senators and senior staff</li> <li>• Prohibits negotiations for lobbying employment by a Senator until after the election of the Senator's successor</li> </ul>  |
| <b>Private/ Corporate Jets</b>                  | <ul style="list-style-type: none"> <li>• Total ban; prohibits Members from using personal, official, or campaign funds to pay for the use of privately owned aircraft, such as corporate aircraft not licensed by the FAA for compensation or hire</li> </ul> | <ul style="list-style-type: none"> <li>• Not banned outright, but Senators or staff must pay the charter rate</li> <li>• Requires disclosure of any such flights taken</li> </ul>   |
| <b>Ethics Training</b>                          | <ul style="list-style-type: none"> <li>• Requires "appropriate" staff to undergo training, but is not required for Members</li> </ul>   | <ul style="list-style-type: none"> <li>• Requires Senators and staff to complete ethics training</li> </ul>   |
| <b>Pay as You Go</b>                            | <ul style="list-style-type: none"> <li>• Requires legislation proposing spending or revenue changes that would increase the budget deficit to be paid for by raising taxes or cutting spending</li> </ul>   | <ul style="list-style-type: none"> <li>• Does not address</li> </ul>  |
| <b>Partisan Influencing of Hiring Decisions</b> | <ul style="list-style-type: none"> <li>• Prohibits influencing the employment decision of a private entity by taking, withholding, offering, or threatening to take or withhold, an official act, on the basis of a partisan political affiliation</li> </ul> | <ul style="list-style-type: none"> <li>• Same as House</li> </ul>   |

## PART II - DISCUSSION

### GIFTS

Under the Senate bill, Senators and staff would be prohibited from accepting a gift from a lobbyist, an agent of a foreign principal (“agent”), or from a private company or organization that employs or retains a lobbyist or agent, unless the gift falls within one of the existing exceptions to the gift rules.

The legislation would also make it a crime for a lobbyist or a private entity that retains or employs a lobbyist to provide a gift or travel to a House or Senate member or staff person, with the knowledge that the gift or travel may not be accepted under Senate or House rules.

The Senate bill creates a new exception to the Senate gift rules for “bona fide constituent events.” Under this exception, a Senator or staff person may accept an offer of free attendance in the Senator’s home state at a convention, conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception, or similar event if:

- The cost of the meal does not exceed \$50;
- The event is sponsored by bona fide constituents of the Senator;
- The event will be attended by a group of at least five bona fide constituents of the Senator, provided that a registered lobbyist shall not attend the event; and
- The Senator or staff person participates as a speaker or panel participant or attendance is appropriate to the performance of official duties.

### VALUATION OF SPORTING TICKETS

Value of a ticket to a sporting or entertainment event is the face value of the ticket, or in the case of a ticket without a face value, the value of the most similar ticket sold by the issuer to the public. “Similar” includes all features of the ticket, including access to parking, food, and beverages. A ticket with no face value and for which no similar ticket is sold by the issuer shall be valued at the cost of a ticket with the highest face value for the event.

### TRAVEL

***Limitations on Payments or Reimbursements for Privately Funded Travel.*** The Senate bill would prohibit Senators or staff from accepting reimbursement or payments for travel from a private entity that retains or employs a lobbyist or agent of a foreign principal, except for one day events (exclusive of travel and an overnight stay), with an exception for trips sponsored by a pre-approved 501(c)(3) organization.

When deciding whether to pre-approve a 501(c)(3), the ethics committee will consider:

- The stated mission of the organization;
- The organization’s prior history of sponsoring congressional trips;
- Whether any trips previously sponsored led to an investigation by the ethics committee; and
- Any other factors deemed relevant.

Also, the ethics committee may approve, on a case-by-case basis, trips that include a two night stay.

**Ban on Lobbyist or Agent of Foreign Principal Planning, Arranging, or Requesting Travel.** The bill would prohibit a Senator or staff person from accepting reimbursement for travel that was planned, organized, arranged by or at the request of a registered lobbyist or agent of a foreign principal, or on which a lobbyist accompanies a Senator or staff person on any segment of the trip.

**Travel Certification.** The bill would require Senators or staff to obtain from the sponsor of the privately funded travel a certification from the sponsor that:

- The trip will not be financed in any part by a lobbyist or agent of a foreign principal;
- That the sponsor either:
  - Does not employ or retain a lobbyist or agent and is not itself a lobbyist or agent; and
  - Certifies that the trip is either a one day event or the sponsor is an approved 501(c)(3) organization;
- That the sponsor did not accept any funds directly or indirectly earmarked for the trip;
- That the trip will not **in any part** be planned, organized, requested, or arranged by a lobbyist or agent; and
- That the Senator or staff person will not be accompanied on any segment of the trip by a lobbyist or agent.

The new rule would require that these certifications be made publicly available as soon as possible after they are received.

The ethics committee is required to issue guidance on many of these travel-related rules within 45 days of enactment of the legislation.

## LOBBYING DISCLOSURE

**Thresholds.** The legislation would lower the financial threshold for lobbying registration from \$5,000 to \$2,500 and reporting of lobbying expenses from \$20,000 to \$10,000 (these figures will be adjusted for inflation).

**Disclosure.** The legislation also would require vastly expanded disclosure, including:

- Quarterly and electronic filing
- A requirement that each employee who is listed as a lobbyist on a current registration or disclosure report file quarterly reports, which include:
  - The names of all political committees established by the registrant
  - The name of each federal candidate or officeholder, leadership PAC, or political party committee to which a *contribution* exceeding \$200 was made by the lobbyist, the registrant, or a registrant's political committee
  - The name of each federal candidate or officeholder, leadership PAC, or political party committee for which a fundraising event was hosted, co-hosted, or sponsored by the lobbyist, the registrant, or registrant's political committee
  - The name of each federal candidate or officeholder, leadership PAC, or political party committee for which aggregate contributions equal to or exceeding \$200 were collected or arranged within the calendar year
  - The name of each covered legislative or executive branch

official for whom the lobbyist, registrant, or registrant's political committee provided, or directed or caused to be provided, any payment or reimbursement for travel and related expenses, including:

- An itemization of the payments or reimbursements provided to finance the travel;
- The purpose and final itinerary of the trip;
- Whether the lobbyist or registrant traveled on any such travel;
- The identity of the sponsors of the travel; and
- The identity of any person or entity, other than the listed sponsors of the travel, who directly or indirectly provided for payment of travel and related expenses at the request or suggestion of the lobbyist, the registrant, or a political committee established or administered by the registrant.
- The date, recipient, and amount of funds contributed, disbursed, or arranged by the lobbyist, the registrant, or registrant's political committee:
  - To pay the costs of an event to honor a legislative or covered executive branch official;
  - To, or on behalf of, an entity that is named for a legislative or covered official, or to a person or entity in recognition of such official;
  - To an entity established, financed, maintained, or controlled by a legislative

or covered executive branch official, or an entity designated by such official; or

- To pay the costs of a meeting, retreat, conference, or other similar event held by, or for the benefit of, one or more legislative or covered executive branch officials.
- Any gift (that under the House or Senate rules counts towards the \$100 cumulative, annual limit) valued in excess of \$20 given by the lobbyist, registrant, or political committee established or maintained by the registrant to a legislative or covered executive branch official.
- A certification that the lobbying firm, or registrant, and each employee listed as a lobbyist for that lobbying firm or registrant, has not provided, requested, or directed a gift, including travel, to a Member of Congress or Congressional staff person in violation of House or Senate rules.

The legislation also requires that the House and Senate make all of the above information publicly accessible via the Internet, and that the information be in a searchable format with direct links to Federal Election Commission campaign finance reports.

**Penalties.** Civil penalties for non-compliance with lobbying disclosure laws would increase to \$200,000 (from \$50,000). In addition, “knowingly, willfully, or corruptly” failing to comply with the Lobbying Disclosure Act can subject the person to up to 10 years in prison.

## LOBBYING ACTIVITY BY COALITIONS AND ASSOCIATIONS

The Senate bill requires disclosure on lobbying reports of certain coalitions and associations. Specifically, the legislation requires disclosure of the name of any organization or business that “participates in a substantial way in the planning, supervision, or control of such lobbying activities.” However, no disclosure is required if “it is publicly available knowledge that the organization that would be identified as affiliated with the client, or has been publicly disclosed to have provided funding to the client, unless the organization, in whole or in major part, plans, supervises, or controls such lobbying activities.”

## AUDITING OF LOBBYING REPORTS

The legislation requires that the Comptroller General audit lobbying registration and reports on an annual basis. The legislation does not specify whether all registrations and disclosure reports will be audited, or whether audits will be merit based or randomly.

## EARMARK AND TAX/TARIFF BENEFIT REFORM

**Disclosure.** The legislation requires any bill reported by a committee to list any earmark, limited tax benefit, or limited tariff benefit (including the name of the Member requesting the earmark or benefit) in the committee report, and that the committee publish the list in the *Congressional Record*.

In the case of a conference report, the joint explanatory statement prepared by the House and Senate conference managers must list any earmarks or limited tariff or tax benefits, including

the name of the Member requesting the earmark or benefit. Importantly, the lists must be made available on the Internet in a searchable format to the general public for at least 48 hours before consideration of the final bill.

**Definitions.** “Earmark” means a provision or report language included primarily at the request of a Member or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

“Limited tax benefit” means:

- Any revenue provision that—
  - Provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and
  - Contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or
- Any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

“Limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

A Member cannot condition inclusion of language to provide funding for an earmark, limited tax benefit, or limited tariff benefit on any vote cast by another Member.

In addition, any Member who requests an earmark or limited benefit in a bill (or accompanying report), or in any conference report, would be required to provide a written statement to the chairman and ranking minority member of the committee of jurisdiction, which includes:

- The name of the Member;
- In the case of an earmark, the name and address of the intended recipient or, if there is no specifically intended recipient, the intended location of the activity;
- In the case of a limited benefit, the entity or entities reasonably anticipated to benefit, to the extent known to the Member;
- The purpose of the earmark or limited benefit; and
- A certification that the Member or spouse has no financial interest in the earmark or limited benefit.

The legislation requires that the relevant committees maintain the lists and statements noted above and that the information be published in a searchable format on the committee's or subcommittee's website not later than 48 hours after receipt of such information.

The legislation would prohibit a Senator from using his or her official position to introduce, request, or otherwise aid the progress or passage of a congressional earmark that will financially benefit or further the pecuniary interest of the Senator, the Senator's spouse or

immediate family member, or any member of the Senator's staff or the spouse of a staff member.

#### POST-EMPLOYMENT RESTRICTIONS

The legislation prohibits senior Senate staff (those making equal or more than 75 percent of a Senator's salary) who become registered lobbyists, or are employed or retained by a registered lobbyist for the purpose of influencing legislation, from lobbying any Senator or Senate staff for one year.

The legislation also would prohibit senior Congressional (House or Senate) staff (those making equal or more than 75 percent of a Senator's or Member's salary) from making any communications with the intent to influence official action to any Member or employee of the house of Congress that employed the staff person.

The bill would extend the ban from one year to two years on senior Executive branch staff engaging in communications with intent to influence official action from: (1) any employee of any department or agency in which the former staff person served (within a period of 1 year before the former staff person's employment with the government terminated); or (2) other very senior Executive branch officials (cabinet secretaries, deputy secretaries, under secretaries, agency commissioners, and others referenced in 18 U.S.C. § 207(d)(2)(B)).

The legislation would extend the ban on Members of Congress lobbying former colleagues or Congressional staff from one year to two years.

### **CORPORATE AIRCRAFT**

The Senate bill does not ban the use of private or corporate aircraft, but Senators or staff must pay the charter rate and may not be reimbursed by a private source. The bill also requires that Senators and staff file detailed disclosures regarding any flights taken on private or corporate aircraft.

### **CONVENTION PARTIES**

Senators would be prohibited from participating in an event honoring that Senator at a national party convention if the event is paid for by a person or entity required to register under the Lobbying Disclosure Act.

### **ELIMINATION OF FLOOR AND GYM PRIVILEGES**

Floor and Congressional gym privileges would be eliminated for former Members or Senators-turned lobbyists or agents of foreign principals, or for those that are in the employ of or represent any organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

### **EMPLOYMENT NEGOTIATIONS**

The bill would require disclosure of employment negotiations by Senators and senior staff (those making equal or more than 75 percent of a Senator's salary), and would prohibit negotiations for lobbying employment by a Senator until after the election of the Senator's successor.

### **LOBBYING BY SENATORS' SPOUSES OR IMMEDIATE FAMILY MEMBERS**

The legislation would prohibit a Senator from allowing his or her spouse or

immediate family member, who is a registered lobbyist or who is retained by a registered lobbyist, from having any official contact with the Senator or his or her staff. An exception applies for spouses (not for immediate family members) if the spouse was serving as a registered lobbyist at least one year prior to the election of the Senator to office, or at least one year prior to his or her marriage to the Senator.

Immediate family member includes: son; daughter; step-children, siblings, or parents; son-in-law; daughter-in-law; mother; father; brother; or sister.

### **INFLUENCING HIRING DECISIONS BASED ON PARTISAN AFFILIATION**

The bill would prohibit a Senator from influencing the employment decision of a private entity by taking or withholding, or offering or threatening to take or withhold, an official act, on the basis of a partisan political affiliation.

### **FOREIGN AGENTS REGISTRATION ACT**

The legislation would require agents of foreign principals to file FARA reports electronically.

### **ELIMINATION OF SECRET HOLDS**

The legislation would end the practice of using secret "holds" by a single Senator to block legislation by requiring disclosure of the Senator's name if he or she objects to proceeding to floor action.

### **ETHICS TRAINING**

The legislation would require Senators and staff to complete ethics training after commencing service, including for

Senators and staff already serving. The legislation also encourages self-regulation by the lobbying community.

**KELLEY DRYE COLLIER SHANNON**

**GOVERNMENT RELATIONS AND  
PUBLIC POLICY PRACTICE GROUP**

Kelley Drye Collier Shannon's Government Relations and Public Policy Practice Group helps clients interpret and shape governing laws, enabling them to achieve and maintain market leadership. The varied backgrounds of its government relations lawyers and lobbyists enable the team to handle a variety of clients needs, including representation and strategic planning.

**FOR MORE INFORMATION**

For more information about this development, please contact:

Corey A. Rubin  
202-342-8470  
CRubin@KelleyDrye.com

David E. Frulla  
202-342-8648  
DFrulla@KelleyDrye.com