



## Overview of Senate- and House-Passed Lobbying and Ethics Bills: How Would They Affect the Business Community?

Responding to a series of still-unfolding ethics scandals involving high-powered lobbyists and Members of Congress, the House and Senate have each passed legislation to reform federal lobbying law and congressional ethics rules. The bills (S. 2349, H.R. 4975) strengthen congressional rules, make violations of such rules by private parties federal violations, require more frequent and detailed disclosures by lobbyists and by businesses who employ them, and provide for ethics training for Members and staff. The Senate bill also prohibits lobbyist participation in privately funded travel, prohibits certain previously permissible gifts from lobbyists, and expands restrictions on lobbying by Senators, Senate staff and very senior Administration officials after they leave office. The House bill provides criminal penalties for violations of federal lobbying law, requires House Ethics Committee approval of privately funded travel, bans lobbyists from trips on a client's corporate jet when Members and staff are present, denies pension benefits to Members convicted of certain felonies committed in connection with their House service, requires lobbyists to undergo ethics training each Congress, and addresses certain election-related issues.

The bills are now slated to go to conference to resolve differences between the measures. However, differences regarding changes to the internal rules of the House and Senate need not be reconciled. Each house has the authority to set its own rules and, therefore, the gift and travel rules applicable to Members and staff of one house may differ from those applicable to the other house in any final bill. It is unclear whether the chambers will be able to reach agreement on a bill. If no agreement is reached, each house could nonetheless adopt the changes to its internal rules contained in its bill. The following reviews the major lobbying and ethics provisions of the bills.

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## PROVIDING GIFTS, MEALS, TRAVEL AND ENTERTAINMENT TO MEMBERS AND STAFF

### ■ **Lobbyists Now Liable for Gift**

**Rule Violations:** In the past, some lobbyists and others have viewed congressional ethics rules as significant only for Members and staff, since they are internal conduct rules that do not apply to private parties. However, under both bills—for the first time—violations by registered lobbyists (and by their clients, under the House bill) of congressional gift rules are violations of the Lobbying Disclosure Act (LDA). Under the Senate bill, the proposed new \$100,000 penalty for knowing violations of the LDA would apply to violations of the congressional gift rules. The House bill provides a \$50,000 penalty for knowing violations of the House gift rules.

### ■ **No More One-on-One Meals with Lobbyists?:**

Current congressional rules prohibit Members and staff from accepting “anything of value” from a private source, but then enumerate a litany of exceptions. One of the most significant exceptions allows any single gift (including a meal or other thing of value) of less than \$50 in value, so long as all gifts from a single source during a calendar year are less than \$100 in value. Under the Senate bill, this exception no

longer applies to gifts from registered lobbyists. However, the term “registered lobbyist” does not include a company that employs or retains a lobbyist (so long as that employer is not a lobbying firm) nor does it include company employees who are not registered lobbyists. Thus, a company employing in-house and outside lobbyists may still buy lunch for a Senator or Senate staffer if under \$50, but a lobbyist or lobbying firm may not. There is nothing in the bill, however, that would prohibit the lobbyist from attending a lunch paid for by its client or employer—in contrast to the bill’s prohibition on lobbyists paying for, organizing or *attending* trips with Members and staff. (See discussion below.) The House bill does not contain a comparable provision.

### ■ **Other exceptions to the gift prohibition still available:**

Under the House and Senate bills, existing gift prohibition exceptions, such as those permitting Senators and staff to attend “widely attended events” at the invitation of the event’s sponsor, remain. In addition, the House bill incorporates into the House rules a House Ethics Committee determination that the value of a ticket to a sporting or entertainment event is the face value of the ticket, and where there is no face value, the value

is that of the highest priced ticket to the event with a face value.

### ■ **Lobbyist Involvement in Trips with Officials:**

Current law bans registered lobbyists and foreign agents from paying for a Member’s or staff’s travel. The Senate bill extends the restrictions by banning lobbyists from also organizing or attending the trip. The bill also requires the trip to be primarily educational (for the sponsor or the official) and minimally (or not at all) recreational. The House bill contains no comparable provisions.

### ■ **Privately Funded Travel:**

Under the Senate bill, before accepting officially related travel or lodging from a private source, a Senate official would be required to:

- obtain from the sponsor a certification of no impermissible lobbyist or foreign agent involvement;
- submit the certification, a detailed itinerary and certain determinations to the Senate Ethics Committee; and
- obtain written Ethics Committee approval.

No later than 30 days after the trip is completed, the Member would be required to file with the Select Committee on Ethics and the Secretary of the Senate a description of the meetings and

events attended during the trip. This information also would have to be posted on the Member's Senate website. Disclosure would not be required if such disclosure would jeopardize the safety of an individual or adversely affect national security.

The House bill prohibits private funding of officially related travel unless the private source first obtains from the House Ethics Committee a certification that the trip complies with all House rules and standards of conduct. The Committee cannot certify any trips until it provides to the House Rules Committee its recommendations for changes to the House gift rules (unless the Ethics Committee approves a particular trip by a two-thirds vote). The Committee's recommendations are due on June 15, 2006.

- **Rides on a Company Jet:** The Senate rejected efforts to require Senate officials to pay the true market value (the charter rate) for a ride on a corporate jet. Rather, under the Senate bill, officials simply must disclose the date, destination, owner or lessee of the aircraft, purpose of and persons on the trip. The House bill prohibits lobbyists from accompanying House Members and staff on a company aircraft that is owned or operated by a

client of the lobbyist or her firm.

- **Ethics Training:** The Senate bill requires Senators and Senate employees to undergo ethics training—within 120 days of the bill's enactment for current Senators and staff, and within 60 days of employment for new Senators and staff. The House bill requires House employees to undergo ethics training once every Congress, and within 30 days of being hired. Ethics training is voluntary for Members. However, the names of Members who do not take the training within the first 100 days of the Congress must be posted on the House Ethics Committee's website and in the Congressional Record. Under the House bill, registered lobbyists also must undergo ethics training once each Congress. Failure to do so constitutes a violation of the LDA.

## LOBBYING DISCLOSURE ACT ("LDA")

- **Quarterly Reports by Lobbyists:** The Senate and House bills require filing of quarterly (instead of the current semi-annual) reports under the Lobbying Disclosure Act, and reduce the amounts of income and expenditures that trigger registration by lobbyists to \$2,500 and \$10,000, respectively, to conform to shorter disclosure periods.

## ■ **New Reporting on Political Contributions and Fundraising:**

Both bills require lobbyists to disclose annually contributions to federal candidates and office holders, their leadership PACs, and political party committees. The House bill also expressly requires disclosure of contributions made by lobbyist employers and their affiliated PACs, as well as contributions made to other federal committees. The Senate bill also requires disclosure of fundraising events that lobbyists host, co-host, or otherwise sponsor.

## ■ **More In-Depth Disclosure of Lobbyists' Travel and Payments:**

The bills require entities registered under the Act to report the following types of payments made by them or their employees who are listed as lobbyists:

- for events to honor or recognize executive or legislative branch officials (both bills);
- to or on behalf of entities named for executive or legislative branch officials (both bills);
- to entities established, financed, maintained, or controlled by legislative or executive branch officials (both bills);

- to pay the costs of meetings, retreats, conferences, or similar events held by or for the benefit of legislative or executive branch officials (Senate bill); and
- for gifts counting toward the \$99.99 annual limit (House bill).

Under the Senate bill, registrants would be required to report travel by executive and legislative branch officials for which they provided, or directed or arranged to be provided, payment or reimbursement. They would be required to make travel disclosures no later than 30 days after the travel. Registrants also would be required to disclose any gift to a Member or staff valued in excess of \$20 and would be required to identify clients as being either public or private entities.

- **Disclosure of Past Government Employment:** Current law requires lobbyists to disclose whether they served as covered executive or legislative branch officials during the two-year period immediately before they began lobbying for the client. The Senate bill requires lobbyists to disclose whether they *ever* served as a covered executive or legislative branch official. The House bill extends the two-year disclosure period to seven years.

#### ■ **Changes in Coalition and Foreign Entity Disclosures:**

Current law requires registrants to disclose those persons other than the client who (1) contribute \$10,000 or more to the registrant's lobbying activities, and (2) "in whole or in major part plans, supervises, or controls such lobbying activities." The Lobbying Guidance translates this into a 20 percent test. The Senate bill changes the second condition to require the participation, control or supervision to be "substantial." What that means may be left to interpretative guidance. Both bills also reduce the dollar threshold for reporting under this provision and the provision requiring reporting of foreign entity contributions to the registrant's lobbying activities from \$10,000 to \$5,000.

- **Grassroots Lobbying Now Covered:** Under current law, so-called grassroots lobbying—efforts to encourage members of the general public to contact legislative or executive branch officials—does not trigger registration under LDA. The Senate bill adds grassroots efforts to the list of registrable and reportable activities. Communications made by an entity directed at its members, employees, officers, or shareholders, however, are excluded from coverage.

Under the Senate bill, covered grassroots lobbying includes any paid attempt in support of lobbying contacts on behalf of a client to influence the general public or segments thereof to contact one or more covered legislative or executive branch officials (or Congress as a whole) to urge such officials (or Congress) to take specific action with respect to specific issues or proposals. *De minimis* grassroots, defined as any effort that amounts to under \$25,000 per quarter, are excluded. Also excluded is any attempt to stimulate grassroots lobbying that is directed at 500 members of the general public or less. Any entity that reports expenditures of grassroots lobbying to the Internal Revenue Service under 26 U.S.C. § 4911 would be allowed to report the same expenditures under the Lobbying Disclosure Act without reference to the bill's definitions. No member of a grassroots lobbying coalition would be subject to disclosure solely for contributing to the coalition. To be disclosed, a coalition member would have to contribute at least \$10,000 to the lobbying activities of the coalition and have a substantial role in the direction of lobbying activities. The House bill has no comparable provision.

- **Good Faith Estimate of Expenses:** Under current law, registrants must report income or expenses of \$10,000 or more during the reporting period rounded to the nearest \$20,000. Both bills require reporting of income or expenditures of \$5,000 or more. The Senate bill rounds to the nearest \$10,000, the House bill to the nearest \$1,000.
- **Electronic Filing of Reports:** Both bills require electronic filing of lobbying disclosure reports, as already required in the House.
- **Electronic Filing under FARA:** The Senate bill requires electronic filing and Internet publication of filings under the Foreign Agents Registration Act.
- **Public Database of Lobbying Disclosure Information:** Both bills require the creation of a searchable, sortable, online electronic database containing lobbying registration and reporting information. Electronically filed lobbying disclosure reports would have to be made available over the Internet within 48 hours.
- **Audits and Reports:** The Senate rejected the creation of a separate agency or office with oversight authority over the LDA, which would have had authority to audit the records of filers and investigate suspected violations of the Act. Instead, the bill empowers the Comptroller General to audit lobbying reports

annually to determine the extent of compliance or noncompliance. It appears that the Comptroller General would have no law enforcement powers (this would remain solely with DOJ). Its mandate would be to report its findings and recommendations to Congress on an annual basis. However, there is nothing in the bill that expressly prohibits the Comptroller General from disclosing noncompliance by particular companies or lobbyists in its annual report.

The House also rejected creation of a separate office with oversight authority. The House bill requires the Office of Inspector General (“OIG”) of the House to conduct random audits of lobbyist disclosure information, authorizes OIG to refer potential violations to DOJ, and requires OIG to review and report annually on the House Clerk’s implementation of the LDA, its effectiveness in securing compliance, whether the Clerk has the necessary authority and resources, and its recommendations for improving compliance and addressing authority and resource needs.

- **Reports on DOJ Referrals:** Under the Senate bill, the Secretary of the Senate and the House Clerk would be required to report semi-annually to Congress on the aggregate number of noncompliance referrals made

to DOJ. The US Attorney for the District of Columbia in turn would report to Congress on the aggregate number of enforcement actions taken by the office and the amount of fines levied. However, the bill expressly provides that such reports could not identify names of those individuals fined or other personally identifiable information. The House bill contains no comparable provision.

- **Increased Penalties For Violations:** Under both bills, penalties for knowing violations of the LDA, including its registration and reporting provisions, are increased to \$100,000. As noted above, a lobbyist’s (and client’s, under the House bill) violation of the congressional gift rules would be a violation of the LDA and subject to penalties—\$100,000 in the Senate bill, and \$50,000 in the House bill.

The House bill also establishes express criminal penalties for LDA violations: (1) of up to three years imprisonment and/or criminal fines under Title 18 for knowing and willful violations; and (2) of up to five years imprisonment and/or criminal fines for knowing, willful and corrupt failure to comply with the LDA.

## POST-EMPLOYMENT ("REVOLVING DOOR") AND OTHER EMPLOYMENT RESTRICTIONS

The Senate bill significantly expands existing restrictions on lobbying by former Members of Congress, staff and senior Executive Branch officials who leave the federal government after the bill's enactment. If these provisions remain in the bill, the lobbying corps may see a marked increase in its membership prior to the legislation's effective date. The bills contain the following employment provisions:

- **Two-Year Lobbying Ban for Former Members of Congress:** The Senate bill extends the current one-year ban on former Members lobbying either house of Congress after leaving office to two years.
- **Broader One-Year Ban for Former Congressional Staff:** Under current law, former congressional staff members are prohibited from lobbying their former offices for one year after leaving government. The Senate bill broadens the scope of the ban to include lobbying anyone in the house of Congress in which the staffer worked.
- **Notification of Revolving Door Restrictions:** The House bill requires the House Clerk to inform Members, officers and covered staff who leave the Congress of the beginning and ending dates

of the prohibitions applicable to them, and also to inform the relevant congressional offices affected by the prohibitions.

- **Two-Year Ban for Former Very Senior Executive Branch Officials:** The Senate bill extends the current one-year ban on very senior Executive Branch officials (e.g., the Vice President, cabinet secretaries, agency heads and senior White House officials) lobbying their former departments or agencies to two years.
- **Floor Privileges Rescinded for Former Senators, Senate Officials and House Speakers Who Lobby:** The Senate bill rescinds Senate floor privileges for former Senators, Senate officials, or House Speakers who are registered lobbyists, foreign agents or are otherwise employed by or representing others to influence legislation.
- **Members of Congress Must Disclose Employment Negotiations:** Under the Senate bill, Senators would be required to file with the Secretary of the Senate, within three business days of the commencement of any direct negotiation or arrangement concerning prospective private employment, a statement identifying the private entity or entities involved and the date such negotiations or arrangements began. The House bill requires

disclosure of negotiations or arrangements concerning prospective employment within five business days, if a conflict or appearance of a conflict may exist.

- **Staff Barred from Having Official Contact with Lobbyist Family Members of their Senator:** The Senate bill would modify the Senate rules to require Senators to prohibit their staffs from having any official contact with immediate family members of the Senator who are registered lobbyists or employed or retained by lobbyists for the purpose of influencing legislation.
- **The "K Street Project" Prohibited.** Both bills would prohibit Members from taking, withholding or threatening to take or withhold an official act, or influencing or threatening to influence the official acts of another person, for the purpose of influencing on a partisan basis the employment decision or practice of any private person. The House bill also prohibits such actions directed at public employers (other than Congress).

## OTHER GOVERNMENT REFORM PROVISIONS

The bill contains a variety of other “good government” provisions that, if enacted, would significantly affect the way the Congress works.

- **Conference Reports Must Be Available to Members and the Public 48 Hours Before Being Taken Up:** In a bid for transparency in legislating, the Senate bill requires conference reports to be posted on the Internet at least 48 hours before they are considered by the Senate.
- **Earmarks Must Be Identified:** Under the Senate bill, the Senate could not take up any bill, amendment or conference report unless the identity of any non-federal entity that is to receive budget, contract, loan authority or any other expenditure or revenue item is posted on the Internet for at least 48 hours, along with the name of the Senate sponsor and an explanation of the government purpose.

Under the House bill, the House could not take up an appropriations bill unless a list of earmarks and their sponsors is included in the report. The House could not take up a conference report on an appropriations bill unless any earmarks added in conference, and their sponsors, are disclosed in the conference report.

- **Cost of Living Adjustments to Member Salaries:** Under the Senate bill, Senators who vote against a cost of living adjustment for Member salaries would be prohibited from taking the adjustment, if approved.
- **Member Pensions:** Under the House bill, Members convicted of a felony under the federal bribery statute, the federal prohibition on public officials acting as agents of a foreign principal or of conspiracy to commit these crimes, for acts or omissions that are directly related to the Member's performance of official duties, would lose their Member pensions under certain circumstances.
- **Bribery Expressly Includes Actions Taken Regarding Earmarks:** The House bill amends the federal bribery statute to include within the definition of a covered “official act” any decision or action taken on an earmark.

*We will continue to monitor ethics reform legislation as it makes its way through the Congress. Action in the House is expected to move quickly when the Congress returns from recess on April 24. If you have any questions, please call:*

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