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April 10, 2006



Senate Passes Ethics and Lobbying Reform Legislation

The Senate on March 29, 2006 passed the most significant set of lobbying reforms since the Lobbying Disclosure Act of 1995 (LDA). The Senate bill (S. 2349) would make various changes to Senate gift, travel and other rules applicable to Senators and their staff and to the LDA requirements that apply to lobbyists. If the bill ultimately does not become law, its Senate rules changes would also not take effect unless separately approved by the Senate.

The Senate bill would, among other things, do the following:

- generally prohibit a lobbyist from giving and a Senator or his staff from accepting any gifts;
- restrict a lobbyist's involvement in Congressional trips;
- create procedural hurdles and more transparency for earmarks;

- tighten post-employment restrictions on Members of Congress and their staff;
- make lobbyists file LDA reports more often and include details on travel, gift and other expenditures involving Members of Congress, their staff and Executive Branch officials; and
- require LDA disclosure of grassroots lobbying efforts.

The bill does not include a range of tougher reforms that were discussed, including creating an Office of Public Integrity to enforce the gift rules, and requiring use of a charter rate (vs. first-class fare) when valuing Member or staff travel on private aircraft.

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Rouvelas|Meeds** LLP

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In the House, various committees are considering ethics and lobbying reform proposals, which are not expected to reach the House floor until the end of April or early May. Unlike the Senate bill, the leading House proposal currently does not require disclosure of grassroots lobbying or ban gifts by lobbyists (although it does require significantly more disclosure of gifts). On April 5, 2006, the House narrowly passed a bill to set limits on so-called Section 527 groups, which reportedly raised nearly \$500 million in unlimited “soft money” contributions during the 2004 campaign.

The Senate rules and federal criminal law reforms discussed below would generally take effect upon the bill’s enactment, but the post-employment restrictions would not take effect until 60 days thereafter and the LDA reforms would not take effect until January 1, 2007.

Gift and Travel Reforms

Gifts from Lobbyists Generally Prohibited.

Under Senate rules, **Senators and their staff** generally could no longer *accept* meals, drinks or other gifts from “registered lobbyists” (i.e. outside lobbying firm or its individual lobbyists, in-house lobbyist employed by an organization to lobby on its own behalf) or agents of foreign principals, unless a gift rule exception applied (e.g. gifts based on personal friendship, home-state products, invitations to widely attended events). Senators and their staff could still accept gifts valued at up to \$50 per occasion and up to \$100 annually or that fall under a gift rule exception from an organization that lobbies on its own behalf or from non-lobbyists.

Under the LDA statute, a **lobbyist** could not *make* a gift to a Senator, House Member or Senate or House staffer unless otherwise permissible under the Senate or House rules. It is unclear whether this would exclude an organization that lobbies on its own behalf (as under the Senate rules) or include such an organization as well as outside lobbying firms and both outside and in-house individual lobbyists. A lobbyist who knowingly violated this would be subject to a civil penalty up to \$100,000.

Travel and Lodging Sponsored or Arranged by Lobbyists Prohibited.

Under Senate rules, before *accepting* transportation or lodging from a private person, Senators or their staff would have to obtain a written certification from the person that:

- the trip would not be financed by a registered lobbyist or foreign agent;
- the person offering the transportation or lodging would not accept, directly or indirectly, funds from a registered lobbyist or foreign agent that were earmarked for the travel;
- the trip would not be planned, organized or arranged by or at the request of a registered lobbyist or foreign agent; and
- registered lobbyists would not participate in or attend the trip.

Under the LDA statute, a lobbyist could not provide travel to a Senator, House Member or Senate or House staffer unless otherwise permissible under the Senate or House rules. It is unclear whether this would exclude an organization that lobbies on its own behalf (as under the Senate rules) or include such an organization as well as outside lobbying firms and both outside and in-house individual lobbyists. A lobbyist who knowingly violated this would be subject to a civil penalty up to \$100,000.

Increased Disclosure of Privately Funded Travel.

Under Senate rules, final trip itineraries would have to be submitted to the Senate Ethics Committee for certification that the trip is primarily for educational purposes, is consistent with official duties, and has minimal or no recreation to it. A report on meetings, events and accompanying lobbyists on the trip would be required within

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30 days of its completion, and would be posted on the Senator's website. Private aircraft could still be used (and valued as first-class airfare), but detailed information would have to be disclosed.

Earmark Reform

Under Senate rules, "earmarks" added in conference to appropriations, authorizing or revenue bills would be subject to points of order on the floor, requiring 60 votes to overcome. Earmarks mean a provision that "specifies the identity of a non-Federal entity" to receive various types of assistance and specifies the amount. A conference report and list of its earmarks (including their sponsors and "essential government purpose") would have to be posted on the Internet 48 hours before a vote. The Senate-passed bill would allow any "earmarks" included in either a House or Senate bill before conference talks and may permit "soft" earmarks in conference that describe the intended recipient with some degree of detail but do not specify its actual identity.

Post-Employment Restrictions

The Senate bill would impose tougher restrictions on senior Executive Branch officials, Senators, House Members and their senior staff:

- A **senior Executive Branch official** would be subject to a two-year (vs. one-year) "cooling off" period, under federal criminal law, before being able to seek official action on behalf of others from officials in the department or agency in which he served or from senior officials at another department or agency.
- A **Senator or House Member** would become subject to a two-year (vs. one-year) "cooling off" period, under federal criminal law, before being able to seek official action on behalf of others from Members, officers, or employees of the Senate or House.

- A **senior Senate or House staffer earning at least 75%** of Member pay would be banned for one year, under federal criminal law, from lobbying *a//* Members, officers and employees of the House of Congress in which the staffer was employed. This ban would also apply to such senior Senate staff under Senate rules. A **Senate staffer earning less than 75%** of Member pay would be subject to the *existing* one-year ban, under Senate rules, on lobbying the former Senator for whom he worked and the staff of that Senator, or, if he worked for a committee, the members of the committee and committee staff.

These new restrictions would take effect 60 days after the legislation is enacted into law. This means that Senators, House Members, Senate and House staff, and very senior Executive Branch officials would have two months after the bill becomes law to leave government service before being covered.

Lobbying Disclosure Reforms

The Senate bill would make a number of changes to lobbying disclosure requirements:

- LDA reports would be filed quarterly, not semi-annually, and would have to be filed electronically and made available online within 48 hours.
- The Senate and House would have to use the same software, in an effort to clear up the difficulties currently caused by each chamber's use of different software.
- LDA reports would contain details about a lobbyist's involvement with payments related to: Congressional and Executive Branch trips; events honoring or entities affiliated with a Member, staffer or senior Executive Branch official; or retreats, conferences or meetings held by or for the benefit of a Member, staffer or senior Executive Branch official.

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- LDA reports would also include details on any gift above \$20 by the lobbyist to a Member, staffer or senior Executive Branch official.
- Grassroots efforts directed at Members, staffers or senior Executive Branch officials that supported related lobbying contacts would generally have to be disclosed on LDA reports. If a person is not registered to lobby, the person would nonetheless have to register if it engaged in grassroots efforts and received at least \$25,000 in a quarterly period.
- The civil penalty for a knowing violation of LDA reporting and other requirements would be doubled to \$100,000.

The Senate and House would have to maintain a public Internet database of lobbying disclosure information that would make such information searchable in various ways and thereby easier to find. The database's lobbying information would also be linked to information disclosed in FEC reports, which includes any contribution above \$200 by a lobbyist or other person.

Other Senate Rules Changes

The Senate bill also would make a number of other changes to Senate rules, including:

- Denying floor privileges to former Senators, Sergeants at Arms of the Senate, and Speakers of the House if they are registered lobbyists or foreign agents or are employed by or represent an organization for the purpose of influencing a legislative proposal;
- Requiring Senators to disclose any post-Senate job negotiations, if such negotiations take place before the election to elect the Senator's successor; and
- Limiting secret "holds" by Senators to block floor consideration of legislation or nominees to three days, at which time they would be made public.

TO FIND OUT MORE

If you have questions about this Alert, or any other government ethics or election law matters, please contact:

Tim Peckinpaugh
202-661-6265
timp@prestongates.com

David Thomas
202-661-3864
davidth@prestongates.com

Paul Stimers
202-661-3883
pauls@prestongates.com

Scott Nelson
202-661-3714
scottn@prestongates.com

To obtain a copy of our firm's *Guide to Political and Lobbying Activities*, please contact our Marketing Department at 202-628-1700. For more information about the firm, please visit www.prestongates.com.

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