



Election Law News

Senate Ethics and Lobbying Bill Passes

On January 18, 2007, the United States Senate passed S. 1, which, if it becomes law, would make substantial changes to the Senate gift rules and travel provisions and to the content and frequency of disclosure under the Lobbying Disclosure Act (LDA). In the final debate on S. 1, the Senate stripped out one of the most far-reaching and controversial provisions – the one that would have required disclosure of federal grassroots lobbying.

The Senate action came on the heels of the passage of substantial new ethics rules in the House. (See the January 8, 2007 *Election Law News Alert* for more information.) In fact, the provisions in S. 1 on gifts and travel largely, but not fully, track the House changes. The provisions in S. 1 that pertain to Senate rules are part of the legislation. For them to become part of the Senate rules without passage of the legislation as a whole, the Senate will have to incorporate them into a resolution addressing its rules. Therefore, unlike the House gift rules, the Senate gift and travel rules have not yet changed.

Although S. 1 also has many provisions targeting earmarks and internal Senate procedures, the following is a brief summary of the provisions pertaining to gifts, travel, lobbying disclosure, political activities and post-government employment lobbying restrictions.

Gifts

Like the recently-adopted changes to the House gift rules, provisions in S. 1 would ban gifts from lobbyists and lobbyist

employers to Senators and Senate staff, except as provided for in preexisting exceptions, which include “widely-attended events” and certain receptions. Moreover, S. 1, similar to the new House rules, would change the valuation formula for certain tickets to sporting and entertainment events.

In addition, provisions in S. 1 also would:

- Require a lobbyist employer to certify that neither it nor its registered lobbyists has provided any travel or gift to Congressional Members or staff that violates the applicable Congressional gift rules.
- Directly prohibit the giving of a gift by a lobbyist or lobbyist employer that is not permissible under the applicable Congressional gift rules.

Travel

Like the recently-amended House rules, S.1 proposes to limit fact-finding and other officially-related travel paid for by persons who employ or retain lobbyists to one-day/one-night (or in some instances, two-night) trips. Lobbyists would not be able to be present for any segment of the trip, and a lobbyist’s involvement in planning, organizing, requesting, and arranging the trip would have to be *de minimis*. There is an exception to these provisions for pre-approved 501(c)(3) charities. (The House rules contain an exception for institutions of higher education.)

The Senate-passed bill proposes to ban free travel on private aircraft for factfinding and other officially-

connected travel. S. 1 also would require reimbursement at the charter rate for travel on private aircraft. (The new House rules ban the use of personal, official and campaign funds for flights on private aircraft.)

Lobbying

Unlike the new House rules, S. 1 addresses lobbying and other requirements imposed on persons outside of the Senate. In addition to the two requirements noted in the gift section above, S. 1 would make a number of other changes to the reporting obligations of lobbyists and lobbyist employers registered under the Lobbying Disclosure Act (LDA). A number of these provisions are described below.

First, LDA reports would be quarterly and electronic. Second, analysis of whether someone qualifies as a lobbyist under the LDA would pertain to three-month periods instead of six-month periods. Third, the legislation would change the statutory language that defines “affiliated” entities, which determines whether such entities must be disclosed on LDA registrations and reports. Fourth, the bill would add additional reporting of lobbyist employer and lobbyist activity (including certain activity conducted by the lobbyist employer’s PAC) with respect to the following (in broad categories):

- Gifts to covered officials;
- Contributions to federal candidates or officeholders, leadership PACs and political party committees;

continued

Bill Passes (continued)

- Fundraisers;
- Bundled contributions;
- Payments for and information about officially-connected travel;
- Events to honor covered officials;
- Payments to an entity named for a covered official;
- Payments to an entity established, financed, maintained or controlled by a covered official;
- Certain meetings, retreats, conferences and other events; and
- Donations to presidential libraries and inaugural committees.

The Senate-passed bill would prohibit “official contacts” by a Senator’s spouse or immediate family member with the personal, committee or leadership staff of that Senator if the spouse or immediate family member is a registered lobbyist or retained or employed by a registered lobbyist. If it becomes law, a provision in the bill also would prohibit a Senator’s spouse from having any “official

contacts” with any Senator or staff if the spouse is a registered lobbyist or retained or employed by a registered lobbyist.

Post-Employment Restrictions

Provisions in S. 1 as passed by the Senate would affect the occupation of staff and members leaving Congress. The bill would do the following:

- Increase to two years the post-employment cooling-off period for very senior executive branch personnel, members of Congress and congressional officers.
- Expand the post-employment cooling-off period for members of Congress to include “lobbying activities,” which includes strategy and preparation for the lobbying of others and is much broader than the current ban focused on a former member’s communications.
- Expand the one year post-employment cooling-off period for highly-paid

Congressional staffers to encompass all contacts with the house of Congress in which a staffer was formerly employed.

Political Activities

In its sweeping provisions, S. 1 does not leave political activity untouched by reform. The bill bans Senators from attending political party convention events in their honor if paid for by lobbyists or lobbyist employers. Also, as discussed above, the new LDA requirements would mandate disclosure by lobbyists and lobbyist employers of many types of political activity. Finally, the charter rate air travel reimbursement provisions would apply to political and campaign travel as regulated by the Federal Election Campaign Act. ■

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