



Legislative Bulletin.....May 3, 2006

Contents:

H.R. 4975—Lobbying Accountability and Transparency Act

**H.R. 4975—Lobbying Accountability and Transparency Act
(Dreier, R-CA)**

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Order of Business: H.R. 4975 is scheduled for House floor consideration on Wednesday, May 3rd, subject to the structured rule H.Res. 783, which the House passed last week by a vote of 216-207: <http://clerk.house.gov/evs/2006/roll110.xml>. Summaries of amendments made in order under the rule, and other details about the rule, are provided in a separate RSC document.

Note the “Possible Conservative Concerns” section on page 6 of this document.

Summary by Title:

This Legislative Bulletin summarizes the “committee print” version of the bill that will come to the House floor today.

Note: the campaign finance language, which was Title VI in the original version of H.R. 4975, has been removed from this bill because it passed separately as H.R. 513 (“Shays-Meehan”). The rule provides for the appending of H.R. 513 onto H.R. 4975 **after** H.R. 4975 passes the House and **before** it is sent to the Senate. There will **NOT** be another vote on H.R. 513 (at this time).

Title I - Enhancing Lobbying Disclosure

- Requires that lobbying disclosure reports be filed four times a year (up from two times a year in current law) and reduces from 45 days to 20 days the grace period for filing after the close of each reporting period. Makes various conforming amendments to reflect this switch to a quarterly reporting system.

- Requires that lobbying registration forms and disclosure reports be filed electronically (with the same deadlines as those for non-electronic filings). Provides for extensions of deadlines for electronic filings under certain circumstances.
- Authorizes “such sums” for the Secretary of the Senate and the Clerk of the House to create and maintain a new, publicly accessible database of lobbying registrations and disclosure reports. The database would have to be free to the public, accessible using the Internet (filings would have to be posted within 48 hours of receipt), searchable, storable, and downloadable.
- Increases from two years to seven years the time period for which past Executive Branch and Legislative Branch employment would have to be disclosed on lobbying registrations.
- Requires that lobbyists disclose, as part of their quarterly reports, the name of each federal candidate or officeholder, leadership PAC, political party committee, or other FEC-regulated political committee to which they made an FEC-reportable contribution, and the dates and amounts of such contributions.
- Requires that lobbyists disclose, as part of their quarterly reports, the date, recipient, and amount of **any gift given to a qualified legislative branch official** (defined in 2 U.S.C. 1602(4) to essentially cover all Members of Congress **and their employees**) that triggers the House gift rule (Rule XXV, Clause 5).
- Requires that lobbyists disclose, as part of their quarterly reports, the date, recipient, and amount of any gift given to, or on behalf of, a non-FEC-regulated entity that is named for or established, financed, maintained, or controlled by a qualified legislative branch official (or to a person or entity in recognition of such official).
- Establishes the following ten tests to use—*at a minimum*—in determining whether a qualified legislative branch official directly or indirectly established, finances, maintains, or controls an entity:
 1. Whether the covered official, directly or through its agent, owns a controlling interest in the voting stock or securities of the entity;
 2. Whether the covered official, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;
 3. Whether the covered official, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees or members of the entity;
 4. Whether the covered official has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the covered official and the entity;
 5. Whether the covered official has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the covered official and the entity;
 6. Whether the covered official has any members, officers, or employees who were members, officers, or employees of the entity that indicates a formal or ongoing relationship between the covered official and the entity, or that indicates the creation of a successor entity;

7. Whether the covered official, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs;
 8. Whether the covered official, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity;
 9. Whether the covered official, directly or through its agent, had an active or significant role in the formation of the entity; or
 10. Whether the covered official and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the covered official and the entity.
- Defines “gift” as “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.”
 - Increases the maximum civil penalty from \$50,000 to \$100,000 for lobbyists who knowingly fail to register or file, as required under current law, or to remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives.
 - Creates a criminal penalty of up to three years in prison (and/or criminal fines) for the knowing and willful failure to register or file disclosure reports.
 - Creates a criminal penalty of up to five years in prison (and/or criminal fines) for the knowing, willful, and corrupt (not defined in the bill) failure to register or file disclosure reports.
 - Directs the Comptroller General to report to Congress on the employment contracts of lobbyists and the extent of contingent fee agreements.

Title II - Slowing the Revolving Door

- Requires that the Clerk of the House inform all Members, officers, and relevant employees of the start- and end-dates of the one-year lobbying prohibitions that apply to them, and that the Clerk inform each House office affected by the prohibitions on these departing individuals. [For details on these current-law lobbying prohibitions for Members of Congress and officers and employees of the Legislative Branch, see 18 U.S.C. 207(e).]
- Amends House Rules to require that a Member file with the Committee on Standards of Official Conduct a statement that he or she is negotiating compensation for prospective employment or has any arrangement concerning prospective employment (within five business days of commencing the negotiation or entering the arrangement), if a conflict of interest or the appearance of a conflict of interest may exist.

- Amends House Rules to request (not require) that Members refrain from voting on any legislative measure pending before the House or any committee thereof, if the above-mentioned negotiation for employment might create a conflict of interest.
- Restates House Rules to prohibit House Members, officers, and staff from taking or withholding (or threatening to take or withhold) an official act or from influencing (or threatening to influence) the official act of another, with the intent to affect an employment decision or practice of any private or public entity (except Congress) on the basis of political party affiliation.

Title III – Suspension of Privately-Funded Travel; Curbing Lobbyist Gifts

- Permanently prohibits House Members, officers, and staff from accepting a gift of travel (including any transportation, lodging, and meals during such travel) from any private source. Trumps any provisions in House Rules to the contrary. There is no expiration date for this prohibition; subsequent legislative action would be required to reverse the travel ban.
- Requires the Committee on Standards of Official Conduct to report its recommendations on gifts and travel rules to the House Rules Committee by December 15, 2006. The recommendations on travel would have to incorporate the ability of House Rules to “protect the House, its Members, officers, and employees, from **the appearance of** impropriety.” [emphasis added] The recommendations on travel would also have to address whether current rules are adequate or whether new rules should be adopted to prevent only certain (as opposed to all) private entities to fund travel for Members, officers, and staff. The recommendations on gifts would have to address the appropriateness of the current dollar limitations (and whether such limits should be lowered).
- Prohibits registered lobbyists from accompanying Members on corporate charter flights when the aircraft for such flights is owned or operated by a person who is the client of the lobbyist or his firm. *[For example, if a Member is on a plane owned by a computer company, the computer company’s in-house lobbyist COULD be on the plane with the Member, but any outside lobbyist hired by the computer company could NOT be on the plane.]*
- Amends House Rules to require that a gift of a ticket to a sporting or entertainment event be valued at the face value of the ticket or the highest cost of a ticket with a face value for the event, in the case of a ticket without a printed face value.

Title IV - Oversight of Lobbying and Enforcement

- Directs the House Inspector General to conduct random audits of lobbyists’ disclosure reports and allows the Inspector General to refer disclosure violations to the Department of Justice for disciplinary action.

- Directs the House Inspector General to annually review and report on the lobbying related responsibilities of the Clerk of the House and to make recommendations for compliance improvements.

Title V - Institutional Reforms

- Creates two new points of order in the House:
 - one against the rule for a general appropriations bill reported by the Committee on Appropriations whose report does not include a list of earmarks in the bill or in the report (accompanied by the name of any Member who submitted a request to the Committee on Appropriations for an earmark included in such list); and
 - one against the rule for a conference report accompanying a general appropriations bill whose joint explanatory statement does not include a list of earmarks in the conference report or joint statement (accompanied by the name of any Member who submitted a request to the Committee on Appropriations for an earmark included in such list) that were not committed to the conference committee by either House (i.e. not in the original House-passed or Senate-passed bill texts), not in the original House committee report, *and* not in a report of a Senate committee on a companion measure. In other words, Members would be able to challenge earmarks first dropped into the bill in conference.
- Makes the above point of order for conference reports non-waivable in the House and provides the details for how the point of order would be raised and debated. NOTE: each point of order above could only be offered once per rule.
- Defines “earmark” as “a provision in a bill or conference report, or language in an accompanying committee report or joint statement of managers, providing or recommending a specific amount of discretionary budget authority to a non-Federal entity, if such entity is specifically identified in the report or bill; or if the discretionary budget authority is allocated outside of the normal formula-driven or competitive bidding process and is targeted or directed to an identifiable person, specific State, or congressional district.” Earmarks in joint resolutions (such as continuing resolutions—“CR”) would not trigger these new points of order.
- Excludes government-sponsored enterprises (like Fannie Mae) from the definition of earmark. Also excludes earmarks for state governments, local governments, Indian tribes, foreign governments, and intergovernmental international organizations, unless the provision or language also details the specific purposes for which the designated budget authority is to be expended.
- Directs the Standards Committee to provide ethics training once per Congress to each House employee. New employees would have to receive ethics training within 30 days of their start-date. Employees who don’t receive the mandatory ethics training could not receive any compensation. District office staff would only have to complete

the training within 30 days of receiving notice that the training is available on the Internet.

- House employees would have to file certifications with the Standards Committee that they completed ethics training and are familiar with the contents of any pertinent publications so designated by the committee.
- Members, Delegates, and the Resident Commissioner would be encouraged (but not required) to participate in an ethics training program established by the Standards Committee.
- Requires the Standards Committee to update its ethics manual once per Congress and to inform Members and staff of any rulings or advisory opinions that constitute changes to, or interpretations of, existing policies.

Title VI - Forfeiture of Retirement Benefits

- Provides that Members of Congress would lose the government-contributions portion of their Civil Service Retirement System (CSRS) or Federal Employees' Retirement System (FERS) pension earned while serving as a Member, if convicted of bribery, acting as a foreign agent, or conspiring to commit offense or to defraud the United States, AND the offense occurs after enactment of this bill, while the Member was serving in Congress, and in direct connection to the Members' service in Congress.
- After conviction as detailed above, Members could not participate in CSRS or FERS at all.
- Allows Office of Personnel Management, given the "totality of the circumstances," to let spouses or dependent children receive the full pension of a convicted Member of Congress.

Additional Information: To see the RSC Legislative Bulletin for the version of H.R. 4975 as introduced, visit this webpage:

http://www.house.gov/pence/rsc/doc/LB_032406_lobbyingreformCFR.doc.

Committee Action: H.R. 4975 was referred to five committees (Rules, Standards, House Administration, Judiciary, and Government Reform), all of which (except the Standards Committee) marked up the bill on March 16th and reported it favorably to the House floor, as follows:

- Judiciary: 18-16
- House Administration: 5-2
- Rules: Voice vote
- Government Reform: Voice vote

Possible Conservative Concerns: Some conservatives might be concerned about:

- the requirement that lobbyists disclose contributions to entities established by, affiliated with, or controlled by a legislative branch official (since such affiliation may not always be known or easily found);
- the increased reporting requirements and other mandates placed on private companies;
- the ban on privately-funded travel, pending further action;
- the definition of “earmark” that excludes government-sponsored enterprises and unspecific state and local government projects; and
- the applicability of the new earmark-related points of order only to the rules for the relevant appropriations bills and not to the earmarks themselves or to non-appropriations bills (like the surface transportation reauthorizations). In other words, conservatives might be concerned about the exclusion of any direct remedy for individual earmarks on all types of bills.

Administration Position: An Administration position is not available at this time.

Cost to Taxpayers: A cost estimate for the “committee print” version of H.R. 4975 is not yet available. The “such sums” for the new database (see Title I above) would likely yield some new cost.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would expand federal regulations on lobbyists—including a new requirement that they disclose contributions to private entities that were established by or remain affiliated with a legislative branch official.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill contains numerous new private-sector mandates. As detailed above, the bill would impose a multitude of new registration and reporting requirements on private-sector lobbyists.

Constitutional Authority:

- The Rules Committee, in House Report 109-439 (Part 3), cites constitutional authority in Article I, Section 5, Clause 2 (the power of each House of Congress to determine its own rules of its proceedings and to punish Members for disorderly behavior).
- The Judiciary Committee, in House Report 109-439 (Part 1), also cites this same clause and additionally cites Article I, Section 8, Clause 3 (the congressional power to regulate commerce with foreign nations, among the states, and with the Indian tribes).
- The House Administration Committee, in House Report 109-439 (Part 2), cites the same clause in Article I, Section 5 as above, and additionally cites Article I, Section 4, Clause 1 (the congressional power to make laws affecting the time, places, and manner of holding federal elections).
- The Government Reform Committee, in House Report 109-439 (Part 4), cites only Article I, Section 8, Clause 18 (the congressional power to make all laws “necessary and proper” for executing other constitutional powers), but does not cite the other constitutional powers referenced.

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