



Legislative Bulletin.....May 24, 2007

Contents:

H.R. 2316 — Honest Leadership and Open Government Act of 2007

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$5 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: Several

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

**H.R. 2316 — Honest Leadership and Open Government Act of 2007
(Conyers, D-MI)**

Order of Business: The bill is scheduled for consideration on Thursday, May 24, 2007, under a structured rule, providing for one hour of debate (equally divided), one motion to recommit with or without instructions, and making in order 5 amendments (only those amendments preprinted in the Rules Committee report). Note: 48 amendments were submitted to the Rules Committee.

“The House of Representatives is supposed to be a marketplace of ideas, and any debate on open government must not restrict the discussion of serious proposals...I am calling on you to you use your authority as Speaker to direct the Rules Committee to report an unrestricted rule on lobby reform.”
--Then Minority Leader Nancy Pelosi, Letter to the Speaker, 4/21/06.

The rule waives all points of order, except for clauses 9 and 10 of Rule XXI (regarding PAYGO and earmarks/limited tax benefits) and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule also modifies the reported text by an amendment printed in the rule (see Rules Committee Amendment below) regarding attendance at charitable events.

Recent Legislative Action: A similar bill, H.R. 4975, passed the House in the 109th Congress by a vote of [217-213](#), but was not acted upon by the Senate. The Senate passed S. 1 earlier this year, which contains provisions regarding gifts, travel, and lobbyist restrictions, but this bill has not been acted upon in the House. The House passed H.Res. 6 on January 5, 2007 ([232-200](#)), which modified House rules pertaining to ethics, travel, gifts, and several other procedural changes to the House rules.

Summary: H.R. 2316 would amend House Rules and current law to increase restrictions and reporting requirements for registered lobbyists, and impose additional restrictions and reporting requirements on Members of Congress and staff regarding lobbying, disclosure requirements, and gifts, among other things. The specific provisions of the bill are summarized below, by title.

Title I – Closing the Revolving Door

- Amends House Rules to prohibit any Member, Delegate, or Resident Commissioner (hereafter referred to as Member) to “directly negotiating” or having any future employment agreement until after his successor has been elected, unless the Member files a signed statement with the Ethics Committee (House Committee on Standards of Official Conduct) within three days after commencing such negotiations. The statement must include the name of any entity involved in the negotiations and the date they commenced.
- Requires any House officer or employee, who earns 75 percent or more of the salary paid to a Member (currently set at \$165,200), to notify the Ethics Committee within three days after negotiations commenced that he is negotiating or has an agreement for future employment or compensation.
- Requires House Members, officers, and employees to recuse themselves from any matter in which there exists a conflict of interest or an **appearance of a conflict of interest** for that member or employee, and requires the individual to notify the Ethics Committee of the recusal.
- Prohibits 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. For violations, the provision provides for up to 15 years in prison, a fine, or both, and the individual may be disqualified from holding any “Office of honor, trust, or profit under the United States.”
- Prohibits any attorney or law firm that has an existing contract with Congress (Committee, Member, covered legislative branch official, working group, or caucus) from knowingly communicating with any Member, officer, or employee of Congress with the intent to influence that individual to seek official action by the Member or employee – and extends this prohibition one year after contract’s termination). In other words, no attorney or law firm under contract with Congress may lobby Congress on any

matter, and the prohibition continues one year after the contract expires. In addition, if an attorney has a contract with Congress, this provision would also prohibit the attorney's law firm from lobbying Congress as well (though it may not have a contract with Congress).

Title II – Full Public Disclosure of Lobbying

- Requires that lobbying disclosure reports be filed four times a year (quarterly), up from two times a year in current law. Makes various conforming amendments to reflect this switch to a quarterly reporting system.
- Modifies the provisions allowing for exemptions from lobbyist registration and reporting, as follows:
 - Lowers the threshold of total income related to lobbying activities for a particular client from \$5,000 to \$2,500 above which a lobbyist must register;
 - Lowers the threshold of total expenses related to lobbying activities from \$20,000 to \$10,000 above which a lobbyist must register; and
 - Lowers the threshold of contributions from a client from \$10,000 to \$5,000 (received semiannually) which must be reported by the lobbyist.
- 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.
- Requires that a certification be included in the lobbyist's quarterly report that states that the lobbying firm or lobbyist has not provided, requested, or directed a gift, including travel, to a Member, officer, or employee of Congress (in violation of rule XXXV of the Standing Rules of the Senate or rule XXV of the Rules of the House).
- Requires registered lobbyists to submit a quarterly report (within 45 days of the end of the quarterly period) listing:
 - the names of all political committees established or administered by the lobbyist;
 - the name of each federal candidate, PAC, or political party committee that received \$200 or more from any political committee established or administered by the lobbyist, and the date and amount of each contribution.
- Requires that lobbyists disclose (in a separate quarterly report) 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 (including contributions made by entities established or administered by the lobbyist).
- Prohibits registered lobbyists (or any entity employing registered lobbyists) from making a gift or providing travel to a Member, officer, or employee of Congress, if the lobbyist has knowledge that the gift or travel may not be accepted under the rules of the House or Senate.

- States that, for any coalition or association that employs a lobbyist, each of the individual members of the coalition or association is the client (and not the coalition or association itself) and therefore reportable, with the following exceptions:
 - 501(c)(3) organizations and those 501(c) organizations that are tax exempt under 501(a) of the IRS code and which has substantial exempt activities other than lobbying, shall be treated as the client (and not its members);
 - a member of a coalition or association, if the amount “reasonably expected to be contributed” by such member toward lobbying activities by the coalition is less than \$500 during the quarterly period.
 - an organization where there exists publicly available knowledge that it is affiliated with the client concerned or has been publicly disclosed to have provided funding to the client, unless the organization supervises or controls (in whole or major part) such lobbying activities.
- Requires lobbyists who have previously served as a covered legislative or executive branch official to disclose this prior employment (current law requires disclosure only if it ended in the 2-year period before the lobbyist commenced present employment).
- 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.

Title III – Enforcement of Lobbying Restrictions

- 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 five years in prison (and/or criminal fines) for the knowing and willful failure to register or file disclosure reports.

Title IV – Increased Disclosure

- Prohibits all staff employed by a Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices), whose spouse is a registered lobbyist or is employed by a lobbyist, from having “any official contact” with that individual’s spouse.
- Requires the Clerk of the House to post all reports related to advance authorizations, certifications, travel, lodging, and related expenses, on a public internet site in a sortable, searchable, and downloadable format (within 45 days of the report’s initial filing).
- States that “Nothing in the Act or the amendments made by this Act shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities

projected by the free speech, free exercise, or free association clauses of, the First Amendment to the Constitution.”

Rules Committee Amendment: The rule adopts the following amendment:

Sec. 4. Subparagraph (3)(Q) of clause 5(a) of rule XXV is amended to read as follows:
“(Q) Free attendance at an event permitted under subparagraph (4).”

This amendment would modify the House Rule XXV regarding exceptions to the Gift Rules. Specifically, this amendment would change the current exception allowing “free attendance at a widely attended event” to “free attendance at an event.” Thus, the charitable event in question would no longer have to be “widely attended” to be allowable. The term “widely attended” is further defined in the [110th Congress House Rules, page 41](#).

Additional Background: Below are a few notable provisions that are not in the reported version of the bill:

- A provision in the introduced version of the bill extended the current “revolving door” restriction – from one year to two years – prohibiting former executive and legislative branch employees from lobbying their former employers. This provision was struck by an amendment in Committee. Rep. Castle has submitted an amendment that would add this provision to the bill.
- An amendment commonly known as the “grassroots lobbying” provision by Rep. Meehan (identical to H.R. 2093, and similar to section 220 of S.1 introduced in the Senate earlier this year) was introduced and defeated in Committee. The Meehan amendment would have required disclosure for “paid communications campaigns to influence the general public to lobby Congress.” In other words, this amendment would have expanded the traditional definition of lobbying to include organizations (such as the ACLU or ACLJ) that contact the general public to inform them on political and legislative issues, and then require these organizations (or other organizations they employ for such services) to submit quarterly reports on expenditures, contributions, and other activities. Rep. Meehan (or any other Member) did not submit this amendment to the Rules Committee for floor consideration.
- Not included in the introduced or reported text, but expected as an amendment by Rep. Van Hollen, is a provision to require lobbyists to report campaign contributions in excess of \$5,000 that were bundled together.

Possible Conservative Concerns: Some conservatives might be concerned about the increased reporting requirements and other mandates placed on individuals and private companies. Some conservatives may also be concerned about the requirement that Members and staff recuse themselves from any matter where there is an *appearance* of a conflict of interest (in addition to an actual conflict of interest). Further, some conservatives may be concerned about this bill’s restrictive treatment of the First Amendment right of U.S. citizens to petition the government for redress of grievances, presumably without undue burdens and barriers, which discourage or exacerbate unrestricted contact.

Committee Action: H.R. 2316 was introduced on May 15, 2007, and referred to the Committee on the Judiciary. The bill was marked-up on May 17, and reported (amended) to the House by voice vote the same day (House Report [110-161](#)).

Administration Policy: A Statement of Administration Policy (SAP) was unavailable at the time of publication.

Cost to Taxpayers: According to CBO, H.R. 2316 will authorize \$1 million in FY08, and \$5 million over the FY08-FY12 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would expand federal regulations and reporting requirements on lobbyists.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. CBO states that H.R. 2316 “would impose several private-sector mandates, as defined in UMRA, on the lobbying industry and certain political organizations. Based on information from the Secretary of the Senate and the Clerk of the House, CBO estimates that the aggregate direct cost of all of the mandates in the bill would fall below the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).”

As noted in the Summary, the bill would impose numerous new registration and reporting requirements on private-sector lobbyists.

Constitutional Authority: The Judiciary Committee, in House Report [110-161](#) (Part 1), 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), Article I, Section 8, Clause 3 (the congressional power to regulate commerce with foreign nations, among the states, and with the Indian tribes), and 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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