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Summary and Analysis of Provisions of H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005

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Summary

This report provides a summary and brief analysis of the provisions of H.R. 2412, entitled the Special Interest Lobbying and Ethics Accountability Act of 2005. The provisions of H.R. 2412, as introduced, address four general areas of federal law and congressional rules dealing with ethics and lobbying. Initially, the bill amends the federal Lobbying Disclosure Act of 1995 to extend the information required to be disclosed by professional lobbyists and to facilitate the public accessability to those reports and disclosures. Secondly, the legislation extends the so-called "cooling off" period of the "revolving door" law to restrict certain lobbying contacts by senior Government officials and Members of Congress for two years after leaving the Government, and requires Members of Congress to publicly disclose current negotiations for future employment. The legislation also seeks to amend internal congressional rules on officially-related travel by Members, officers and employees paid for by outside, private third parties by increasing disclosure and requiring more diligence by Members and staff concerning the permissible source of private funding for such trips. Finally, the legislation would criminalize attempts by Members, officers or employees of Congress to influence certain private or public employment decisions on the basis of party affiliation and would also change internal congressional rules to expressly prohibit the taking, or threatening to take or withhold, official action on the basis of one's partisan affiliation or campaign support or contributions.

The legislation, H.R. 2412, 109th Congress, as introduced on May 17, 2005, would affect changes in provisions concerning ethics, conflicts of interest and lobbying through amendments to both the federal law and to internal, congressional rules. The changes and additions in the bill to current provisions of federal law, either the Lobbying Disclosure Act of 1995, the Ethics in Government Act of 1978, or the criminal conflict of interest statutes in title 18 of the United States Code, would generally apply with equal force to the House or the Senate. However, where the legislation affects changes to the Rules of the House of Representatives, the bill as introduced generally leaves blank the provisions with respect to the Senate, with a notation that the text "is to be supplied by the Senate."

The Senate, if it desires, could possibly change its rules through legislation such as this vehicle, or could change its own internal rules through the more common practice of the passage of a Senate resolution.[1] When changing internal congressional rules by way of legislation it has been a suggested legislative practice to expressly note within the law that the changes made by legislation are made pursuant to the exercise of the House or Senate's express constitutional authority to make the rules for its own proceedings, and therefore may be changed, amended, or repealed by simple resolution.[2]

The legislation addresses a fairly wide-range of statutory and rule provisions dealing generally with (1) disclosure and reporting of lobbying activities by professional lobbyists; (2) potential post-employment conflicts of interest; (3) ethical practices in the House of Representatives involving Member and staff travel paid for by outside, private third parties, and (4) attempts to exert influence on certain employment decisions outside of Congress based on partisan considerations.

The provisions of Title I, concerning lobbying disclosure, apply to the registration and reporting statements of professional "lobbyists" under the Lobbying Disclosure Act of 1995 and, as currently structured, would apply with equal weight to those lobbying the House or Senate. These provisions would require quarterly, rather than semi-annual, filings and reports by covered professional lobbyists (Section 101), would require electronic filing by such lobbyists (Section 102), rather than merely paper filings as are done now, and would require the establishment and maintenance of a searchable database of lobbyist filings and disclosures by the Clerk of the House and Secretary of the Senate (Section 103), in an effort to assist with greater public accessability of the reports, and their usefulness to the public and the media. The new provisions regarding lobbying would also require specific identification by lobbyists of the covered executive branch and legislative branch officials whom they have contacted (Section 104), would require disclosure of all past legislative or executive branch employment by a lobbyist (Section 105), would specifically require the disclosure and reporting of expenses for "grassroots" lobbying campaigns funded and engaged in by otherwise registered lobbyists (Section 106), and would require greater disclosure of the identity of the individual member organizations of certain lobbying "coalitions" as the actual clients of lobbyists, as opposed to merely identifying the coalitions themselves as the "client" (Section 107). The additional disclosure of "grassroots" lobbying expenditures in Section 106 would appear to apply only to those "lobbyists" or organizations which are currently required to register and to file under existing law (that is, only those who are compensated a particular amount to engage in sufficient "direct" lobbying contacts), and thus the expenditure of funds on "grassroots" lobbying campaigns *only* would not separately qualify one as a "lobbyist" and would not separately subject a person or an organization to the registration and reporting requirements.

The provisions of Title II of the bill would extend the current one-year "cooling off" period in the so-called "revolving door" (or post-employment) conflict of interest law [18 U.S.C. § 207] to two years (Section 201 of the bill), such that high-level Government

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[1] Riddick and Fruman, *Riddick's Senate Procedure, Precedents and Practices,* S. Doc. No. 101-28, 101st Cong., 2d Sess. at 1218-1220 (1992).

[2] See, for example, the Ethics Reform Act of 1989, P.L. 101-194, Title X, Section 1001, 103 Stat. 1781 (1989).

officials and Members of Congress leaving Government service would not be allowed to "lobby" their former agencies, departments or offices for two years after leaving the Government. Section 202 of the bill provides new procedures for granting and disclosing conflict of interest waivers in the executive branch of Government [18 U.S.C. § 208], and Section 204 of the bill would add a statute to criminalize attempts by Members, officers or employees of Congress to influence private or public employment decisions, on the basis of party affiliation, through withholding, taking or threatening to withhold or take official action on any matter. Sections 203 and 205 of the bill would change internal congressional rules to require, at Section 203, Members of the House to disclose negotiations or arrangements for future private employment "if a conflict of interest or the appearance of a conflict of interest may exist," while Section 205 would also change internal congressional rules to expressly prohibit the taking, or threatening to take or withhold, official action on the basis of one's partisan affiliation or campaign support or contributions.

With respect specifically to the issue of "officially connected" congressional travel paid for by outside, private third parties, the legislation approaches the issue by amending the internal congressional rules governing such conduct to (1) require knowledge by the recipient of the travel expenses that the source for such payments is permissible under congressional rules; (2) clarify the requirement that a registered lobbyist or agent of a foreign principal is not only prohibited from *paying* for the expenses of such travel, but is also prohibited from planning, organizing, arranging or financing such trip, or having the trip and expenses "organized at the request of" the lobbyist or foreign agent; and (3) require that the outside sponsoring person or organization has not accepted funds from "any" source "specifically earmarked for the purpose of financing the travel expenses." (Section 301) This is accomplished in the legislation by way of requiring a written certification to be received by the Member of the House, or officer or employee of the House from the "person" providing the travel expenses (Section 301), and subjecting such certification to specific civil penalties for false certifications. (Section 302).[3] The legislation would also require more "detailed description" of the travel expenses received by Members and staff in the currently required disclosures of such travel and expenses, as well as a more detailed "description of all meetings, tours, events, and outings during such travel." (Section 303) Finally, the issue of privately funded travel expenses is addressed by requiring the adoption of a rule authorizing the Committee on Standards of Official Conduct in the House to develop and revise guidelines on what constitutes "reasonable" expenses on such privately financed travel for Members, officers and employees of the House. The legislation expressly indicates an intent to deal with the overall costs of transportation, food and lodging (Section 304), but the proposed guidelines could also be directed, in the context of "reasonableness," at the purposes and activities of such privately funded expenses, and the length of stays in relation to the purposes of such trips. All of the provisions in this part, other than the penalties for false certification, are accomplished by way of changes to House Rules, and would thus require similar language or a similar provision to change Senate Rules in this legislation (or a separate Senate resolution) to be effective in the Senate.

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[3] A false certification or false statement made to the Clerk of the House under such provision regarding a required disclosure, if knowingly and intentionally false, or made with an intent to deceive, may also be subject to existing criminal provisions, such as 18 U.S. C. § 1001.

It may be noted that with respect to the issue of "officially connected" travel, the legislation does *not* address specifically the issue of what are "necessary" expenses of travel in relation to accepting privately financed expenses for "recreational" activities, such as allowing an outside, private third party to pay for one's golfing, skiing, fishing or tennis during such "officially connected" travel. It should be emphasized, however, that the current, existing Rules in both the House and the Senate expressly *prohibit* the receipt of expenses or reimbursements for incidental recreational activities in an amount of $50 or more from *any* private source, and not merely from lobbyists or foreign agents, during and in relation to "officially connected" travel.[4]

Title IV of the bill, in Section 401, directs oversight of the lobbying disclosure provisions by the Comptroller General, and in Section 402 increases penalties for lobbyists' failures to comply with the law. Sections 403 and 404 apply to internal House of Representatives proceedings concerning hearings and (in Section 404) appointment and duties of an ethics "task force," and apply only to the House of Representatives with no comparable provisions for the Senate.

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[4] The expenses for incidental "recreational" activities during any officially connected trip, such as the costs for golf or skiing, are *not* considered "necessary" expenses of such travel under House or Senate Rules, and thus fall within the general prohibitions on gifts of $50 or more from private sources in both House and Senate Rules. House Rule XXV, clause 5(b)(4)(C); Senate Rule XXXV, clause 2(d)(3). Expenses for such things as golf or tennis (in an amount of $50 or more) may commonly be accepted under congressional rules (other than from certain "personal friends" or relatives) only in the case of a charitable fund-raising event, when the "tournament" is the fund-raiser, and a Member accepts an unsolicited offer of free attendance (Senate Rule XXXV, clause 1(d)(3); House Rule XXV, clause 5(a)(4)(C)), or in the case of a political fundraising event when the expenses are paid for by the sponsoring "political organization." House Rule XXV, clause 5(a)(3)(B), and 5(a)(3)(G)(iii); Senate Rule XXXV, clause 1(c)(2), and 1(c)(7)(C). As to "charitable" events, the House and Senate Rules differ as to the permissibility of acceptance of non-local expenses of travel for such recreational charitable events, which the Senate prohibits (Senate Select Committee on Ethics, *Senate Ethics Manual,* 108th Congress, 1st Sess. at 45 (2003)), but which the House may allow under certain circumstances. House Rule XXV, clause 5(a)(4)(C)(i)-(iii).