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Ethics, Lobbying, and Related Procedural Reforms Proposed in S. 1, 110th Congress

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Abstract. This report discusses and analyzes the changes proposed by S. 1, 110th Congress, in the Senate Rules relating to ethics and to Members' or staffs' contact with registered lobbyists, agents of foreign principals and those employing lobbyists or foreign agents; and analyzes proposed changes and amendments to federal statutes governing lobbying disclosure, as well as statutory conflict of interest and standards of conduct provisions. Because the proposed changes are incorporated in a bill, both the changes to the Senate Rules (affecting, generally, ethics and Senate procedures), as well as amendments to statutes (regarding lobbying, conflicts of interest, and pensions), would become effective only upon enactment of the proposals into law after agreement with the House of Representatives and signing by the President.

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Prepared for Members and Committees of Congress

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Summary

This report discusses and analyzes the proposals in S. 1, 110th Congress, as passed by the Senate on January 18, 2007, concerning congressional ethics, lobbying reform, and proposals to amend Senate procedures to increase legislative transparency. Proposed changes in ethics and lobbying provisions are examined in five general areas: (1) proposed amendments and additions to internal Senate Rules governing such things as the acceptance of gifts by Senators and staff, including gifts of free travel; official contacts with Senators' family members who are lobbyists; influencing private hiring decisions; and mandatory ethics training; (2) amendments to Senate Rule provisions and changes in the federal criminal law concerning "revolving door" restrictions and regulations on former Members and employees of Congress concerning various post-employment "lobbying" activities and privileges, including the requirement to disclose negotiations for future private employment; (3) amendments to the statutory provisions requiring the disclosure of lobbying activities and other activities of registered lobbyists under the Lobbying Disclosure Act of 1995, as amended; (4) the establishment in the legislative branch of a study commission on ethics and lobbying; and (5) the statutory provisions concerning the forfeiture of federal pension annuities for former Members of Congress for the conviction of certain crimes. Finally, the procedural changes that have been proposed in S. 1, including procedural matters concerning so-called "earmark reforms," matters in conference reports, and cost scoring provisions are also analyzed.

Contributors to the report include Jack Maskell, legislative attorney, American Law Division, (coordinator, primarily responsible for covering the provisions concerning congressional ethics, receipt of gifts by Members and staff, "revolving door" and other post-employment conflicts of interest, and pension reform); R. Eric Petersen, analyst in American National Government, Government and Finance Division (lobbying reform); Sandy Streeter, analyst in American National Government, Government and Finance Division (congressional earmark reform); Bill Heniff Jr., analyst in American National Government, Government and Finance Division (CBO scoring); and Todd B. Tatelman, legislative attorney, American Law Division (Senate procedures, conference reports, and COLA adjustments).

This report will be updated as warranted.

Contents

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Proposed changes in ethics and lobbying provisions are examined in five general areas: (1) internal Senate Rules governing such things as the acceptance of gifts by Senators and staff, including gifts of free travel; official contacts with Senators' family members who are lobbyists; and mandatory ethics training; (2) Senate Rule provisions and changes in the federal criminal law concerning "revolving door" restrictions and regulations on former Members and employees of Congress concerning various post-employment "lobbying" activities and privileges; (3) the statutory provisions requiring the disclosure of lobbying activities and other activities of registered lobbyists under the Lobbying Disclosure Act of 1995, as amended; (4) the provision concerning the establishment of a study commission on ethics and lobbying; and (5) the statutory provisions concerning the forfeiture of federal pension annuities for former Members of Congress for the conviction of certain crimes. Finally, the procedural changes that have been proposed in S. 1, including procedural matters concerning so-called "earmark reforms," matters in conference reports, and cost scoring provisions are analyzed in this report.

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[1] *Riddick's Senate Procedure*, S. Doc. 101-28, 101st Congress, 2d Sess., "Rules," at pp. 1218-1219 (1992). A House or Senate Rule adopted by statute as a function of the rule-making authority of the House or Senate (Article I, Section 5), may be later changed by the House or Senate, respectively, by simple resolution.

Senate Rules Relating to Gifts, Travel, and Other Ethics Matters

Gift Valuation: Tickets to Sporting or Entertainment Events

Section 107 would amend the Senate Rules on gifts (Rule XXXV) to provide that the market value of a ticket to a sporting or entertainment event will be the face value of the ticket; and if there is no face value, then the value of the most similar ticket sold to the public (taking into consideration all features of the ticket, including parking, food and refreshments, and any special access to venue areas). If there are no comparable tickets sold to the public, then the value of the pass or ticket will be the cost of a ticket with the highest face value for the event.

Gifts from Lobbyists and Clients: No De Minimis Exception

Section 108 would amend the Senate Rule on gifts (Rule XXXV) to provide that the $50 de minimis exception to the gifts rule (wherein a gift valued at under $50 may be accepted by Senators and staff) does *not* apply to gifts from a registered lobbyist, an agent of a foreign principal, or a private entity that retains or employs a registered lobbyist or foreign agent. The 23 exceptions listed to the gift prohibition in paragraph (c) of the Senate Rule (Rule XXXV) will still apply to allow acceptance in those designated circumstances.

Event To Honor Member at National Party Convention

Section 108A would amend Senate Rules (Rule XXXV) to prohibit a Senator from participating in an event to honor that Senator at a national party convention if the event is paid for by someone who is required to register as a lobbyist, or is identified as a lobbyist or a client in any registration report under the Lobbying Disclosure Act of 1995.

Free Attendance at Bona Fide Constituent Events

Section 403 of S. 1 would provide a specific exception to the general prohibition on the acceptance of gifts to allow the acceptance of an offer of free attendance in the Member's home State for a convention, conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception, or similar event, including the acceptance of a meal (of up to $50 in value), and such items as conference materials, if the event is sponsored by a constituent group, if the event is to be attended primarily by at least five "bona fide constituents," if the Member or staffer "participates" in the event as a speaker, panel member, presenter, or by performing ceremonial functions, and if the attendance is appropriate to the performance of official duties. The expense which may be accepted may not include expenses for transportation other than local transportation, nor for overnight lodging (see meaning of "free attendance" for "widely attended events," Senate Rule XXXV, clause 1(d)(4)). If appropriate and consistent with the event, the Member or staffer may be accompanied by another individual.

Restrictions on Gifts of Travel

"Officially Connected" Travel Expenses.

Acceptance of Expenses. Section 109(a) would extend the current prohibition on accepting travel expenses, or reimbursements of expenses, for so-called "officially connected" travel from registered lobbyists or agents of foreign principals (current Senate Rule XXXV, paragraph 2(a)(1)), to restrict the acceptance of expenses for such travel also from a private entity that retains or employs one or more lobbyists or foreign agents, that is, the clients of such lobbyists and agents. This restriction will not apply to receiving expenses or reimbursement of expenses for such travel from an "individual" (who is not a lobbyist or an agent of a foreign principal) if acceptance is in conformance with regulations of the Senate Select Committee on Ethics and (1) expenses are provided for attendance and participation in a one-day event or (2) expenses are for an event, meeting or fact-finding trip sponsored by a 501(c)(3) (charitable) organization when the organization has been pre-approved by the Senate Select Committee on Ethics. On a case-by-case basis, the Ethics Committee may permit a two-night stay when practically required to participate in a one-day event.

Disclosure. The disclosures that are required when a Member or staffer accepts travel expenses from a private source for "officially connected" travel are required to be made within 30 days after the travel is completed, and would have to also provide a description of the meetings and events attended.

Lobbyist Participation. In addition to prohibiting acceptance of expenses from lobbyists, foreign agents, or their private clients, the Rule also would prohibit the acceptance of such travel expenses from anyone if the trip was "planned, organized, or arranged by or at the request of a registered lobbyist or agent of a foreign principal," or for trips on which a lobbyist accompanies the Member or staffer on any segment of the trip.

Certification to and Approval by Ethics Committee. Before accepting expenses for any trip, a Member or staffer must provide to the Ethics Committee a written certification from the sponsor of the trip that the trip will not be financed in any part by a registered lobbyist or a foreign agent; that the source of such expenses either does not retain a lobbyist or foreign agent (and is not itself a registered lobbyist or foreign agent), or meets one of the exceptions provided by the Select Committee on Ethics; that the source of the funding will not accept from another source funds earmarked for the purposes of financing such a trip; and that the trip will not be planned, organized, requested, or arranged by a registered lobbyist or foreign agent and that the traveler will not be accompanied by such registered lobbyist or foreign agent. Any Member or staffer before accepting travel expenses must obtain the prior approval of the Senate Select Committee on Ethics.

Public Availability. All the documents required to be filed and certified, and all of the disclosures made would be available for public inspection by the Secretary of the Senate as soon as possible after receipt.

Ethics Committee Guidelines on "Reasonable" Expenses. Under current Senate Rules Members and staff, when they are allowed to accept reimbursement or payment of expenses for travel, are allowed to accept only such "necessary" expenses which are "reasonable" expenses for travel, "transportation, lodging, conference fees and materials, and food and refreshments...." (Current Senate Rule XXXV, clause 2(d)). No specific guidance is given concerning allowable costs that might be considered within the "reasonable" standard. Under S. 1, the Select Committee on Ethics is instructed to develop guidelines concerning the connection between a trip and official duties, reasonableness of an amount spent by a sponsor, the relationship between an event and an "officially connected" purpose, and the relationship between the source of funding and an event. In developing these guidelines the Committee is instructed to take into consideration the "maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense."

Travel on Private Aircraft.

"Officially Connected" Travel Expenses. Section 109(a) of S. 1 would provide that it is not a "reasonable expense," and thus is prohibited for a Member or staffer who is accepting reasonable travel expenses for "officially connected" travel, to travel on an aircraft not licensed by the FAA for commercial air travel.

Reporting of Travel on Private Aircraft. Members or staff who travel on private, as opposed to commercial, carriers or aircraft for hire must file a detailed report within 60 days after the date of the flight to include information on the date of the flight, the destination, the owner or lessee of the aircraft, the purpose of the travel, the persons on the flight, and the charter rate paid for the flight.

Reimbursement for Travel on Private Aircraft. The Senate gift rule (Senate Rule XXXV) would be amended in Section 109(b) of S. 1 to require the reimbursement at fair market value for travel on most private, noncommercial aircraft, with the fair market value being the pro rata share of the value of the normal and usual charter fare or rental charge for similar travel on a similar aircraft. The Senate Rule on unofficial office accounts (Senate Rule XXXVIII) is also amended to require the same rate of reimbursement for official use of private, noncommercial aircraft.

Candidate Travel. The Federal Election Campaign Act would be amended by S. 1, Section 109(b)(3), by providing that a campaign "contribution" will not include the value of a federal candidate's travel on a private, noncommercial aircraft only if the candidate, the candidate's authorized committee, or another political committee reimburses within seven days the owner or lessee of the aircraft the "normal and usual charter fare or rental charge" for a comparable plane and flight, and files a detailed report and disclosure concerning such travel. Previously, under Federal Election Commission regulations candidates needed to reimburse the charter or rental rate only for flights on private, noncommercial aircraft to cities that were not served by regularly scheduled airlines, but could reimburse at the first class rate to destinations so served (11 C.F.R. § 114.9(e)).

Review of Senate Travel Allowances. The appropriate committees in the Senate are directed under S. 1, Section 109(b)(4), to study and recommend needed changes and adjustments to statutes, appropriations measures, and to the Senator's Official Personnel and Office Expense Account, in light of the new provisions and restrictions on air travel.

Effective Date. The new restrictions on the acceptance of expenses for "officially connected" travel by Senators and Senate staff, and the restrictions on air travel on private aircraft, would take effect 60 days after the enactment of the law containing these provisions. (S. 1, Section 109(c)).

Congressional Travel Website

Section 406 of S. 1 would require the Secretary of the Senate and the Clerk of the House to establish a publicly available, searchable website to contain all of the information on "officially connected" congressional travel expenses subject to the disclosure requirements under the gifts rules of the House and Senate.

Official Contact by Senate Office with Lobbyist Family Member

Section 113 of S. 1 would amend Senate Rules regarding conflicts of interest (Rule XXXVII) to require a Member to prohibit his or her staff from having official contact with any members of that Senator's immediate family who are registered lobbyists or who are employed by a lobbyist to influence legislation (Section 113(a), except that such prohibition will not apply to a spouse of a Senator who was already serving as a registered lobbyist at least one year prior to the election of the Member, or one year prior to their marriage. (Section 113(c)). All Senators and employees of a Senate office, including personal, committee or leadership offices, would also appear to be prohibited from having official contact with a spouse of *any* Senator if that spouse is a registered lobbyist or is retained by a registered lobbyist. (S. 1, Section 113(b)).

Influencing Private Hiring Decisions

Section 114 of S. 1 would amend Senate Rules (Senate Rule XLIII) to prohibit a Senator from taking or withholding, or threatening or promising to take or withhold, any official act, or to influence or to offer to influence an official act of another, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity.

Ethics Violations for Certain Earmarks

Section 404 would add a provision to the Senate Rule on conflicts of interest (Senate Rule XXXVII) to make it an ethics violation for a Member to use his or her official position to "request, or otherwise aid in the progress or passage of a congressional earmark" that benefits the financial or pecuniary interests of the Member, the Member's spouse, the Member's immediate family, any employee of the Member, or spouse or family member of such employee. An earmark would

include not only a defined spending item, but also a targeted tax deduction, exclusion, or preference for 10 or fewer beneficiaries. (See "Earmarks" section in this report).

Mandatory Ethics Training for Senators and Staff

New Senators and new staff would be required by this legislation to complete an ethics training program from the Senate Select Committee on Ethics within 60 days after commencing service. Existing Members and staff serving on the date of the enactment of this Act must complete the program not later than 120 days after the enactment of this Act. (Section 232).

Annual Ethics Committee Reports

The legislation would require both the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics to issue an annual report not later than January 31 of each year concerning the number of alleged violations of congressional rules received from third parties, Members, or staff or from inquiries raised by committee staff; the number of violations dismissed for lack of subject matter jurisdiction or for failure to provide sufficient facts as to any material violation; the number of complaints for which the staff conducted a preliminary investigation; the number of complaints presented by staff to the committee with recommendations that the complaint be dismissed; the number of complaints presented by staff to the committee with recommendations that the investigation proceed; the number of ongoing inquiries; the number of complaints dismissed for lack of substantial merit; the number of private letters of admonition issued; and the number of matters resulting in disciplinary sanctions.

Financial Disclosure Penalties

Section 401 would provide additional penalties for knowing and willful failure to file, or knowing and willful falsification of, financial disclosure reports required to be publicly filed annually by Members of Congress and certain other federal government officers and employees under the provisions of the Ethics in Government Act of 1978. The civil fine would be increased from $10,000 to $50,000, and an additional criminal penalty (in addition to the current coverage of 18 U.S.C. § 1001 [$250,000 fine and up to five years' imprisonment]) of a misdemeanor, that is, imprisonment of up to one year, is expressly provided.

Federal Conflict of Interest Law or Senate Rules Concerning Post-Employment, "Revolving Door" Activities

Negotiating Prospective Private Employment

Section 112 of S. 1 would amend Senate Rules to prohibit Senators from negotiating or having an arrangement concerning prospective private employment

until the Senator's successor has been elected, unless the Senator, within three days after "negotiations" begin, files a publicly disclosed signed statement with the Secretary of the Senate revealing the names of the private parties or private entities involved, and the date such negotiations or arrangements commenced. If the job is to involve "lobbying activities," the Senator may not negotiate or have an arrangement for such employment until after his or her successor is elected.

Senior staff (those compensated at a rate of 75% of a Senator) would be required to notify the Select Committee on Ethics within three days about the commencement of negotiations or arrangements for prospective private employment. Such an employee is then required to recuse himself or herself concerning any official matter that would create a conflict or an appearance of a conflict of interest because of such negotiations or arrangements, and to notify the Ethics Committee.

Floor and Other Privileges of Former Members

Section 106 of S. 1 would change Senate Rules (Rule XXIII) to restrict the floor privileges, and the privileges to use the Senate or House gymnasium or exercise facilities or the Member-only parking spaces, of former Senators, Senate officers, and Speakers of the House, if such persons are registered lobbyists, agents of a foreign principal, or are in the employ of or represent any outside party for the purposes of influencing the passage, defeat or amendment of any legislative proposal.

"Revolving Door," Post-Employment Lobbying: Senate Rule

Section 111 of S. 1 would amend Senate Rule XXXVII concerning post-employment lobbying by former Senate staffers by providing an additional restriction for "senior" staff, those employed at least 60 days and who earn a salary at a rate of 75% of a Member's salary, who become registered lobbyists or are employed by registered lobbyists to influence legislation, barring such former employees from lobbying Member, officer or employee of the Senate for one year.

"Revolving Door," Post-Employment Lobbying: Criminal Law

Section 241 of S. 1 would amend federal criminal law on post-employment conflicts of interest, commonly called the "revolving door" laws, to expand from one year to two years the so-called "cooling off" period on Members of Congress, whereby they would not be able to "lobby" Congress for two years after leaving office[2]; to expand the one-year cooling off period to two years for "very senior" executive branch officials (cabinet officers and certain others)[3]; and to expand the one-year cooling off restriction for "senior" congressional staff (paid at the rate of 75% of a Member's salary) to prohibit lobbying the entire House of Congress in

[2] Currently 18 U.S.C. § 207(e)(1), to be amended by S. 1, Sec. 241(b)(1).

[3] Currently 18 U.S.C. § 207(d)(1)(C), to be amended by S. 1, Sec. 241(a).

which they had worked (i.e., the entire House or the entire Senate), rather than merely the office or committee in which they had worked, as currently provided.[4]

The new provisions in S. 1 would also significantly expand the activities of former Members, and of former elected congressional officers, for which criminal penalties may be applied in the two-year "cooling off" period, by adding a new restriction to include any behind-the-scenes activities, advice, or consultations that the former Member or officer may have that are "in support of ... lobbying contacts" made on behalf of a client, "including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and the coordination of the lobbying activities of others."[5]

The effective date of this provision under S. 1 would be 60 days after the enactment of the law.[6] Because the law applies to one who "is a Member of Congress," or "is an employee of a House of Congress ...," the new restrictions would not apply to one who has already left employment or office before the effective date of the new law. Members or staff who are no longer Members or staff at the time of the effective date of the new law (those who have resigned or retired before the effective date of the new law) would be covered by the provisions of the statute as it applied when they *were* Members or staff, that is, the current restrictions and cooling off periods.

"Revolving Door," Post-Employment Lobbying for Indian Tribes

Section 110(a) of S. 1 would amend current provisions of the "revolving door" law, 18 U.S.C. § 207, to treat federal employees now employed by Indian Tribes to perform federal services which have been contracted out to tribes under the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450i), in a similar manner as officers and employees of the federal government or the District of Columbia, or elected officials of state or local governments; that is, such persons are generally exempt from the restrictions on communications to and appearances before federal agencies on behalf of such tribes. The bill further provides at Section 110(b) that any former federal government official covered by the post-employment, revolving door restrictions in 18 U.S.C. § 207 will be exempt from the restrictions only when they are carrying out official duties for Indian Tribes as elected or appointed officials of the tribe.

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[4] Currently 18 U.S.C. § 207(e)(2)-(5), (6), to be amended by S. 1, Sec. 241(b)(2).

[5] S. 1, Section 241(b)(3) and (c)(4), adding two-year post-employment prohibition on "lobbing activities" (proposed 18 U.S.C. § 207(e)(3)), and defining the term "lobbying activities" to mean those "lobbying activities" for which disclosure is required under the Lobbying Disclosure Act of 1995, *see* definition of "lobbying activities" at 2U.S.C. § 1602(7)).

[6] S. 1, Section 241(d).

Lobbying Disclosure and Accountability

The Lobbying and Disclosure Act of 1995 (LDA), as amended,[7] requires any lobbyist, whether an individual or firm, whose lobbying expenses exceed certain thresholds to register with the Secretary of the Senate and the Clerk of the House of Representatives within 45 days after the lobbyist first makes a direct lobbying contact with covered officials in the legislative and executive branches of the federal government on behalf of a client.[8] The law requires lobbyists to file with the Clerk and the Secretary semiannual reports of their activities. These reports identify the name of the registrant, lobbyists the registrant employs, client, and the broad issue areas in which lobbying was carried out.[9]

Title II of S. 1, entitled the Lobbying Transparency and Accountability Act of 2007, would amend several provisions of LDA. Those amendments include

- quarterly, instead of semiannual, filing of lobbying disclosure reports;
- corresponding reduction of the income threshold that requires a lobbying firm or lobbyist to register under LDA to $2,500, to reflect quarterly filing;
- reduction of the increments in which lobbying expenditures may be estimated in larger increments, from $20,000 to $10,000;
- reduction of the contribution threshold for reporting of any firm or entity other than the client who contributes to the lobbying activities to $5,000;

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[7] P.L. 104-65, Lobbying Disclosure Act of 1995 (109 Stat. 691, 2 U.S.C. 1601), as amended by P.L. 105-166, Lobbying Disclosure Technical Amendments Act of 1998 (112 Stat. 38, 2 U.S.C. 1601 note).

[8] Legislative branch officials covered under LDA include Members of Congress; elected officers of either chamber; any employee of a Member, committee, leader or working group organized to provide assistance to Members; and any other legislative branch employee serving in a position that is compensated at a rate of 120% of the basic pay for GS 15 of the General Schedule.

Executive branch covered officials include the President; the Vice President; any officer or employee in the Executive Office of the President; any officer or employee serving in a position compensated through the Executive Schedule; any member of the uniformed military services whose pay grade is at or above O-7 under 37 U.S.C. 201 (In the United States Army, Air Force, and Marine Corps, this is a brigadier general. In the United States Navy and Coast Guard the equivalent rank is rear admiral.); and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character that the Office of Personnel Management has excepted from the competitive service under 5 U.S.C. 7511(b)(2)(b).

[9] Further discussion of LDA provisions is available in CRS Report RL33798, *Lobbying Disclosure: Themes and Issues, 110th Congress*, by R. Eric Petersen.

- requirements that registrants disclose contributions to federal candidates, party committees, and leadership PACs[10] for whom they sponsored fund-raisers, made contributions to, and collected contributions or otherwise arranged for contributions to be made (i.e., "bundling"),[11] as well as contributions to congressional gifts or presidential libraries;

- requirements that clients who are states or municipal entities be identified;

- establishment and maintenance by the Clerk of the House and Secretary of the Senate of lobbying disclosure information in a searchable, sortable electronic database that links LDA information to the Federal Election Commission database, made available to the public free of charge through the Internet, with those reports to be available within 48 hours of filing LDA forms;

- disclosure by registered lobbyists in their registration statements of all past executive branch and congressional employment;

- increase the civil penalty for failure to comply with lobbying disclosure requirements up to $200,000. The measure would also establish criminal penalties for knowing and willful violations, and corrupt violations, of LDA provisions, of not more than 10 years imprisonment;

- identification of entities that participate in a substantial way in the planning, supervision, or control of lobbying activities conducted by or on behalf of certain associations or coalitions, subject to provisions limiting the disclosure of individual members and contributors;

- requirements that the Secretary of the Senate make publicly available the number of lobbying firms and lobbyists referred to the United States Attorney for the District of Columbia for noncompliance with LDA;

- requirements that the United States Attorney for the District of Columbia report semiannually to the Senate Committees on Homeland Security and Governmental Affairs, and the Judiciary, and the House Committees on Government Reform,[12] and the

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[10] Section 212 of S. 1 defines leadership PAC as "an unauthorized political committee which is associated with an individual holding federal office, except that such term shall not apply in the case of a political committee of a political party."

[11] For further analysis of issues related to campaign financing, see CRS Report RL33580, *Campaign Finance: An Overview*, by Joseph E. Cantor.

[12] At the beginning of the 110th Congress, the committee was renamed Committee on (continued...)

Judiciary the aggregate number of enforcement actions taken under LDA, and any fines imposed;

- requirements that LDA registrations and reports be filed in electronic form and any other form required by the Secretary and the Clerk; and

- prohibitions preventing registered lobbyists from providing gifts or travel to members of Congress and congressional staff if the lobbyist is aware that such gifts may not be accepted by the recipient under congressional rules.

In addition to those provisions, Title II of S. 1 would require the Comptroller General to audit LDA registrations and reports to determine the extent of compliance or noncompliance with the act, and to report annually to Congress his assessment, and any recommendation regarding the resources and authorities needed for effective administration of LDA.

Study Commission on Congressional Ethics

Title II of S. 1, in subtitle E, provides for the establishment of a commission to strengthen confidence in Congress. The measure would create a 10-member, bipartisan commission with the chair and vice-chair appointed jointly by the minority and majority leaders of the House and Senate. Two members would be appointed by senior Members of the leadership of the two parties in each chamber, with one of the two appointees each senior leader appoints to be a former Member of the chamber. The commission would be authorized to hold hearings, gather evidence, and obtain information, and charged to study and submit a report to Congress with its findings, conclusions, and recommendations on current congressional ethics requirements and enforcement.

Congressional Pension Forfeiture

Sections 301-304 of S. 1 would add to the current list of offenses for which a federal official might lose his or her pension under the current provisions of the so-called "Hiss Act" (5 U.S.C. §§ 8311-8322),[13] certain specific crimes "committed by a Member of Congress" (Section 302(b)). The additional crimes committed by a Member of Congress that would result in forfeiture of federal annuities would be the conviction of any offense in the purview of 18 U.S.C. § 201, relating to bribery and illegal gratuities; violations of 18 U.S.C. § 371, conspiracy, when the conspiracy involves the commission of an act within the purview of the bribery law; or perjury

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[12] (...continued)
Oversight and Government Reform.

[13] For a general discussion of current pension forfeiture provisions, see CRS Report 96-530, *Loss of Federal Pensions for Members of Congress Convicted of Certain Offenses*, by Jack Maskell.

or subornation of perjury when it relates to denying the commission of an offense violative of the bribery statute, or of the conspiracy statute concerning a conspiracy to violate the bribery law. Under the Senate bill the effective date of this restriction would be delayed until January 1, 2009, and would apply, of course, only to convictions for acts committed after the effective date of the new law.

Senate Procedures and Transparency

Out-of-Scope Matters in Conference Reports

Section 102 of S. 1 would permit a point of order to be raised against individual items contained in conference reports if the section or provision "includes or consists of any matter not committed to the conferees by either House." Section 102 then provides a definition of matters "not committed to the conferees by either House," which appears primarily directed at levels of funding for accounts, programs, projects, or activities. The definition, however, uses the construction "shall include," which arguably can be interpreted to mean that the list following the phrase are merely examples and, therefore, are not to be considered an exhaustive list of items that may be subject to the point of order. Hence, it is arguable that items such as specific tax or tariff waivers if "not committed to the conferees by either House" would also be subject to the potential point of order.

Senate Rule XXVIII(2) already permits a point of order to be raised against conference reports that contain matters "not committed to the conferees by either House." Section 102(a)(2) of S. 1 would merely require the Senate to apply the same definition discussed above to interpretations of Rule XXVIII. The current Senate rule appears to require that if a point of order is raised and sustained, then the entire conference report is rejected and recommitted to the conference committee. Section 102 of S. 1 would appear to change Rule XXVIII to permit points of order to be raised against individual items in conference reports, rather than against the report in its entirety. Under the provision in S. 1, if a point of order is raised and sustained than the matter shall be stricken from the report. The Senate would then have the option of debating — after all other points of order have been raised and voted upon, and without further amendments being in order — whether to recede from its agreement with the House or concur with a further amendment. The further amendment would reflect any provisions that have been stricken pursuant to the point of order, and any amount appropriated adjusted as necessary. In addition, section 102 can only be waived by a three-fifths vote of the Members of the Senate. Finally, a three-fifths vote is required to sustain an appeal to the Chair on a point of order raised under this section.

Earmarks

Section 103 of S. 1, entitled "Congressional Earmark Reform," would establish a new Senate Standing Rule, "Rule XLIV, Earmarks," which would generally require greater transparency of earmarks.

Section 103 would prohibit Senate consideration of a bill, joint resolution, or conference report; unless the names of congressional sponsors of certain earmarks[14] associated with the measure are available to the public on the Internet 48 hours prior to Senate consideration of the legislation. More specifically, it would prohibit consideration of the legislation, unless (1) a list of earmarks included in the above legislation or accompanying report language[15] and the name of any Senator who submitted a request for an item on the list is available on the Internet, or (2) a statement that there are no earmarks in the applicable documents is available.[16] In the case of conference reports, the list must also include the name of any Representative (or Delegate or Resident Commissioner) who requested an earmark on the list. A complete list of earmarks would not be required. This section would not apply to amendments, including committee substitute amendments proposed on the floor or amendments between the Senate and House.

The new point of order would apply only to a motion to proceed to consider a measure. Under existing Senate practices, the Senate may agree to consider legislation either by (1) unanimous consent (that is, no Senator objects to a unanimous consent request to consider it), or (2) by a motion to proceed to consider the legislation, which requires a majority vote to adopt. If objection is expected to a unanimous consent request, the Senate may agree to consider the legislation by adopting a motion to proceed, subject to the new point of order and any other applicable points of order.

There would be no motion to waive the application of the point of order as is the case with points of order under the Congressional Budget Act;[17] however, the Senate could, on appeal, overrule the chair's ruling on this new point order or adopt a motion to suspend the rules. A majority vote is required to overrule the chair's ruling, such action would, however, affect the subsequent applicability of the new point of order. A two-thirds vote is required to adopt a motion to suspend the rules, and, in order to propose such a motion, the sponsor must notify the Senate in writing at least one-day prior to consideration of the motion.

Section 103 would also require public disclosure of congressional sponsors of certain classified earmarks. Congress provides spending for certain foreign and national intelligence activities in classified portions of the annual defense regular appropriations legislation and accompanying report language. Section 103 would prohibit consideration of a bill, resolution, or conference report that includes an earmark in the classified portion of the accompanying report, unless the legislation

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[14] Section 103 also defines the earmarks that would be affected, see below.

[15] *Report language* refers to reports accompanying committee-reported measures and joint explanatory statements attached to conference reports.

[16] In the case of committee-reported measures, S. 1 provides that this statement must be included in the accompanying committee report; for non-committee measures, the statement must be included in the *Congressional Record*; and for conference reports, the statement must be included in the accompanying joint explanatory statement.

[17] For information on Congressional Budget Act waiver motions, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

includes, in unclassified language, a general program description, funding level, and congressional sponsor of that earmark. It is important to note that the section would also provide that such earmark information shall be available to the greatest extent practicable, consistent with the need to protect national security (including intelligence sources and methods).

Additional information on each earmark would also be required from congressional earmark sponsors. This information on some or, possibly, all earmarks would be made public. A Member who requests an earmark in legislation or report language would be required to submit in writing to both the chair and ranking member of the committee of jurisdiction the following:

- The Member's name.
- In the case of a spending earmark, the name and address of the intended recipient or, if there is no specifically intended recipient, the intended location of the activity.
- In the case of a limited tax or tariff benefit,[18] identification of the individual or entities reasonably anticipated to benefit, to the extent known to the Member.
- The purpose of the earmark.
- A certification that the Member or spouse has no financial interest in such earmark.

Each committee would be required to maintain this information.

The written statement on any earmark included in a committee-reported bill or conference report, shall be published, in searchable form, on the applicable committee's or subcommittee's website not later than 48 hours after the information is received. This requirement would not apply to non-committee-reported bills.

Section 103 would apply to earmarks, as defined by this section. Three types of earmarks would be affected: spending earmarks (referred to as "congressional earmark" in sec. 103), limited tax benefits, and limited tariff benefits. A *spending earmark* would refer to a provision or report language providing, authorizing, or recommending a specific funding level for specified activities with or to an entity (such as a federal department or agency, a local government, or local museum) or targeted to a specific state, locality, or congressional district. The definition would include the earmarks described above that are not selected through a statutory or administrative formula-driven or competitive award process. A specified activity is a contract, loan, loan guarantee, grant, loan authority, or other expenditure. Under the definition, the earmark must have been included primarily at the request of a Representative, Delegate, Resident Commissioner, or Senator.

[18] Section 103 applies to three types of earmarks as defined by this section: spending earmarks, limited tax benefits, and limited tariff benefits.

A *limited tax benefit* refers to two types of tax provisions. First, a limited tax benefit would be (1) a revenue provision that provides a tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the tax code and (2) contains eligibility criteria that do not uniformly apply to potential beneficiaries of the provisions. Second, a limited tax benefit would be a tax provision that provides one beneficiary with transitional relief from a change to the tax code.

A *limited tariff benefit* is defined as a provision to reduce or temporarily suspend duties on certain imports (referred to as a *duty suspension*) in a manner that would benefit 10 or fewer entities. Duty suspensions are, generally, provided for chemicals or components used in manufacturing.

Section 103 would provide that a Member may not condition the inclusion of an earmark in a provision or report language on any vote cast by another Member, Delegate, or Resident Commissioner.

Section 404 of S. 1 would add a new Paragraph to Senate Standing Rule XXXVII, Conflicts of Interest, to prohibit any Member from using his official position to introduce, request, or otherwise aid the progress or passage of a "congressional earmark" that would financially benefit, or otherwise further the pecuniary interest, of (1) the Member, (2) the Member's spouse or other immediate family member, (3) an employee on the staff of such Member, or (4) the spouse or other immediate family member of the staffer. This requirement would apply to staff in the Member's personal, committee, or leadership offices. The term "congressional earmark" would include spending earmarks, limited tax benefits, and limited tariff benefits.[19] The definitions of "spending earmark" and "limited tariff earmark" are identical to those provided under section 103 (see above). The definition of "limited tax earmark," however, is different. Under this section, "limited tax benefit" would cover two types of tax provisions. First, a limited tax benefit would be a revenue-losing provision that (1) provides a tax deduction, credit, exclusion or preference to no more than 10 beneficiaries under the tax code and (2) contains eligibility criteria that does not uniformly apply to potential beneficiaries of the provision. Second, a tax provision that provides one beneficiary with transitional relief from a change to the tax code would also be a limited tax benefit. Section 404 also defines other "immediate family member."

Availability of Conference Reports on the Internet

Section 104 of S. 1 amends Senate Rule XXVIII by adding a requirement that conference reports shall not be considered in order unless the report has been provided to all Members and made available via the Internet at least 48 hours prior to consideration. In addition, the section would also include a requirement that the text of the report not be changed after the signature sheets have been signed by a majority of the Senate conferees. Currently, under Rule XXVIII, conference reports are always in order when available on each Senator's desk except during reading of the Journal, when questions of order or motions to adjourn are pending, or when

[19] Under section 103, by contrast, "congressional earmark" refers only to spending earmarks.

voting or ascertaining the presence of a quorum. Hence, Section 104 would add further conditions on the procedures under which conference reports may be considered in order for consideration. Section 104 can only be waived by a three-fifths vote of the Members of the Senate and a three-fifths vote is required to sustain an appeal to the Chair on a point of order raised under this section. Finally, section 104 instructs the Secretary of the Senate, in consultation with the Clerk of the House of Representatives and the Government Printing Office, to develop a website within 60 days that is capable of meeting the above described requirements.

Sense of the Senate on Conference Committee Protocols

Section 105 of S. 1 contains a Sense of the Senate Resolution regarding conference committee protocols. The resolution contains three suggested requirements for all conference committees. Namely, that each conference committee (1) hold regular, formal meetings that are open to the public; (2) provide adequate notice to all Members of the time and place of meetings; and (3) afford all Members an opportunity to fully participate in the committee's debates.

Amounts of COLA Adjustments Not Paid to Certain Members of Congress

Section 116 of S. 1 would prohibit any Member from receiving their annual cost-of-living adjustment (COLA) if the Member voted in favor of an amendment (or against the tabling of any amendment) providing that the COLA not be granted. Section 116 also provides that in the event that there are Members who are not entitled to receive a COLA, the money that would have been paid to the Member shall be transmitted to the Department of the Treasury for deposit in the appropriations account under the subheading "Medical Services" under the heading "Veterans Health Administration." In addition, section 116 provides that, for the purposes of calculating a Member's benefits, such as retirement or health insurance, the salary figure used shall be what the Member would have received had they not voted against the COLA amendment. In other words, the COLA, although not actually received by the Member, would still be factored into any calculations regarding that Member's benefits. Section 116 has an effective date of February 1, 2008.

Requirement of Notice of Intent To Proceed

Section 117 appears to deal with the Senate's use of so-called "anonymous holds" by requiring that the majority and minority leadership recognize only those notices to object to proceedings that meet the following criteria: (1) the notice is submitted in writing to the appropriate Leader or designee and (2) if within three days the Senator submits for inclusion in the appropriate section of the *Congressional Record* a notice as described by the section. The section would direct the Secretary of the Senate to establish on the appropriate calendars a separate section titled "Notices of Intent to Object to Proceeding," which is to include name of each Senator filing a notice to object, the measure or matter covered by the calendar that the Senator objects to, and the date the objection was filed. Senators may remove their

objections by submitting a notice for inclusion in the *Congressional Record* as provided by section 117(c).

CBO Scoring Requirement

Committee reports generally are required to contain estimates of the budgetary impact (or cost estimates) of the reported legislation (Senate Rule XXVI, clause 11). Conference reports, in contrast, are required to include only a joint explanatory statement "sufficiently detailed and explicit to inform the Senate as to the effect" which the conference report will have upon the matters committed to conference (Senate Rule XXVIII, clause 4). In addition, Section 308(a)(2) of the Congressional Budget Act requires the joint explanatory statement accompanying a conference report contain a CBO cost estimate, "if available on a timely basis," or made available to Members "as soon as practicable prior to the consideration" of the conference report.

Section 118 of S. 1 would prohibit in the Senate the consideration of a conference report unless an official written cost estimate or table by the Congressional Budget Office is available at the time of consideration. As with many other budget-related points of order, this free-standing rule may be waived, and an appeal on a ruling of the Chair under this rule may be sustained, by an affirmative vote of three-fifths of the Senators, duly chosen and sworn (i.e., 60 Senators if there are no vacancies).

Public Availability of Senate Committee and Subcommittee Meetings

Senate Rule XXVI(5)(e) currently only requires that committees and subcommittees create an "adequate" written or electronic transcript of their proceedings. Section 402 of S. 1 would amend Senate Rule XXVI(5)(e) by adding a requirement that, within 14 days of a committee or subcommittee meeting, the proceedings be made publicly available through the Internet, video recording, audio recording, or written transcript. The amendment applies to all meetings by committees or subcommittees, except for those meetings that are closed pursuant to Rule XXVI. (Section 402 has an effective date of October 1, 2007).

Amendments and Motions To Recommit

Section 405 would replace paragraph 1 of Senate Rule XV, which currently requires that all motions and amendments be reduced to writing, only "if desired" by the Presiding Officer or any Senator, and be read prior to being debated. Section 405 would replace this language with a requirement that any amendment or instruction carrying a motion to recommit be reduced to writing, read, and have identical copies be provided to the desks of the Majority and Minority Leaders, before being debated. With respect to motions, section 405 retains the existing Senate Rule language that they be reduced to writing — only "if desired by the Presiding Officer or any Senator" — and read prior to being debated.