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Senate Bill 974 – Public Ethics – Lobbyists – Gift Exception and Regulated Activities Exemption

Testimony before the Education, Health, and Environmental Affairs Committee

The State Ethics Commission (“Commission”) supports Senate Bill 974 – Public Ethics – Lobbyists – Gift Exception and Regulated Activities Exemption as amended by the Sponsor. The bill as amended would provide that an official’s or employee’s ability to accept gifts from a State governmental entity that employs a lobbyist would be subject to the same restrictions as gifts from other regulated lobbyists and from entities whose financial interests could be significantly affected by the recipient’s performance or non-performance of official duties. For the reasons discussed below, the Commission supports this proposed change to the Public Ethics Law (“Law”).

Background

1. The Gift Restrictions. The Law prohibits an official or employee from accepting gifts from certain defined donors. These donors are **entities** that: 1) do or seek to do business with the recipient’s governmental unit; 2) engage in activity regulated or controlled by the recipient’s governmental unit; 3) are regulated lobbyists; or 4) have financial interests that could be significantly affected by the recipient’s performance or non-performance of official duties. The gift section of the Law specifically excludes a governmental unit from the definition of “entity”, and consequently there is no prohibition on an official or employee accepting a gift from a unit of government (and this includes not only a unit of State government but any governmental unit).

2. Exceptions to the Gift Restrictions. The Law contains several authorized exceptions to the acceptance of gifts from the above-described donors under specifically defined circumstances. Among the most common are gifts of nominal value (not to exceed \$20), ceremonial gifts or awards of insignificant monetary value, tickets or free admission to certain types of events for elected constitutional officers from the person sponsoring the event, and gifts of meals and beverages received and consumed in the presence of the donor. With respect to the meals and beverages exception, as the members of this body know, events are typically hosted by

regulated lobbyists or their employers, and the Law imposes certain requirements on lobbyists and employers when they host such events. Those requirements include: a) extending an invitation to an entire, recognized legislative unit; b) registering the event with the Department of Legislative Services on a form required by the Ethics Commission at least 5 days before the date of the event; and c) reporting the cost of the event and the names of all contributing sponsors within 14 days after the date of the event.

3. Governmental Units engaging Lobbyists. A number of local governmental units (currently there are 18), and from time to time some State governmental units, engage the services of a regulated lobbyist. These outside lobbyists are to be distinguished from State and local government employees who communicate with legislators without the requirement to register as a lobbyist, because the Law exempts employees who carry out such activities as part of their official duties from the registration requirement. Governmental units that choose to hire outside lobbyists must adhere to the Law's registration and reporting requirements in the same way as any other entity that employs a lobbyist.

The Bill

The amended bill seeks to make clear that should a State governmental unit (but not a local governmental unit) elect to engage the services of a regulated lobbyist, it is to be treated, for the purposes of the Law's gift restrictions, like any other entity that hires a regulated lobbyist. It would deny a claim that has been made on rare occasions by State governmental units employing a lobbyist that they can "have it both ways". That is, they contend they can engage the services of a regulated lobbyist to advocate on their behalf, but can avoid the gift restrictions that apply to lobbying entities if they decide to provide gifts by simply excluding their lobbyist from the gift giving process. So, for example, a State governmental unit that hires a lobbyist may wish to host a dinner or reception, but prefers to only invite certain, selected legislators, or legislators of only one party, and does not wish to be bound by the exception requirement that they invite all members of a legislative unit. To avoid this limitation, they would contend that by using other persons and not their lobbyist to organize the event, the gift is merely from a State governmental entity which as discussed above is exempt from the Law's gift restrictions.

The Commission believes the intent of the Ethics Law is to provide transparency and to place reasonable limits on the acceptance of gifts from certain donors. This intent is circumvented when a State governmental unit can alter its identity (i.e., a lobbyist employer in one case, a State governmental unit in another) as it sees fit to attain its objectives and avoid inconvenient restrictions. The Commission applauds the sponsor for proposing the foregoing change to the Ethics Law this bill and is pleased to support it.