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**Date:** 5/19/2014 10:26:54 PM  
**Subject:** Re: Ethics update

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I'm for us telling them we are ok with 1 and 2 and against 3. We have leverage or they would not be willing to deal.

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**From:** Patel, Swati  
**Sent:** Monday, May 19, 2014 10:21 PM  
**To:** littleengine.nh@gmail.com; Tim Pearson; Ted Pitts; Veldran, Katherine  
**Subject:** Ethics update

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Governor,

This afternoon Patrick Dennis gave me a new version of an amendment to H.3945 that is supported by a group in leadership (he didn't identify who). This amendment is a move in the right direction and based on our "Working Group Amendment (WGA)."

Patrick used the version of the amendment I prepared for Eric Bedingfield last week which is the Working Group Amendment plus judges (includes judges under the State Ethics Commission's jurisdiction, but is drafted in a way to easily strike judges in conference committee which Bedingfield, Patrick, and Delleney understand).

This amendment has a few substantive changes from the version I prepared as follows:

(1) My version (WGA) included a screening process for the 4 legislative appointees to the Commission which is similar to a confirmation process. Patrick's version removes this and replaces it with language allowing the House and Senate through its rules to dictate that process.

\*\*I do not have a problem with this since each body can choose a process through their rules, which must be voted on by the body. Also, this change does not affect how the Governor's appointments are made. That process remains unchanged from the WGA.

(2) Patrick's version removes language in current law regarding the 50-day period before an election allowing a person to file a complaint with the Court of Common Pleas. Under current law, no one can file a complaint with the State Ethics Commission in that 50-day period. A complaint can be filed after the election or complaint can be filed with the circuit court.

\*\*I believe the reason for this deletion is clarify the jurisdiction question that was present in Rainey v Haley - the question being whether the Court has any authority to review an ethics complaint prior to the legislative committees/State Ethics Commission. It could possibly be an issue in Harrell v Wilson, but that really deals with the Attorney General's authority, not the Court's. Also, I do not recall many instances when someone has attempted to file a complaint with the circuit court during the 50-day window.

(3) Patrick's version removes language in the WGA that allows the State Ethics Commission during an investigation of a legislator to refer the matter to the Attorney General if it finds criminal intent. Rather, it keeps the current law which allows the legislative ethics committee after a hearing to refer a matter to the AG

as one of the options after a full investigation and hearing on the merits.

**\*\*This is clearly relevant in the current Harrell matter. However, the effective date on the bill is July 1, 2015. The issue here is should the Attorney General be able to investigate a public official for criminal wrongdoing after the State Ethics Commission completes investigating and finds probable cause and after the legislative committees complete all of its work OR should the State Ethics Commission during its investigation be able to refer the matter to the AG?**

There are other technical changes made but the above are the major changes.

**Patrick said the House Republican Caucus plans to meet tomorrow to discuss this proposal AFTER we have weighed in. I would like to get back to him tomorrow morning.**

I am generally fine with items (1) and (2). I have concerns with item (3) because we must rely on the legislative committees to refer the matter to the AG and it clearly relates to the Harrell matter. But it is important to note that under this bill, since all information is made public after probable cause is found, then the committee would be strongly scrutinized if it failed to refer to the AG. Transparency in the process will help here.

Let me know if you have questions. I'll be up late.

Swati

Sent from Windows Mail