

From: Patel, Swati

To: chip@spiritlinecruises.com <chip@spiritlinecruises.com>

CC: Veldran, Katherine <KatherineVeldran@gov.sc.gov>

Brett Hubler <BrettHubler@scsenate.gov>

Date: 5/7/2013 11:36:13 AM

Subject: RE: Ethics Amendments

Attachments: Enhancing penalties #15 - Revised 5-7-13.docx

Chip,

I have attached the Enhanced Criminal Penalties Amendment for the 4 statutes as proposed by the McMaster-Medlock Commission and supported by the Attorney General's Office and the SC Ethics Commission Executive Director. There is one issue in 8-13-1348 that I have highlighted in yellow regarding the threshold amount for a person to be convicted of a felony that we should talk through. Herb Hayden initially agreed with a \$5,000 threshold but the other 3 statutes have a \$10,000 threshold.

We can talk about this more at 2:00.

Swati

From: Patel, Swati

Sent: Friday, May 03, 2013 3:24 PM

To: chip@spiritlinecruises.com

Cc: Veldran, Katherine; 'Brett Hubler'

Subject: RE: Ethics Amendments

Chip,

Per our conversation yesterday, I wanted to make you aware of what the House did as it relates to the amendments you agreed to offer. In the email below from Brett you had agreed to offer amendments #2, #4, #6, #7, #12 (as Senator Thurmond's bill), and #16 in Subcommittee. Here are my recommendations with regard to these amendments and one additional amendment for your consideration:

- #2: I have attached a new Version #4 which adds language (in red) that clarifies that a public official must disclose the source and amount of income from a government contract only if the public official directly derives income from that contract (as opposed to income solely received the business affiliated with the public official). Also, for your information, the House watered-down the income disclosure language that they originally adopted in Committee and in previous bills. The language you have agreed to offer is stronger in these respects:
- (a) Your amendment requires disclosure of source and amount of any government contract; the House only requires disclosure of the name of the government that contracts with the public official, his immediate family or business.
 - (b) Your amendment requires disclosure of all government contracts from State to municipal regardless of the level of government the public official serves; the House requires only state contracts be disclosed for state officials and local contracts be disclosed for local officials.
 - (c) Your amendment requires disclosure of source and amount of income received by the public official, his immediate family and business if the income is derived from an entity regulated by a governmental regulatory agency on which the public official serves.
- #4: I have attached a new Version #3 which is similar to H.3945, as amended by the House. We recommend adding clarification language in 8-13-700(B) also related to recusals. The new language would clarify when a legislator must recuse themselves from voting and require that the written statement that must be entered into the Journal include the specific nature of the conflict of interest.

- #6: This language is identical to H. 3945, Section 6. No changes needed to this amendment.
- #7: We are still fine with your changes. The House did not adopt this amendment and we would very much appreciate your continued support for this.
- #12: The House version is different. One difference I would point out is that the House did not use the term “political subdivisions” and used “local” instead. Steve Draffin said “local” would be more appropriate to encompass school districts which overlap counties. Also, for your information, some local economic development alliances have raised concerns about this language and may ask for an exception. I will let you know what I find out about this before Tuesday.
- #15: As a result of the broad decriminalization issue in the House, changes were made to the general criminal statute (8-13-1520) in the Ethics Act in H.3945. The word “willfully” was added in exchange for abandoning all other de-criminalization efforts. The AG’s office will likely address their concerns about this change with the Subcommittee. Also, the McMaster-Medlock Commission recommended enhancing criminal penalties for 4 statutes of the Ethics Act by adding a felony for serious violations. The House added a felony to 1 out of the 4 recommended statutes. Let me know if you are interested in offering an amendment to enhance criminal penalties for the 4 statutes.
- #16: The House did make some changes to this amendment. Your current version mirrors the McMaster-Medlock recommendation #16.

We plan to speak with Sen. Massey and possibly others on the Subcommittee about these amendments before Tuesday. Please let us know if you are okay with the new attached versions of #4 (recusals) and #2 (income disclosure). Also, let us know if you are interested in the enhanced criminal penalties amendment. Thanks again for your support!! Call me anytime if you have questions. 803-665-0259

Swati

From: Brett Hubler [<mailto:BrettHubler@scsenate.gov>]
Sent: Wednesday, April 10, 2013 7:21 PM
To: Patel, Swati
Cc: chip@spiritlinecruises.com; Veldran, Katherine
Subject: RE: Ethics Amendments

Thanks, Swati.

Senator Campsen plans to introduce amendments #2, #4, #6, #7, #12 (as Senator Thurmond’s bill), and #16 tomorrow in subcommittee. Here are our suggestions for each. Copies are attached. Please let us know if they are amenable.

- #2: Introduced with two suggestions. First, we suggest making (A)(11)(i) require disclosure of income from contracts with “a lobbyist’s principal or an entity controlled by, affiliated with, or existing for the benefit of a lobbyist principal.” Second, we suggest changing the commercial transaction exception so that it uses the plural form of the phrase instead of the singular.
- #4: Introduced as provided by you and Katherine.
- #6: Introduced as provided by you and Katherine.
- #7: Introduced with one suggestion. Based upon our discussion, it sounds like #7’s new subsection, (B)(2), is intended to require disclosure of fees, names, etc. when a public official, family member, or associated business brings a law suit against a governmental entity. With that in mind, there seems to be a risk that the phrase “against a governmental entity” in subsection (B)(2) would go further than our intent by requiring disclosure when a public official represents someone in an action brought by the government itself, both civil and criminal. We would suggest addressing that risk by limiting disclosure to representation of persons in

actions “brought against” a governmental entity. Further, because (B)(1) seems to require disclosure when a public official represents someone in contested cases, it seems like (B)(2) is intended to capture actions other than contested cases, i.e. civil actions. So, we may want to limit (B)(2) to “civil actions” brought against the governmental entity. Even fixing for that, though, we may still be requiring disclosure of fees and contacts made in post-conviction relief or habeas cases. If that is the case, we may need to exclude disclosure of those relationships.

#12: Introduce the language using Senator Thurmond’s bill (S.601) as the base. However, we would make three changes to his bill. Two changes affect (12)(e). First, we would switch the order of “action or vote.” Second, we would clarify that lobbying includes opposing or promoting the action of any member of the governing body of a political subdivision “while acting in his official capacity,” or some similar language. As for the third change, we would suggest adding “a member or staff of the governing body of a political subdivision” to the exception from lobbying for government officials.

#16: Introduced as provided by you and Katherine.

Looking forward to seeing you tomorrow.

Brett

Brett A. Hubler
Research Director: Fish, Game and Forestry Committee
South Carolina Senate
P.O. Box 142
Columbia, South Carolina 29202
803.212.6340
bretthubler@scsenate.gov

From: Patel, Swati [<mailto:SwatiPatel@gov.sc.gov>]
Sent: Wednesday, April 10, 2013 4:40 PM
To: chip@spiritlinecruises.com
Cc: Brett Hubler; Veldran, Katherine
Subject: Ethics Amendments

Chip and Brett:

Thanks for our meeting this morning. I have attached amendments (Version 2) based on our discussion this morning which I will summarize below:

- (1) First, I have not attached the amendments that you did not have concerns with – Amendment # 4 (Clarifying recusals by public officials) and Amendment #16 (Prohibiting use of campaign funds to pay for criminal penalties).
- (2) Income Disclosure #2:
 - a. First I made a technical change to subitem (8) by deleting references to public officials because we address them in the new subitem (11). Subitem (8) is current law which requires *public officials, public members and public employees* to disclose source and amount of income derived from a business or individual which contracts with their governmental entity. I didn’t want to change the current law requiring public members and employees to also report this income in this specific, high-conflict situation; but we needed to delete the references to public officials so as not to be redundant and confusing.
 - b. Second, I added the exclusion language we discussed.
 - c. Third, I addressed the “regulation” concern we discussed. In Section 8-13-730, a similar conflict issue is addressed and uses the term “governmental regulatory agency” which better captures the intent in

(iii). Let me know if you and Brett agree.

(3) Clarifying representation prior to a contested case #6: I did not make any changes; however I put it in context of the full paragraph of Subsection (A) of Section 8-13-740.

a. Disclose public officials' fees earned when representing a client in an action against a governmental entity: I did not make any substantive changes but put it in a consistent form as the other amendments. The rationale for the amendment is the same as the current law which requires public officials to disclose fees earned when representing clients before a governmental entity: potential influence could occur in either situation when the public official may control legislation/budgets/appointments of those entities. *Example: County council member is also an attorney and represents plaintiffs in a legal action against a county fire department which receives funds through the official's appropriation votes. (similar examples for municipal, school board and state elected officials)*

(4) Regulating lobbying at local levels #12: I apologize for not providing this amendment to you earlier! I have attached it now. This language mirrors the language in H.3772 (Rep. Bingham's bill). I also understand that Sen. Thurmond has introduced today a similar separate bill which he wants your Subcommittee to take up. I have not reviewed the language of his bill because it is not posted yet.

I'm available anytime if you have questions (665-0259). Tomorrow, Prof. Simpkins plans to address the Subcommittee on the Reform Commission's proposal to limit jurisdiction of legislative ethics committees. James Burns, the Commission's counsel will also be there to answer general questions. I will be there too but do not plan to address the subcommittee.

Sorry for the long email!

Swati

Swati S. Patel
Chief Legal Counsel
Office of the Governor.South Carolina
1205 Pendleton Street
Columbia, SC 29201
DD 803.734.5095