

PROGRESSIVA

Education Fund

Virginia’s 2015 Ethics Reform: An analysis of HB2070 and its impact on gift giving in Richmond

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Summary

Around 8pm on Friday, February 27th, the Virginia General Assembly approved an omnibus ethics bill with little debate. The conference report differs significantly from the original ethics reform bills introduced in the House of Delegates and State Senate and contains loopholes that impact its ability to curtail gifts.

Travel loopholes would create a system under which some gifted travel would not only be unregulated but also unreported. A change in the way the gift cap is applied expands the ability of legislators to accept freebies from lobbyists and lobbyists' principals. Narrowly defined categories of prohibited givers provide opportunities for entities seeking to influence business in Richmond to circumvent the rules. And the failure to give authority to the ethics council to audit filings, accept and investigate signed complaints, and refer findings for prosecution means there is little oversight for the system or a central watchdog for citizen information.

Key findings:

- 79% of gifts reported by legislators in 2014 would still be allowable under HB2070, including 70% of gifts from lobbyists and their principals.
- Travel loopholes would allow for any lobbyist or principal to pay for a legislator to fly around the state for official meetings without violating the cap or any required disclosure
- Travel loopholes would allow unlimited gifted travel to conferences such as ALEC with no disclosure
- Narrow categories of prohibited givers provide significant opportunities for special interests to circumvent the gift cap
- Eliminating the aggregate gift cap opens the door to an increase in special interest gifts
- Significant discrepancies between gifts reported by legislators and lobbyists underscore the need for a stronger ethics council

Impact of HB2070 on 2014 Reported Gifts

HB2070 would establish a \$100 per gift cap for gifts from lobbyists or lobbyists' principals to members of the Virginia General Assembly. The bill redefines what is not considered a gift under the code (and therefore not subject to limits or disclosure.) Those items include:

- An offer that is not used
- Honorary degree
- Scholarship
- Campaign contribution properly reported
- Gift related to private profession of elected official or immediate family
- Food or beverage at an event where the official is performing official duties
- Food/beverage or registration/attendance fees at event where official is speaker/presenter/lecturer

- Unsolicited awards
- Inheritance
- Travel disclosed under the Campaign Finance Act
- Travel paid for by US, state, local government or a subdivision
- Travel to attend a General Assembly session, legislative committee or commission, or national conference approved by the Rules Committee
- Travel related to an official meeting of the Commonwealth, political subdivision, board, commission, entity, or affiliated charity the official is appointed or elected to because of public office or private employment
- Gifts from relatives or personal friends [Lines 2011-2045]

Additionally, HB2070 creates several categories of gift exemptions, including food or beverages consumed at a widely attended event, gifts from foreign dignitaries that are accepted on behalf of the Commonwealth and archived by the library of Virginia, a gift from a lobbyist or lobbyist's principal who is also a personal friend, and travel for which a waiver has been granted by the ethics council. [Lines 2098-2112]

ProgressVA Education Fund analyzed the impact these rules would have on gifts reported by legislators in 2014. In total, members of the legislature accepted 753 gifts in 2014, with a value of \$184,562. Of those gifts, 79% would be allowed under the provisions of HB2070. Gifts from lobbyists and principals account for 70% of the total gifts received by legislators in 2014, worth over \$100,000. Our analysis projects 70% of those lobbyist gifts would be legal under HB2070. An additional 10% of lobbyist gifts were not reported with sufficient information to determine whether they qualify for an exemption.

	Number of gifts	Percentage	Value
Total gifts	753		\$184,562
Gifts under cap	301	40.0%	\$23,199
Total gifts allowed	594	78.9%	\$144,632
Total lobbyist gifts	523	69.5%	\$102,530
Total lobbyist gifts allowed	364	69.6%	\$62,600
Total lobbyist gifts prohibited	104	19.9%	\$30,638
Total lobbyist gifts unclear	53	10.1%	\$9,292
Total nonlobbyist gifts	229	30.4%	\$82,032

*Based on data from the Virginia Public Access Project

ProgressVA conducted a similar analysis of the original ethics reform bill in 2014, based on gifts received in 2012. The bill as introduced would have blocked few, if

any gifts. While HB2070 is an improvement, the numbers also demonstrate the impact of loopholes on Richmond's culture of largesse. In 2012, members of the legislature reported 695 gifts worth \$247,608. While the total value of gifts has dropped significantly over two years, the volume of gifts has risen to 753 in 2014.

Loopholes

Travel

HB2070 carves out significant loopholes for public officials when it comes to privately financed travel. The bill excludes "travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules" from the definition of a gift. [Lines 2028-2031] Travel for these purposes is not a gift, no matter who pays. And, because this travel is not a gift, it is not required to be reported. This language appeared in the final conference report but was not included in previous versions of the House or Senate bill.

In practical effect, a corporation otherwise subject to a \$100 gift cap could fly a lawmaker from Southwest Virginia to Richmond and back for the legislative session without violating gift limits and without either party needing to disclose the transaction.

The bill also excludes travel for national conferences that have been approved by the House or Senate Rules Committee. This provision essentially allows the Speaker and the Chair of Senate Rules to provide waivers by which their members may accept free travel without having to disclose.

For example, Speaker Bill Howell sits on the national board of the American Legislative Exchange Council, a corporate front group which partners legislators with lobbyists to write model legislation behind closed doors. Speaker Howell regularly approves requests for his colleagues to travel to ALEC conferences, with both privately subsidized and taxpayer funds. Just in 2014, ALEC spent \$2,616 for members of the Virginia legislature to travel to their conferences¹. Since 2001, ALEC has spent close to \$100,000 to subsidize Virginia legislators' attendance at their conferences². Under HB2070, those gifts would no longer need to be reported. Furthermore, ALEC's corporate members could also pay for travel without any limit or disclosure. Corporations like Dominion and Verizon, which bestow thousands of dollars of gifts and campaign contributions year, are members of ALEC. This travel loophole would allow these corporations to continue to make substantial gifts to

¹ Virginia Public Access Project

² Virginia Public Access Project

members of the legislature while circumventing the gift cap and reporting requirements.

Prohibited givers

In 2014, following ProgressVA Education Fund's report on ethics reform, legislators broadened the categories of prohibited givers to include not only lobbyists, but also lobbyists' principals and individuals seeking to do business with the state (or locality for local officials). HB2070 maintains those categories of prohibited givers for local officials, but deletes the prohibition on gifts from individuals or businesses seeking a contract with the state for members of the General Assembly [Lines 2103-2104]. Gifts from any other source are not subject to the \$100 cap and are not required to be reported.

A perusal of gifts received in 2014 illustrates how officials might circumvent these rules. Thirteen legislators reported receiving gratis tickets to Virginia Tech football games from the University. An additional five legislators reported free tickets to University of Virginia sporting events³. Under HB2070, none of these gifts would be prohibited, because the university proper does not employ a lobbyist. Instead, each school employs lobbyists through an affiliated foundation. Similarly, while associations such as the Old Dominion Highway Contractors Association or the Virginia Agribusiness Council employ lobbyists and therefore are subject to the gift cap, their members are not. Any individual business member could legally provide gifts over the cap even though a lobbyist is representing their interests in Richmond, so long as they do not directly serve as the principal.

Personal friends

HB2070 exempts gifts from regulation in two ways. First, it narrowly defines what is considered a gift to apply the regulation to a small range of freebies. Second, the bill also separately carves out exemptions for some gifts. These two treatments create significant confusion around gifts from personal friends. Under HB2070, freebies from personal friends do not qualify as a gift, and therefore are not regulated and not required to be reported [Line 2039-2041]. That exemption only applies to gifts from personal friends who are not a lobbyist or lobbyist's principal. However, the bill separately sets criteria by which a lobbyist or principal could qualify as a personal friend and therefore exempt a gift from the \$100 gift cap [Line 2123-2134]. Unlike the other specified exemptions from the cap, however, HB2070 does not specifically define whether gifts over the cap from lobbyists who are also personal friends must be disclosed. Because the bill does not specify, legislators could likely accept gifts over the cap from lobbyists who meet the personal friend criteria without disclosing the gift.

³ Virginia Public Access Project

Widely attended events

HB2070 creates a gift exemption for food or drink consumed at widely attended events, which are defined as events to which 25+ people have been invited or it is reasonable to expect so, or that are open to the public, or meet one of the below qualifications:

- Open to people who share a common interest
- Members of a public, civic, charitable, or professional organization
- Are from a particular industry or profession
- Represent persons interested in a particular issue [Line 2093-2097]

However, unlike a similar congressional ethics rule regarding widely attended events, HB2070 does not specify the event sponsor must provide the food and drink. In 2014, Norfolk Southern Corp., a lobbyist's principal, provided Senator Emmett Hanger and his wife with \$300 worth of meals at the Fiddlers Convention in Galax⁴. While this amount would exceed the gift cap under HB2070, the Fiddlers Convention qualifies as a widely attended event so the gift would not be prohibited. This example illustrates how the loophole might be exploited by special interests in the future.

Aggregate gift cap

While HB2070 lowers the gift cap from \$250 to \$100, in practicality it expands the number of gifts any official might receive. The \$250 cap instituted in 2014 was an aggregate cap, meaning any combination of gifts from a single source could not exceed that level. The Senate omnibus ethics proposal would have maintained the aggregate provision while lowering the cap to \$100. HB2070 eliminates the aggregate cap altogether and applies the \$100 limit to any single gift [Line 2098-2112]. In practice, then, any official could accept unlimited gifts valued at \$100 or less from a single lobbyist or principal. Delegate Luke Torian, for example, reported two golf trips paid for by Hunton and Williams in 2014⁵. While together they would exceed \$100, HB2070 allows the gifts because each instance was under the cap.

Virginia Conflict of Interest and Ethics Advisory Council

Ethics legislation passed in 2014 established the Virginia Conflict of Interest and Ethics Advisory Council. The Council was tasked with receiving disclosure forms, establishing a searchable electronic database of forms, conducting ethics trainings and providing formal and informal advisory opinions on compliance with the law. HB2070 expands the Council's responsibilities to include granting travel waivers to

⁴ Virginia Public Access Project

⁵ Virginia Public Access Project

elected officials for privately financed trips that bear a reasonable relationship to the office holder's official duties.

Governor Terry McAuliffe's blue ribbon ethics and integrity commission suggested multiple reforms that were not adopted by the General Assembly, including granting the Council the authority to randomly audit ethics filings, receive and investigate signed complaints, or refer findings for prosecution⁶.

Travel Waivers

Under HB2070, the Council "shall" approve requests for travel waivers for trips that are privately financed and which bear a "reasonable relationship" to the requester's official duties [Line 2868-2892]. This vague wording leaves significant leeway for the Council to approve or deny requests. However, HB2070 also provides that any waiver which is not acted upon in five business days will be deemed approved, providing an unusual "out" where the Council could deadlock or decline to rule on the appropriateness of a trip and the requester would still be able to legally receive the gifted travel [Line 2900-2902].

Additionally, earlier versions of both the House and Senate bills required approved travel waivers to be posted online by the Council. That requirement was deleted from the final version of HB2070.

Audits

Unlike an earlier version of the Senate omnibus ethics proposal, HB2070 does not give the Council authority to randomly audit ethics filings to ensure compliance with the law. Under HB2070, the council may inspect filings for completeness and request filers submit a complete form, but those requests are exempt from the Virginia Freedom Of Information Act.

Audits like those recommended by the Governor's commission would identify discrepancies on disclosure forms to ensure the public receives accurate information. In a review of 2014 gifts disclosed by members of the General Assembly and lobbyists, ProgressVA Education Fund found multiple instances in which lobbyists reported providing legislators with gifts that were not also reported by the legislator, and vice versa. In many cases, those gifts exceeded the reporting threshold and should have been disclosed by both parties. The prevalence of these errors undermines confidence in the accuracy of disclosure forms. Empowering the Council to serve as an independent watchdog to oversee and verify filings would be a significant step towards ensuring disclosure forms accurately reflect Richmond's generosity.

⁶ Interim Report of the Commission on Integrity and Public Confidence in State Government

Central Watchdog

HB2070 does not empower the Council to receive or investigate signed complaints by citizens, a key proposal from the Governor's blue ribbon commission. While the Council will receive and make available online some disclosure forms, they are not authorized to serve as a central repository for ethics information or watchdog for the public.

Under HB2070, state officials and constitutional officers are required to file their disclosure forms with the Council [Line 1166-1271]. Local officials, however, will file the form with the local clerk. It is unclear if those forms will be included in the Council's searchable online database of filings. The various filing systems facilitate a lack of transparency in disclosure and promote an inconsistent standard.

Since the Council has no real investigatory or enforcement power under HB2070, it's unclear where a citizen should turn with a question or whistleblower complaint. HB2070 clarifies that a willful violation of the ethics provisions is a class 5 felony. The Attorney General has the authority to provide a written advisory opinion and assist in collecting civil fines for violation of the statute, but is not tasked with explicit authority to investigate suspected wrongdoing. Citizen whistleblowers would likely need to direct complaints to state or local police, or a local Commonwealth's Attorney.