

HSB 617

Gipp - CHAIR

STATE GOVERNMENT

Garman
Johnson

SENATE/HOUSE FILE

Succ
SF 02527

BY (PROPOSED ETHICS AND CAMPAIGN
DISCLOSURE BOARD BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to elected officials, including lobbyist and
2 client reporting, reports of official misconduct, and campaign
3 finance reporting.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 68B.32, subsection 1, Code 2001, is
2 amended to read as follows:

3 1. An Iowa ethics and campaign disclosure board is
4 established as an independent agency. ~~Effective-January-17~~
5 ~~19947--the~~ The board shall administer this chapter and set
6 standards for, investigate complaints relating to, and monitor
7 the ethics of officials, employees, lobbyists, and candidates
8 for office in the executive branch of state government. The
9 board shall administer chapter 721 and set standards for,
10 investigate complaints relating to, and monitor the conduct of
11 officials, employees, and candidates for office in the
12 executive branch of state government under chapter 721. The
13 board shall also administer and set standards for, investigate
14 complaints relating to, and monitor the campaign finance
15 practices of candidates for public office. The board shall
16 consist of six members and shall be balanced as to political
17 affiliation as provided in section 69.16. The members shall
18 be appointed by the governor, subject to confirmation by the
19 senate.

20 Sec. 2. Section 68B.32, subsection 5, Code 2001, is
21 amended to read as follows:

22 5. The board shall employ a full-time executive director
23 who shall be the board's chief administrative officer. The
24 board shall employ or contract for the employment of legal
25 counsel notwithstanding section 13.7, and any other personnel
26 as may be necessary to carry out the duties of the board. The
27 board's legal counsel shall be the chief legal officer of the
28 board, and shall advise the board on all legal matters
29 relating to the administration of this chapter, and chapter
30 56, and chapter 721. The state may be represented by the
31 board's legal counsel in any civil action regarding the
32 enforcement of this chapter, or chapter 56, or chapter 721,
33 or at the board's request, the state may be represented by the
34 office of the attorney general. Notwithstanding section
35 19A.3, all of the board's employees, except for the executive

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1 director and legal counsel, shall be employed subject to the
2 merit system provisions of chapter 19A. The salary of the
3 executive director shall be fixed by the board, within the
4 range established by the general assembly. The salary of the
5 legal counsel shall be fixed by the board, within a salary
6 range established by the department of personnel for a
7 position requiring similar qualifications and experience.

8 Sec. 3. Section 68B.32A, subsections 1, 5, 8, and 11, Code
9 2001, are amended to read as follows:

10 1. Adopt rules pursuant to chapter 17A and conduct
11 hearings under sections 68B.32B and 68B.32C and chapter 17A,
12 as necessary to carry out the purposes of this chapter, and
13 chapter 56, and chapter 721.

14 5. Prepare and publish a manual setting forth examples of
15 approved uniform systems of accounts and approved methods of
16 disclosure for use by persons required to file statements and
17 reports under this chapter and chapter 56. The board shall
18 also prepare and publish other educational materials, and any
19 other reports or materials deemed appropriate by the board.
20 The board shall annually provide all officials and state
21 employees with notification of the contents of this chapter, and
22 chapter 56, and chapter 721 by distributing copies of
23 educational materials to associations that represent the
24 interests of the various governmental entities for
25 dissemination to their membership.

26 8. Establish and impose penalties, and recommendations for
27 punishment of persons who are subject to penalties of or
28 punishment by the board or by other bodies, for the failure to
29 comply with the requirements of this chapter, or chapter 56,
30 or chapter 721.

31 11. Establish a procedure for requesting and issuing
32 formal and informal board opinions to local officials and
33 employees and to persons subject to the authority of the board
34 under this chapter, or chapter 56, or chapter 721. Advice
35 contained in formal board opinions shall, if followed,

1 constitute a defense to a complaint filed with the board
2 alleging a violation of this chapter, chapter 56, chapter 721,
3 or rules of the board that is based on the same facts and
4 circumstances.

5 Sec. 4. Section 68B.32B, subsections 1, 4, 8, 9, and 10,
6 Code 2001, are amended to read as follows:

7 1. a. Any person may file a complaint alleging that a
8 candidate, committee, person holding a state office in the
9 executive branch of state government, employee of the
10 executive branch of state government, or other person has
11 committed a violation of chapter 56 or rules adopted by the
12 board.

13 b. Any person may file a complaint alleging that a person
14 holding a state office in the executive branch of state
15 government, an employee of the executive branch of state
16 government, or a lobbyist or a client of a lobbyist of the
17 executive branch of state government has committed a violation
18 of this chapter or rules adopted by the board.

19 c. Any person may file a complaint alleging that a public
20 officer or employee or other person has committed a violation
21 of chapter 721 or rules adopted by the board.

22 d. The board shall prescribe and provide forms for ~~this~~
23 purpose the purposes of this section.

24 e. A complaint under this section must include the name
25 and address of the complainant, a statement of the facts
26 believed to be true that form the basis of the complaint,
27 including the sources of information and approximate dates of
28 the acts alleged, and a certification by the complainant under
29 penalty of perjury that the facts stated to be true are true
30 to the best of the complainant's knowledge.

31 4. Upon completion of legal review, the chairperson of the
32 board shall be advised whether, in the opinion of the legal
33 advisor, the complaint states an allegation ~~which~~ that is
34 legally sufficient. A legally sufficient allegation must
35 allege all of the following:

1 a. Facts that would establish a violation of a provision
2 of this chapter, chapter 56, chapter 721, or rules adopted by
3 the board.

4 b. Facts that would establish that the conduct providing
5 the basis for the complaint occurred within three years of the
6 complaint.

7 c. Facts that would establish that the subject of the
8 complaint is a party subject to the jurisdiction of the board.

9 8. The purpose of an investigation by the board's staff is
10 to determine whether there is probable cause to believe that
11 there has been a violation of this chapter, chapter 56,
12 chapter 721, or of rules adopted by the board. To facilitate
13 the conduct of investigations, the board may issue and seek
14 enforcement of subpoenas requiring the attendance and
15 testimony of witnesses and subpoenas requiring the production
16 of books, papers, records, and other real evidence relating to
17 the matter under investigation. Upon the request of the
18 board, an appropriate county attorney or the attorney general
19 shall assist the staff of the board in its investigation.

20 9. If the board determines on the basis of an
21 investigation by board staff that there is probable cause to
22 believe the existence of facts that would establish a
23 violation of this chapter, chapter 721, or of rules adopted by
24 the board, the board may issue a statement of charges and
25 notice of a contested case proceeding to the complainant and
26 to the person who is the subject of the complaint, in the
27 manner provided for the issuance of statements of charges
28 under chapter 17A. If the board determines on the basis of an
29 investigation by staff that there is no probable cause to
30 believe that a violation has occurred, the board shall close
31 the investigation, dismiss any related complaint, and the
32 subject of the complaint shall be notified of the dismissal.
33 If the investigation originated from a complaint filed by a
34 person other than the board, the person making the complaint
35 shall also be notified of the dismissal.

1 10. At any stage during the investigation or after the
2 initiation of a contested case proceeding, the board may
3 approve a settlement regarding an alleged violation. Terms of
4 a settlement shall be reduced to writing and be available for
5 public inspection. An informal settlement may provide for any
6 remedy specified in section 68B.32D. However, the board shall
7 not approve a settlement unless the board determines that the
8 terms of the settlement are in the public interest and are
9 consistent with the purposes of this chapter and, chapter 56,
10 chapter 721, or of rules of the board. In addition, the board
11 may authorize board staff to seek informal voluntary
12 compliance in routine matters brought to the attention of the
13 board or its staff.

14 Sec. 5. Section 68B.32C, subsections 1 and 3, Code 2001,
15 are amended to read as follows:

16 1. Contested case proceedings initiated as a result of the
17 issuance of a statement of charges pursuant to section
18 68B.32B, subsection 9, shall be conducted in accordance with
19 the requirements of chapter 17A. Clear and convincing
20 evidence shall be required to support a finding that a person
21 has violated this chapter, chapter 721, or any rules adopted
22 by the board pursuant to this chapter or chapter 721. A
23 preponderance of the evidence shall be required to support a
24 finding that a person has violated chapter 56 or any rules
25 adopted by the board pursuant to chapter 56. The case in
26 support of the statement of charges shall be presented at the
27 hearing by one of the board's attorneys or staff unless, upon
28 the request of the board, the charges are prosecuted by
29 another legal counsel designated by the attorney general. A
30 person making a complaint under section 68B.32B, subsection 1,
31 is not a party to contested case proceedings conducted
32 relating to allegations contained in the complaint.

33 3. Upon a finding by the board that the party charged has
34 violated this chapter, chapter 721, or rules adopted by the
35 board, the board may impose any penalty provided for by

1 section 68B.32D. Upon a final decision of the board finding
2 that the party charged has not violated this chapter, chapter
3 721, or the rules of the board, the complaint shall be
4 dismissed and the party charged and the original complainant,
5 if any, shall be notified.

6 Sec. 6. Section 68B.32D, subsection 1, Code 2001, is
7 amended to read as follows:

8 1. The board, after a hearing and upon a finding that a
9 violation of this chapter, chapter 56, chapter 721, or rules
10 adopted by the board has occurred, may do one or more of the
11 following:

12 a. Issue an order requiring the violator to cease and
13 desist from the violation found.

14 b. Issue an order requiring the violator to take any
15 remedial action deemed appropriate by the board.

16 c. Issue an order requiring the violator to file any
17 report, statement, or other information as required by this
18 chapter, chapter 56, chapter 721, or rules adopted by the
19 board.

20 d. Publicly reprimand the violator for violations of this
21 chapter, chapter 56, chapter 721, or rules adopted by the
22 board in writing and provide a copy of the reprimand to the
23 violator's appointing authority.

24 e. Make a written recommendation to the violator's
25 appointing authority that the violator be removed or suspended
26 from office, and include in the recommendation the length of
27 the suspension.

28 f. If the violation is a violation of this chapter,
29 chapter 721, or rules adopted by the board pursuant to this
30 chapter and the violator is an elected official of the
31 executive branch of state government, other than an official
32 who can only be removed by impeachment, make a written
33 recommendation to the attorney general or the appropriate
34 county attorney that an action for removal from office be
35 initiated pursuant to chapter 66.

1 g. If the violation is a violation of this chapter or
2 rules adopted by the board pursuant to this chapter and the
3 violator is a lobbyist of the executive branch of state
4 government, censure, reprimand, or impose other sanctions
5 deemed appropriate by the board. A lobbyist may also be
6 suspended from lobbying activities if the board finds that
7 suspension is an appropriate sanction for the violation
8 committed.

9 h. Issue an order requiring the violator to pay a civil
10 penalty of not more than two thousand dollars for each
11 violation of this chapter, chapter 56, chapter 721, or rules
12 adopted by the board.

13 i. Refer the complaint and supporting information to the
14 attorney general or appropriate county attorney with a
15 recommendation for prosecution or enforcement of criminal
16 penalties.

17 Sec. 7. Section 68B.37, Code 2001, is amended by striking
18 the section and inserting in lieu thereof the following:

19 68B.37 LOBBYIST REPORTING.

20 1. A lobbyist before the general assembly shall file with
21 the general assembly, on forms prescribed by each house of the
22 general assembly and according to the filing provisions of
23 subsection 3, a report disclosing all of the following:

24 a. The lobbyist's clients.

25 b. Contributions made by the lobbyist to candidates for
26 state office.

27 c. The recipients of the lobbyist's campaign
28 contributions.

29 d. Expenditures made by the lobbyist for the purposes of
30 acting directly to encourage the passage, defeat, approval,
31 veto, or modification of legislation, administrative rule, or
32 an executive order by the members of the general assembly, a
33 state agency, or any statewide elected official. For purposes
34 of this section, "expenditures" does not include expenditures
35 made by an organization for publishing a newsletter or other

1 informational release for its members.

2 e. The receipt of salaries, fees, or other compensation
3 paid to the lobbyist for acting directly to encourage the
4 passage, defeat, approval, veto, or modification of
5 legislation, administrative rule, or an executive order by the
6 members of the general assembly, a state agency, or any
7 statewide elected official. The receipt of salaries, fees, or
8 compensation shall be disclosed for each client the lobbyist
9 represents. In situations where a lobbyist receives a salary,
10 the lobbyist shall disclose the amount of the lobbyist's
11 salary that is attributed to time actually spent on lobbying
12 activities.

13 2. A lobbyist before a state agency or the office of the
14 governor shall file with the board, on forms prescribed by the
15 board, a report disclosing the same items described in
16 subsection 1.

17 3. a. A report by a lobbyist before the general assembly
18 shall be filed on or before May 19, October 19, and January
19 19. A report filed by a lobbyist before the general assembly
20 shall contain information for the preceding calendar months or
21 the parts thereof during which the person was engaged in
22 lobbying.

23 b. A report filed by a lobbyist before a state agency or
24 the office of the governor shall be filed on or before May 19,
25 October 19, and January 19, for the preceding calendar months
26 or the parts thereof during which the person was engaged in
27 lobbying.

28 c. The May 19 report shall cover the time period of
29 January 1 through May 1. The October 19 report shall cover
30 the period of May 2 through October 1. The January 19 report
31 shall cover the period of October 2 through December 31.

32 d. If a lobbyist cancels the lobbyist's registration at
33 any time during a calendar year, the lobbyist's final report
34 required by this section is due on the date required by this
35 section or fifteen days after cancellation, whichever is

1 earlier.

2 e. If a lobbyist is a person who is designated to
3 represent the interest of an organization as described in
4 section 68B.2, subsection 13, paragraph "a", subparagraph (2),
5 but is not paid compensation for that representation and does
6 not expend more than one thousand dollars as provided in
7 section 68B.2, subsection 13, paragraph "a", subparagraph (4),
8 the lobbyist shall only be required to file the report
9 specified in this section once annually, which report shall be
10 submitted at the time of filing the lobbyist's registration
11 form or forms.

12 4. The general assembly and the board shall work together
13 to adopt identical rules concerning what items shall be
14 disclosed as lobbying expenditures under this section.

15 Sec. 8. NEW SECTION. 721.13 COMPLAINTS FILED WITH IOWA
16 ETHICS AND CAMPAIGN DISCLOSURE BOARD.

17 Complaints concerning possible violations of this chapter
18 involving executive branch officers, executive branch
19 employees, or candidates for executive branch elected office
20 shall be filed with the Iowa ethics and campaign disclosure
21 board pursuant to section 68B.32B.

22 Sec. 9. Section 68B.38, Code Supplement 2001, is repealed.

23 Sec. 10. CODE EDITOR DIRECTIVE. The Code editor shall
24 move and renumber chapter 56 as chapter 68A, and shall change
25 all references to chapter 56 appropriately throughout the
26 Code.

27 **EXPLANATION**

28 This bill amends Code section 68B.37, relating to lobbyist
29 reporting, by detailing the disclosures that lobbyists for the
30 general assembly and for the executive branch must make in
31 their reports. The bill also establishes new filing dates of
32 May 19, October 19, and January 19. A lobbyist that does not
33 expend more than \$1,000 annually need only file one report a
34 year. The bill also repeals Code section 68B.38, relating to
35 lobbyist client reports.

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1 The bill provides that complaints regarding possible
2 violations of Code chapter 721, relating to official
3 misconduct, are to be filed with the Iowa ethics and campaign
4 disclosure board. Code chapter 721 contains such prohibitions
5 for state employees such as using public motor vehicles for
6 political purposes, engaging in campaign work during state
7 employment, and furnishing anything of value to the state
8 under a contract other than one awarded through open and
9 competitive bidding. Other amendments are also made to
10 various provisions in Code chapter 68B to add appropriate
11 references to Code chapter 721.

12 The bill also directs the Code editor to designate Code
13 chapter 56, relating to campaign finance disclosure, as Code
14 chapter 68A, and to make appropriate changes throughout the
15 Code as necessary to reflect the change.

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HSB 617

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

W. CHARLES SMITHSON
Executive Director
& Legal Counsel

514 East Locust Street, Suite 104
Des Moines, Iowa 50309-1912
Telephone 515-281-4028/Fax 515-281-3701
www.state.ia.us/ethics

BOARD MEMBER
James Albert, Chair
Geraldine Leinen, 1st Vice Chair
Gwendolyn Boeke, 2nd Vice Chair
Mark McCormick
Bernard McKinley
Phyllis Peters

TO: MEMBERS OF 2002 IOWA GENERAL ASSEMBLY
FROM: W. CHARLES SMITHSON, LEGAL COUNSEL WCS
DATE: JANUARY 28, 2002
Re: IECDB DEPARTMENTAL BILL FOR ETHICS

On behalf of the Iowa Ethics and Campaign Disclosure Board, I hereby respectfully submit the Board's 2002 Departmental Bill concerning amendments to the ethics and conflict of interest laws found in Iowa Code chapter 68B. The proposals in the bill are for the following purposes:

1. Direct the Code Editor to renumber Chapter 56 in the Code as "68A". The Administrative Rules Review Committee suggested this amendment in order to have the campaign finance laws and the ethics/conflict of interest laws together numerically in the Code.
2. Amend Iowa Code section 68B.37 by requiring lobbyists to report compensation received for lobbying purposes. Currently, the lobbyists' clients report this information on separate forms (see #3 below). The amendment would also reduce the number of reports filed by legislative lobbyists to three a year with the General Assembly and executive branch lobbyists to three a year with the Board. Finally, it would provide that the General Assembly and the Board adopt identical rules concerning definitions of expenditures related to lobbying.
3. Repeal Iowa Code section 68B.38. The information currently reported by lobbyists' clients would be reported by the lobbyists under proposal #2. This would eliminate a substantial amount of paperwork and the need to initiate compliance measures against clients who often do not realize they are required to file reports with the government.
4. The remaining sections would make complaints concerning the conduct of executive branch officials, employees, and candidates for executive branch office concerning potential violations of Chapter 721 be investigated by the Board. Chapter 721 refers to "official misconduct" and contains several provisions that should have probably been included in either Chapter 68B or campaign finance laws in Chapter 56 originally. The Board gets several complaints concerning Chapter 721 but does not have the jurisdiction to investigate. Also, those sections are currently subject to criminal penalty only, when there are times that administrative action would be sufficient to resolve the matter.

I look forward to working with the 2002 Iowa General Assembly on the proposed bill.

3/20/02 Rereferred To: State Gov.

FEB 25 2002
Place On Calendar

HOUSE FILE 2527
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 617)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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HF 2527

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2 that the party charged has not violated this chapter, chapter
3 721, or the rules of the board, the complaint shall be
4 dismissed and the party charged and the original complainant,
5 if any, shall be notified.

6 Sec. 6. Section 68B.32D, subsection 1, Code 2001, is
7 amended to read as follows:

8 1. The board, after a hearing and upon a finding that a
9 violation of this chapter, chapter 56, chapter 721, or rules
10 adopted by the board has occurred, may do one or more of the
11 following:

12 a. Issue an order requiring the violator to cease and
13 desist from the violation found.

14 b. Issue an order requiring the violator to take any
15 remedial action deemed appropriate by the board.

16 c. Issue an order requiring the violator to file any
17 report, statement, or other information as required by this
18 chapter, chapter 56, chapter 721, or rules adopted by the
19 board.

20 d. Publicly reprimand the violator for violations of this
21 chapter, chapter 56, chapter 721, or rules adopted by the
22 board in writing and provide a copy of the reprimand to the
23 violator's appointing authority.

24 e. Make a written recommendation to the violator's
25 appointing authority that the violator be removed or suspended
26 from office, and include in the recommendation the length of
27 the suspension.

28 f. If the violation is a violation of this chapter,
29 chapter 721, or rules adopted by the board pursuant to this
30 chapter and the violator is an elected official of the
31 executive branch of state government, other than an official
32 who can only be removed by impeachment, make a written
33 recommendation to the attorney general or the appropriate
34 county attorney that an action for removal from office be
35 initiated pursuant to chapter 66.

1 g. If the violation is a violation of this chapter or
2 rules adopted by the board pursuant to this chapter and the
3 violator is a lobbyist of the executive branch of state
4 government, censure, reprimand, or impose other sanctions
5 deemed appropriate by the board. A lobbyist may also be
6 suspended from lobbying activities if the board finds that
7 suspension is an appropriate sanction for the violation
8 committed.

9 h. Issue an order requiring the violator to pay a civil
10 penalty of not more than two thousand dollars for each
11 violation of this chapter, chapter 56, chapter 721, or rules
12 adopted by the board.

13 i. Refer the complaint and supporting information to the
14 attorney general or appropriate county attorney with a
15 recommendation for prosecution or enforcement of criminal
16 penalties.

17 Sec. 7. NEW SECTION. 721.13 COMPLAINTS FILED WITH IOWA
18 ETHICS AND CAMPAIGN DISCLOSURE BOARD.

19 Complaints concerning possible violations of this chapter
20 involving executive branch officers, executive branch
21 employees, or candidates for executive branch elected office
22 shall be filed with the Iowa ethics and campaign disclosure
23 board pursuant to section 68B.32B.

24 Sec. 8. CODE EDITOR DIRECTIVE. The Code editor shall move
25 and renumber chapter 56 as chapter 68A, and shall change all
26 references to chapter 56 appropriately throughout the Code.

27 EXPLANATION

28 This bill provides that complaints regarding possible
29 violations of Code chapter 721, relating to official
30 misconduct, are to be filed with the Iowa ethics and campaign
31 disclosure board. Code chapter 721 contains such prohibitions
32 for state employees such as using public motor vehicles for
33 political purposes, engaging in campaign work during state
34 employment, and furnishing anything of value to the state
35 under a contract other than one awarded through open and

1 competitive bidding. Other amendments are also made to
2 various provisions in Code chapter 68B to add appropriate
3 references to Code chapter 721.

4 The bill also directs the Code editor to designate Code
5 chapter 56, relating to campaign finance disclosure, as Code
6 chapter 68A, and to make appropriate changes throughout the
7 Code as necessary to reflect the change.

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