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Date: July 7, 2014
To: All Senate Members and Staff
From: Senate Rules Committee
Subject: Senate Rule 56 "Blackout" Hypotheticals

Senate Resolution 44, passed on June 9, 2014 added Senate Rule 56 to the Standing Rules of the Senate for the 2013-14 Regular Session which prohibits Members of the Senate from soliciting or accepting campaign contributions from lobbyist employers for the period immediately preceding the passage of the state budget and a 30 day period preceding the end of the legislative session each year.

In each even-numbered year, the prohibited end of session blackout period is August 1 to August 31, inclusive. For the 2013-14 Regular Session, the blackout period begins on August 1, 2014.

Remember, Senate Rule 56 only applies to lobbyist employers. For purposes of this rule "contribution" and "lobbyist employer" have the same meanings as set forth in the Political Reform Act of 1974 (Title 9, commencing with Section 81000 of the Government Code).

The following hypotheticals serve as a guide to the scope, intent and implications of Senate Rule 56:

- What if a lobbyist employer campaign contribution is sent before August, but arrives during the August blackout period? *Members cannot solicit or accept contributions during the month of August. It must be sent back.*
- Can the lobbyist employer re-send the campaign contribution after the end of the blackout period? *Yes.*
- What if the campaign contribution was committed at an event before August, but arrives during the blackout period? *Members cannot solicit or accept contributions during August. It must be sent back.*
- What if a lobbyist employer campaign contribution is sent during August but doesn't arrive until after August 31? *As long as the contribution was not solicited or known by the Member in August, it may be accepted in September.*
- Can the Member's campaign staff/fundraising entity contact lobbyist employers during the blackout period to collect pledged contributions made before August? *No, the Member cannot accept contributions from a lobbyist employer during the blackout period. Staff and fundraisers, or any other person acting on behalf of the Member, are agents of the Member.*

- If the Member has a fundraising event scheduled for September in the district, can information about the fundraiser be sent out by mail/email, in August? *No, an invitation to a fundraiser event, to lobbyist employers, would be considered a solicitation in violation of the August blackout period. If it is a district event, it is permissible to solicit as long as you're not soliciting lobbyist employers. For example, it is permissible to send invitations to constituents for a barbeque fundraiser in the district in August.*
- What if a local "volunteer" solicits the lobbyist employer on behalf of the Member during or before the blackout period and the check arrives in August? *A Member or his /her agent cannot solicit the campaign contribution in August, or facilitate a contribution that arrives in August. If the Member knows, or has reason to know that a person is soliciting a campaign contribution on his/her behalf, then that person serves as the Member's agent and the contribution is subject to the blackout provisions.*
- Would providing lobbyist employers with campaign materials, such as volunteer envelopes or campaign prospectus, including information on how to contribute to the Member's campaign be considered a solicitation in violation of the blackout period? *Yes, if distributed during the month of August. Persons receiving such inquiries should note that fundraising information cannot be provided during the blackout period.*
- Would directing lobbyist employers to a Member's campaign website, in August, which includes the option to make a contribution, be a violation of the blackout period? *Yes.*
- Would social media communications on behalf of the Member that globally solicit contributions and include lobbyist employers constitute a violation of the blackout period? *Members cannot solicit or accept contributions from lobbyist employers during the blackout period. If a Member sends out a global solicitation, it should include the blackout prohibitions stated in Rule 56.*
- Would sending communication, on the Member's behalf, to a lobbyist employer during the blackout period instructing them to not contribute in August but wait until after August 31 be considered a solicitation? *Yes.*
- Do the blackout restrictions apply to campaign contributions received by a Member in August from dues paying members of an association that is a lobbyist employer? *No. It is the association, not the individual that is the lobbyist employer.*
- Can member companies or individuals of statewide organizations contribute directly to the Member during the blackout period? *As long as the member companies are not themselves lobbyist employers they may make campaign contributions during the blackout period. The same applies to individuals.*
- Do the blackout restrictions apply to organizations that only have local lobbyists, like local Chambers of Commerce? *Yes, local Chambers of Commerce can be lobbyist employers that meet the definition commencing with Section 81000 of the Government Code.*
- Can individuals, or the companies they own, who are members of the board of Political Action Committees (PAC) make campaign contributions to the Member during the blackout period? *If the board member companies are not lobbyist employers they may make contributions during the blackout period. The same applies to individuals (e.g., some individuals may be sole source lobbyist employers).*
- Do the blackout restrictions apply to only Senate Campaign Accounts or any campaign account that the Member has control? *The blackout restrictions apply to any candidate controlled committee, whether for the Senate or any other elective office. However, a Member may not solicit a campaign contribution during the blackout period for other committees such as PAC's or political party committees.*

- What are the sanctions if Senate Rule 56 is found to be violated? *The Senate may take any disciplinary action it deems appropriate against a Member including, but not limited to, reprimand, censure, suspension, or expulsion. The Senate Rules Committee may refer an alleged violation of Senate Rule 56 to the Senate Committee on Legislative Ethics for investigation.*
- Does the Fair Political Practices Commission have any role in the disciplinary responsibility of the Senate with respect to Senate Rule 56? *No.*

If you have questions regarding the implementation of Senate Rule 56 please contact Cary Rudman, Ombudsperson, at (916) 651-1507 or email him at cary.rudman@sen.ca.gov.